* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON: 23.04.2009
PRONOUNCED ON: 07.01.2010

WP (C)No.876/2007

INDIAN OLYMPIC ASSOCIATION ……. PETITIONER

Through : Mr. Harish Malhotra, Sr. Advocate with Mr. Lovkesh Sawhney, Advocate

Vs.

VEERESH MALIK & ORS. …….. RESPONDENTS

Through : Mr. P.P. Malhotra, ASG with Mr. Dalip Mehra and Mr. Rajiv Ranan Mishra, Advocates for UOI.
Mr. Sushant Kumar with Mr. Abhinav Verma, Advocate for Resp-1

WP(C) No.1212/2007

SANSKRITI SCHOOL …….. PETITIONER

Through : Mr. Raju Ramchandran, Sr. Advocate, Sr. Advocate with Mr. Shridhar Y.Vhitale and Mr. Mrigank Prabhakar, Advocates

Vs.

CENTRAL INFORMATION COMMISSION …….. RESPONDENT

Through : Mr. Ravi Varma and Mr. Milind Jha, Advocates
Mr. K.K. Nigam, advocate

WP(C) No.1161/2008

ORGANISING COMMITTEE COMMONWEALTH GAMES 2010, DELHI ……. PETITIONER

Vs.

UNION OF INDIA ..... RESPONDENT

Through : Mr. P.P. Malhotra, ASG with Mr. Dalip Mehra and Mr Rajiv Ranjan Mishra, Advocate for UOI.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1.	Whether the Reporters of local papers may be allowed to see the judgment?	Yes
2.	To be referred to Reporter or not?	Yes
3.	Whether the judgment should be reported in the Digest?	Yes

HON'BLE MR. JUSTICE S.RAVINDRA BHAT

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1. The present judgment will dispose of three writ petitions filed by the Indian Olympic Association (the petitioner in W.P. 876/2007, hereafter referred to as "the IOA"), the Sanskriti School, petitioner in W.P. 1212/2007, (hereafter referred to as "the school") and the Organizing Committee of the Commonwealth Games, 2010, Delhi (petitioner in W.P. 1161/2008, hereafter referred to as "the Games Committee"). The common question involved is as to the applicability of the Right to Information Act (hereafter referred to as "the Act"), with broad reference to whether the writ petitioners are "Public Authorit(ies)" within the meaning of the term under Section 2(h) of the said Act.

Petitioners' facts and contentions:

WP 876/2007

2. Briefly the facts of the case in W.P. 876/2007, filed by the IOA are that the IOA is the apex body in the field of Olympic sports in the country and a society registered under the Indian laws. It is an autonomous body controlled and supervised by the International Olympic Committee. The first respondent applied for information from the Central Government, addressing a letter to the Central Public Information Officer (CPIO), seeking particulars relating to the hierarchy of the authorities set-up under the Act, status of the latest audited accounts of the IOA for the years 2004-05, 2005-06 and all

particulars of expenses incurred by the IOA in connection with the visits by anyone to Melbourne or any other destination in connection with the Commonwealth Games, from 1st January, 2006 to 15th April, 2006. Not receiving the reply of the kind he expected, the first respondent/information applicant approached the third respondent (referred to as "the CIC") with a complaint. The petitioner, and second respondent (referred to as "the Central Government"), made submissions as to the maintainability of the proceedings before the CIC.

3. The petitioner contends that it is completely autonomous from the governmental authorities and relies upon specific provisions of the Olympic Charter, particularly, Chapter 4, which defines the mission and role of National Olympic Committees; Clauses-31(3); (4)(1); 8(1)(1.1)(1.2); Clause 32(4)(7), 7.1, 7.2, 7.3, 7.4, 7.5, 7.6 and 9.4. It is contended that a composite reading of these conditions, which are uniformly applicable to all National Olympic Committees, such as the IOA reveal that every such National Olympic Committee is autonomous and has to guard its independence from any attempts to control its functioning or against any attempts at imposing outside regulatory measures. The said provisions, relied upon, read as follows:

> ***"31 Mission and Role of the NOCs****
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> *…3. The NOCs have the exclusive powers for the representation of their respective countries at the Olympic Games and at the regional, continental or world multi-sports competitions patronized by the IOC.*
>
> *4. …..*
>
> *1. The NOCs must work to maintain harmonious and cooperative relations with appropriate governmental bodies; they must also contribute effectively to the establishment of programmes for the promotion of sport at all levels. As sport contributes to education, health, the economy and social order, it is desirable for the National Olympic Committees to enjoy the support of the public authorities in achieving their objectives. Nevertheless, the NOCs shall preserve their autonomy and resist all pressures of any kind, including those of a political, religious or economic nature that may prevent them from complying with the Olympic Charter.*

…….

8. In order to fulfill their mission, the NOCs may cooperate with governmental or non-governmental bodies. However, they must never associate themselves with any activity, which would be in contradiction with the Olympic Charter.

1. Apart from the measures and sanctions provided in case of infringement of the Olympic Charter, the IOC may, after having heard an NOC, suspend it or withdraw its recognition from it.

1.1 If the activity of such NOC is hampered by the effect of legal provisions or regulations in force in the country concerned or by acts of other entities within such country, whether sporting or otherwise;

1.2 If the making or expression of the will of the national federations or other entities belonging to such NOC or represented within it is hampered by the effect of legal provisions or regulations in force in the country concerned or by acts of other entities within such country, whether sporting or otherwise.

32. Composition of the NOCs

4. Governments or other public authorities shall not designate any members of an NOC. However, an NOC may decide, at its discretion, to elect as members representatives of such authorities.

Bye-law to Rules 31 and 32.

7. NOCs which cease temporarily or permanently to be recognized by the IOC thereupon lose all rights conferred upon them by the IOC including, but not limited to, the rights;

7.1 to call or refer to themselves as "National Olympic Committee"

7.2 to use their Olympic emblems.

7.3 to benefit from the activity of Olympic Solidarity.

7.4 To take part in activities led or patronized by the IOC (including regional games);

7.5 To send competitors, team officials and other team personnel to the Olympic Games.

7.6 To belong to any association of NOCs.

….

9.4 seek sources of financing which will enable them to maintain their autonomy in all respects. The collection of funds must however, be accomplished in accordance with the Olympic Charter and in such a manner that the dignity and independence of the NOC are not harmed."

4. The IOA alludes to a specific declaration by the International Olympic Committee, known as the "AOMORI Declaration". The said resolution was made by the General Assembly of the Olympic Committee, which, keeping with the spirit of the Charter, regarding the autonomy of every National Committee resolved that any attempt at outside control or violation of rules of the Olympic Charter would result in withdrawal of recognition of that National Olympic Committee by the international body. IOA reiterates that there is no Central Government representation in its bodies; its Executive Committee and elected office-bearers enter into arrangements with public or private organizations for furtherance of the Charter and the IOA's objectives, independent of any control of outside agencies.

5. IOA submits that its funding is five-fold, which includes, in the first instance, funding by the International Olympic Committee; Olympic Committee of Asia; secondly, funding through sponsorship; thirdly, annual subscription, if received from members; fourth, International Solidarity Funds and lastly, through miscellaneous receipts; through donations etc. IOA contends that all these aspects were submitted to the CIC, which was informed that the Central Government or its agencies give limited assistance to the players who participate in international events. Even there, the IOA says that it manages to raise funds through sponsorship to meet additional needs of the players; it funds the bills for travelling, boarding, lodging of the national team whenever participation in international tournaments or events or coaching camps that take place abroad. Such financial assistance keeps varying and is dependent upon the concerned sporting events of the year. The IOA states that it does not receive financial assistance of a particular kind or a fixed sum every year and that such funding is contingent or event-based. The IOA submits that travelling expenses for the tickets of sports persons are paid by the

Central Government directly to the travel agents, who issue the tickets directly to the players and such persons. The IOA also does not bear other incidental expenses but prepares the estimate for boarding, lodging and other travel related miscellaneous expenses, which are forwarded to the Central Government, which then, in turn, sanctions 85% of such expenses, after sanction-money is deposited into the IOA account and directly remitted to the service provider/hotel etc. As regards coaching camps, the Central Government reimburses the concerned National Sports Federations for the expenses incurred, or directly makes payments to the players. All funds received from or disbursed by the Central Government are duly accounted for and subject to scrutiny by the Comptroller and Auditor General of India, who addresses the public concern for appropriate utilization and accounting of the amounts.

6. It is contended that completely ignoring these salient aspects, the CIC, by its impugned order dated 28.11.2006, brushed-aside IOA's objections and decided that it was a public-authority and thus obliged to comply with the provisions of the Act.

7. The relevant part of the impugned order of CIC reads as follows:

> *"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"

8. The IOA contends that the impugned order is unsustainable because it is not a public authority within the meaning of the terms under Section 2(h) of the Act. It relies upon its constitution, submitting that its members have no connection with any public body and are drawn on purely individual basis. Its administrative mechanism and management are the result of independently-held elections and that the membership is

drawn from National Sports Associations or Federations whose games are included in the Olympic Commonwealth, Asian and South-Asian Federation Games' programs. The voting is exclusively from amongst the members indicated in Clause-XI of the Constitution. The powers and duties of the office-bearers and other functionaries are also specifically mentioned. The IOA disciplines its members and office-bearers- for which there is a separate and autonomous code; the list of members who constitute the IOA are detailed in the Constitution. The IOA next contends that there is no element of state or public control in regard to its constitution, establishment or functioning. It argues that there is no suggestion of its performing any statutory or public functioning that can be a matter of concern to the people at large.

9. As far as IOA's funding, utilization of the amounts received and audited or accounting controls are concerned, the IOA relies upon copies of auditor's reports and audited statements of accounts for the periods 01.04.1995 to 31.03.1996, 01.04.1996 to 31.03.1997, 01.04.1997 to 31.03.1998, 01.04.1998 to 31.03.1999, 01.04.1999 to 31.03.2000, 01.04.2000 to 31.03.2001, 01.04.2001 to 31.03.2002, 01.04.2002 to 31.03.2003, 01.04.2003 to 31.03.2004, 01.04.2004 to 31.03.2005. Pointing to the contents of these reports, it submitted that the income generated is through affiliation and membership fees, interest on fixed deposits and saving deposits, sponsorship and royalty etc. It is pointed that there is no fixed percentage or pattern in regard to the amounts received from government or government agencies and as to the characteristics, the same is not financed, let-alone substantially financed - the satisfaction of which criteria only could possibly apply provisions of the Act to the IOA. It is reiterated by the learned counsel that the IOA is independent and autonomous and a close scrutiny of the audited reports, copies of which are placed on record, disclose that the funds received from the government were for specific performances and must have been directly remitted to the concerned parties, which provided services such as air-travel, ticketing, boarding, transport etc. An objective analysis of the pattern of income and expenditure would reveal that IOA is not dependent on the Central Government largesse or funds; it is

autonomous; neither its membership nor its management or office-bearers are subject to government control and importantly, the Central Government has no say in its affairs. Learned counsel points out that the executive or governing council of the IOA or its functionaries do not comprise of any Central Government or public agency representative so far as to remotely suggest that IOA performs any functions of a public character of the kind that would attract provisions of the Act.

W.P. 1161/2008

10. The Commonwealth Games Committee, in W.P. 1161/2008 impugns the Office Orders of the Ministry of Sports and Youth Affairs, Central Government, dated 01.11.2007 and 28.11.2007, declaring it to be a public authority, as defined under the Act. The Committee was registered as a society on 10.02.2005 by the Registrar of Societies, Govt. of NCT of Delhi. Its Charter is to organize/conduct the Commonwealth Games, 2010; assigned or allocate to the IOA, which is an affiliate of the Commonwealth Games Federation.

11. Like the IOA, the Games Committee asserts that it is an autonomous and independent society, having no connection with the Central Government or any statutory body. The Commonwealth Games, 2010 was allotted to the IOA by the Commonwealth Games Federation by a resolution of its General Assembly in Jamaica. To effectuate this, the IOA signed a host city agreement dated 13.11.2007 to which the Commonwealth Games Federation, the IOA, the Central Government and the Govt. of NCT of Delhi were parties and signatories. It is contended that the role and duty of each party as well as their obligations are set-out in detail in that contract. The Games Committee states that sometime in April-May 2007, the applicant, i.e. Team One Network Communications approached it under the Act, seeking some information. The Games Committee refused to entertain the application under the Act, stating that it was not a public authority. Team One ("the information applicant") then approached the Central Government, which, by its

letter, dated 29.05.2007 wrote to the Games Committee, stating that it is governed by the provisions of the Act, and enumerated the following reasons:

(1) That the Games Committee had entered into a "Host-city" contract (hereafter "the contract") to which the Central Government was one of the signatories;

(2) Decisions pertaining to appointment of Chairperson and composition of the Games Committee Society were taken by a Group of Ministers (GoM) set-up by the Central Government, which is providing substantial upfront funds and has also undertaken to meet the shortfall between revenue and expenditure of the Games Committee.

This letter was responded by the Games Committee on 20.06.2007, contesting each reason and further arguing that it was not covered by the Act and that it was not a public authority. As regards its creation, the Games Committee relied upon Article 27(C) of the Constitution of the Commonwealth Games Federation and the Resolution dated 01.11.2004 by the General Assembly of the IOA, (which is, in turn, an autonomous body and an affiliate of the International Olympic Committee). The Games Committee also relies upon the IOA's arguments that the latter is autonomous and is only subjected to control by the International Olympic Committee.

12. The Games Committee claims that it owes its existence to Article 27(C) of the Constitution of the Commonwealth Games Federation, which obliges the IOA to create another body like it. Reference is made to recital D of the host-city contract, which reads as follows:

> *"D. IOA will in accordance with Article 27(C) of the Constitution and with the approval of the CGF delegate the Organization of the Games to the OC which, while working in partnership with the IOA, will also be directly responsible to the CGF.""*

13. The Committee also relies upon other Articles or provisions of the Contract, to say that Article 3, which lists the role, responsibility of the respondent, does not authorize it to constitute it and, rather emphasizes that the Central Government has to provide the

support to the Committee, and the IOA in the manner provided in the Host City Contract. It is said that Article 3 of the Host City Contract does not place any responsibility on the respondent in terms of establishing, managing, supervising or being accountable for acts of the petitioner in any manner. The Committee submits that as owner of the Games, the contract binds it and IOA only for the organization and conduct of the Games.

14. It is also stated that the Host City Contract is very particular in providing separate roles and responsibilities on each of the signatories' vis-à-vis the organization of the Games without altering or diluting their respective basic character or legal status and it nowhere empowers the respondent to encroach upon the field specifically reserved for the Games Committee. It is thus submitted that the Games Committee is completely autonomous in its role and functioning. The responsibilities of the Central Government under Article 3 of the Host-city contract do not empower it to constitute the Committee; it is emphasized that it has to provide support as agreed upon.

15. The Games Committee states that it has its own Board in accordance with its Memorandum and Rules, comprising of 15 members out of which two members each are nominated by the Central Government and the Govt. of NCT of Delhi and the rest are independently drawn from the IOA, National Sports Federations affiliated to it and so on. Similarly, it is emphasized that the Chairman of the Games Committee is not government-appointed, but nominated by Resolution of the IOA. The space for the Games Secretariat is rented by it; the Games Committee Chairman is empowered to recruit employees to conduct its affairs. The Committee has its autonomous administration and official guidelines which are put in place; the procedures for recruitment are not in any way connected with the Central Government regulations or rules. It is submitted that the Games Committee only has charge of ownership of the Games and not all the physical assets or infrastructure put in place or existing, that is used for such purpose. Article 37 of the Host-city contract provides for a mechanism for distribution of the surplus; it provides that such an amount will be paid to the Commonwealth Games Federation and the IOA.

16. The Games Committee states that it has been sanctioned budgetary support by the Central Government in the form of a repayable loan, with interest- from the surplus revenue generated by it. It is claimed that the Games Committee is revenue-neutral and that contrary to commercial arrangements which the Central Government has with it, all other stakeholders are provided budgetary support for creating infrastructure through grants. The Games Committee places particular emphasis on the submission that its arrangement is a commercial one, such as where any Company or Society is beneficiary to amounts released that are repayable with interest. For this purpose, it relies upon certain loans issued by the Central Government. It is argued that the Committee had requested for waiver of interest on loan and that the Central Government agreed to these by its decision dated 11.10.2007, stating that interest could be paid only from the surplus, out of the receipts from the Games.

17. The Games Committee submits that the returnable loan is not the only source of funds to enable its functioning but that it has the ability to raise funds from the corporate sector through sponsorship, from banks, by applying for loans etc. The Games Committee Society is not in any manner a Society receiving any financial grant and that the mere assurance held out by the Central Government, would not constitute it as a public authority under the Act. The Committee emphasizes that the involvement of the Central Government and the Govt. of NCT of Delhi is only with a view to popularize the games scheduled in the year 2010, and not in any manner with the intention of controlling its conduct or the affairs.

18. It is argued that the Central Government's stand about the applicability of the Act would result in cessation of independence of the Committee and subject it to additional burdens, thus hampering the work of creating efficient mechanisms for the conduct of games in the city of Delhi. The Games Committee further argues that it is not meant to be a permanent body set-up in order to provide expertise for the conduct of the Games and any surplus generated – after the repayment of the loan etc. would revert to the IOA and the Commonwealth Games Federation. The absence of any government, Central

Government or public agency control it clarifies that the Central Government or any other public authority under its control never contemplated that the Games Committee would be subject to provisions of the Act or any such statutory control as would flow if the stand taken in the impugned orders/communications is upheld.

19. The Games Committee argues that in the absence of a notification under Section 2(h), as such is the case, it cannot be held to be a public authority and therefore, be subjected to the rigors of the Act, such as placing certain information in the public domain, scrutiny by the general public through information applications, appointment and maintenance of Public Information Officers and appellate bodies etc, which would strain its functioning and ultimately tell on the efficiency of its basic task and functioning. It is contended that the host city contract and other arrangements entered into with the Central Government and the Govt. of NCT of Delhi provide adequate mechanism for accountability and scrutiny of the amounts used from the funding or loan received by governmental authorities; such authorities are free to query the Games Committee in this regard. Thus, the applicability of the Act is impinged as an unfeasible proposition, besides being unwarranted on a plain construction of its provisions. The Games Committee also submits that the expression "substantially financed" should in any case be construed as provided under Section 14 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 (hereafter called "the CAG Act"). The Explanation to Section 14 (1) of that Act reads what is meant by a body being "substantially financed" in the following terms:

> *"Explanation: Where the grant or loan to a body or authority from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly in a financial year is not less than rupees twenty-five lakhs and the amount of such grant or loan is not less than seventy-five percent of the total expenditure of that body or authority, such body or authority shall be, deemed, for the purposes of this sub-section, to be substantially financed by such grants or loans as the case may be."*

W.P. 1212/2007

20. The school is aggrieved by an order of the CIC, dated 23-1-2007, declaring it to be a public authority. The facts here are that one Ms. Manju Kumar, the respondent in the petition ("information-applicant") sought particulars about funding to the school by various government departments, details of wards of children of parent(s) belonging to Central Government Services (IAS, IFS, IRTS etc.) and of those belonging to Defence Forces, studying (in the school) who were admitted, for the period March 2006, and those children admitted to the school without holding any entrance test, for March to July, 2006, etc, by her application dated 11-7-2006. The school replied on 26-7-2006, through its principal (who has deposed in support of the petition) that it was an unaided institution, and therefore, not a public authority, within the meaning of the expression under the Act. The information applicant wrote to the CIC on 2-8-2006, stating that the school was unjustifiably denying applicability of the Act to it, and that it was a public authority, and therefore, bound to disclose the information sought. The CIC issued notice to the school, on 12-9-2006, under Section 18 of the Act. The school's response, in its reply was that it was not covered by provisions of the Act, as it was an unaided institution. It also urged that it was not a body constituted by or under any enactment, and that its members and governing body were drawn from amongst wives of serving officers of the Central Civil Services. It pleaded that the legislative intent of ensuring coverage of provisions of the Act to public authorities, was that such bodies were to be set up by or under a notification, if they were not government or statutory bodies, and also had to be substantially financed by the appropriate government. It was contended that none of such pre-requisites were fulfilled.

21. The CIC by its impugned order, held as follows:

> *"9. The Commission recalled its earlier order of 6th January 2007 wherein the respondents were represented by their Advocate, Shri Chitale. However, the Commission directed him to send the Principal of the School to the Commission as it was not prepared to hear the Advocate as per Section 5 (4) of the Central Information Commission (Appeal Procedure Rules 2005). Accordingly, in the hearing today, the Principal appeared on behalf of the Sanskriti School. The main issue in the case seemed to be whether Sanskriti School was a "Public Authority"*

or not ? At the hearing, it was stated by the Principal that although the Government did not give any grant for the day to day running of the School or for any other activity, it has given a substantial grant for setting up the infrastructure of the school in its initial phase. Secondly, as stated by the Respondent, the wife of the Cabinet Secretary is the Ex- Officio Chairperson of the Board of Management of the School and also that wives of other Civil Service Officers are on the Board of Management. On the basis of these two submission, the Commission decided that the Sanskriti School did come under the purview of the RTI Act, 5 as a "Public Authority". Hence, it was incumbent on them to set up the infrastructure for supply of information as required under the RTI Act and also to respond to the RTI applications.

10. The Commission, therefore, directed the Principal to reply to the application filed by Smt. Manju S. Kumar by 5th February.

11. The Commission ordered accordingly."

22. The School faults the CIC for not giving it appropriate hearing, or opportunity to present its case. It submits to being controlled by the Civil services Society, which is a private, non-profit making, voluntary organization, registered under the Societies Registration Act. The school has its Executive Committee comprising the wives of the serving Civil Services Officers and subsists fully on the fees received from the students. The day today expenses, salary of the teachers, and all recurring expenditure of the School is met from the tuition fee collected, which is the only income for the School and are not subject to any grants, funds or aid from the State. The School is a private non-profit institution which manages its day to day expenditure by itself without any aid, finance or grant from the Government or any other organization; it is not an aided school.

23. The school says that to fall within the parameters prescribed by Section2 (h) the authority, body or institution must be one of self government established by or under the Constitution, or by any law made by Parliament or the State Legislature or by a notification issued by the appropriate Government and in the event an authority, body or institution is established or constituted by a notification issued by the Appropriate Government, then it must be a body owned, controlled or substantially financed directly or indirectly by funds provided by the appropriate government. The provisions of Section 2 (h) (d) (i) & (ii), argues the school, cannot be read in isolation and must be read as

necessary part of Section 2 (h) (d). The Legislature while drafting the provisions of Section 2(h) was cautious in inserting the words *"body owned, controlled or substantially financed,"* as a part of sub section (d) of Section 2 (h). Had the legislature intended otherwise, the words "body owned, controlled or substantially financed" would have been inserted with the opening words of Section 2 (h) to read as a "Public Authority means a body owned, controlled or substantially financed directly or indirectly by funds provided by the appropriate government or any authority, institution or body of self government established or constituted under the provisions of sub clause (a) to (d)". It is submitted that none of the ingredients mentioned in Section 2 (h) of the Act stand satisfied in the present case there is no material on record to suggest the same. The CIC's order is therefore, attacked as untenable.

Common contentions of all petitioners

24. It is agued by all the petitioners that under Section 2 (h), a body institution or authority must possess the following essential ingredients to be a "public authority":

I) The authority, body or institution must be one of self government. In the present case, the petitioners are not an authority, body or institution of self government and hence not a public authority. There is no material on record to establish that the petitioner school is an authority or body or Institution of self government.

II) The Authority, body or institution under clause (a) may be established or constituted:

(i) by or under the Constitution
(ii) by a law made by Parliament or State Legislature
(iii) by a notification issued or made by the Appropriate Government and if so then it can be a NGO or a body owned controlled or substantially financed by the appropriate government.

All writ petitioners submit they are not "an authority, body or institution" constituted by or under the Constitution, or by a law made by Parliament or the State Legislature or by a

notification issued or made by any Government, and in any event, do not fall within the definition.

25. Besides the contentions mentioned above, all petitioners urge that facially, none of them fall within the description of "public authority". Considerable emphasis is placed upon the structure of the definition (of that term), for this purpose. Learned senior counsel for the Games Committee and the School point out that generically, the description of the bodies set out in the definition, are governmental or state bodies, constituted by or under a statute, or the Constitution. It is argued that in order that a body or institution to qualify as a public authority, it must be notified as such, by the appropriate government; the contention here is that absent a notification, no one can claim that it is a public authority. It is argued, concurrently, that the body or institution should also be set up or constituted by a notification. The petitioners therefore, submit that as none of them are set up by a notification, or are notified as public authorities, they do not fall within the description.

26. Learned counsel submit that the intention of Parliament was that institutions performing some public function, or affecting lives of the general public, for which they are substantially financed by the government, can alone be characterized as public authorities. Absent such characteristics, even if some assistance is given by the government, in a sporadic, or irregular manner, as a general policy measure, or to promote certain activities, (which otherwise do not partake any public law element) they are not public authorities. The Games Committee therefore, says that loans secured on commercial basis, irrespective of the amount, do not fall within the term "substantially financed". It is argued that the Committee itself is not a permanent body, but set up for the purpose of the Commonwealth Games; no sooner is that event concluded, the Committee will cease to function. Such a temporary body with short term objectives cannot be called a public authority.

27. The school submits that assistance given as a matter of policy by the Land and Development Office, to allot land (as a one-time measure) on concessional rates, or that one time grant was given by certain government departments or agencies, does not mean by any stretch of the imagination that it is a public authority. The school's management, its functioning and activities, and composition of the governing body, all point to such activities being purely private, and the school, being unaided. It is emphasized that even the funds received were for one time capital expenditure, and not recurring grants (by the school), which cannot negate its essential nature as a private organization, managing its affairs. Unless there is a public element with dominant control in its affairs or management by the Government, or government agencies, the school cannot be termed a public authority, for purposes of the Act. The IOA reiterates the same arguments, as in the case of the Games Committee and says that India is pledged to ensure that its functioning is completely autonomous, and that requiring it to comply with provisions of the Act on an assumption that it is a public authority would result in complete erosion of such autonomy and independence, which would be a blow to the Olympic movement as well as a setback to sports generally, so far as India is concerned. It is emphasized that IOA does not ever depend on government or state funding, as it has independent sources of income, through sponsorships, donations, event fees, etc. That the Central Government assists sports persons selected or endorsed pursuant to the IOA's affiliate bodies' processes, for which purpose, the amounts are routed through its accounts, does not make its (IOA's) functioning dependant on any substantial financing by the Central Government, or public funds. It is also submitted that the concept of "substantial financing" implies that government or public financing or funding should be dominant, or more than 50%, and also be on a recurring basis. Learned Counsel argue that mere allocation of funds for specific purposes would not make the recipient or donee organization or institution a public authority.

28. The respondents general common contentions are that the structure of Section 2(h), if left without the extension *"..and includes"* leaves no manner of doubt that in the

case of bodies or institutions that are neither created by or under the Constitution, or by a law made by Parliament, or by a law of the State Legislature, nor created under any notification, issued for the purpose, what is necessary – in the case of non-governmental bodies, is whether they are a *"Body owned, controlled or substantially financed"* by the appropriate government, or are a "*Non- Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government."* In either instance, there is no requirement that such bodies should perform public or governmental functions; the controlling intention is the element of "substantial financing" by the appropriate government, in both cases, and, in the case of non-governmental organizations, the funding should be by "substantial" by the appropriate government, whether it is "direct" or "indirect". Thus, argue the respondents, there is no requirement that the institution should be set up or created by a notification, or by an enactment. The emphasis is on funding, irrespective of whether it is direct or indirect.

29. It is argued that a look at the Annual Reports furnished by the IOA show that its activities are dependant to a large extent, on Central Government funding. Learned counsel argues that IOA has been seeking financial assistance from the Central Government and relies on a copy of the letter dated 16.10.2007 sanctioning Grant-in-aid of Rs.47,92,500 for participation of the Indian Contingent in the 2nd Asian Indoor Games 2007 at Macau and releasing an amount of Rs.35,94,375 as 75% advance. The Central Government relies on the following chart, which, it says, is only illustrative of the kind of financial assistance given to IOA:

S.No.	*Item/Event*	*Amount of assistance sought by the Petitioner*	*Amount of assistance approved/released by the Central Government*
1.	*Bid for Asian Games, 2014*	*Rs.5,00,00,000/- (Rupees five crore)*	*Rs.2,00,00,000/- (Rupees two crore)*
2.	*Participation of Indian Contingent in 2nd Asian Indoor*	*Rs.1,18,79,000/- (Rupees one crore eighteen lakh seventy*	*Rs.92,38,303/- (Rupees ninety two lakh thirty eight thousand and*

	Games, 2007 at Macau (China)	*thousand)*	*three hundred three)* *[Rs.35,94,375/- paid directly to the IOA and Rs.56,43,928/- to Ms. Balmer Lawrie & Co. towards airfare]*
3.	*Participation of Indian Contingent in Commonwealth Games, 2006 at Melbourne*	*Rs.1,69,00,800/- + Airfare (Rupees one crore sixty nine lakh and eight hundred)*	*Rs.1,10,65,410/-* *(Rupees one crore ten lakh sixty five thousand four hundred ten only)* *[Rs. 41,17,629/- released directly to the pensioner and Rs.69,47,781/- released to M/s. Balmer Lawrie & Co. towards air fare]*
4.	*Participation of Indian Contingent in Asian Games, 2006*	*Rs.3,23,44,768/- + Airfare (Rupees three crore twenty three lakh forty four thousand seven hundred sixty eight)*	*Rs.2,50,83,476/-* *(Rupees two crore fifty lakh eighty three thousand four hundred and seventy six only)* *[Rs.1,12,64,839/- paid to the petitioner directly and Rs.1,38,18,637 paid to M/s. Balmer Lawrie and Air India towards airfare].*
5.	*Participation of Indian Contingent in 4th children Asian Games 2008 at Yakutia (Russia)*	*Rs.53,62,900/- + Air fare as per actual* *(Rupees fifty three lakh sixty two thousand and nine hundred only)*	*Rs.1,50,77,856/-* *(Rupees one crore fifty lakh seventy seven thousand eight hundred fifty six)* *[Rs.11,74,320/- paid directly to the petitioner and Rs.1,39,03,536/- paid to M/s. Balmer Lawrie & Co. towards airfare]*
6.	*Participation of Indian Contingent in Olympic Games, 2008 at Beijing*	*Rs.88,86,062/-* *(Rupees eighty eight lakh eighty six thousand and sixty two only)*	*Approved amount– Rs.64,30,712/-* *(Rupees sixty four lakh thirty thousand seven hundred and twelve).* *Amount released: Rs.42,64,854/-* *(Rupees forty two lakh sixty four thousand eight hundred*

			fifty four)
7.	*Participation of Indian Contingent in 1st Asian Beach Games.*	*Rs.1,06,04,200/- + Air fare as per actuals.*	*Assistance approved:* *Air fare as per actual; accommodation and boarding @ US $ 50 per person per day; ceremonial dress @ Rs.9000/- per day for 73 contingent members cleared at Government cost; competition kit @ Rs.3500/- per person in respect of 52 sportspersons only and out of pocket allowance @ US $ 20 per day person for sportspersons and coaches only.* *Amount released: Rs.37,79,782/- to M/s. Ashol Travels & Tours Limited towards air fare.* *Amount to the petitioner to be released on receipt of the audited statement of accounts.*
8.	*Participation of Indian Contingent in 3rd Commonwealth Youth Games 2008 at Pune.*	*Rs.1,02,36,950/-* *(Rs. One crore two lakh thirty six thousand nine hundred fifty only).*	*Assistance approved:* *Air fare as per actual in respect of the team officials and extra team officials; accommodation & boarding for 21 extra officials @ US 75 per day per person; ceremonial dress @ Rs.12,000/- per person for 196 contingent officials; competition kit @ Rs.3,500/- per person in respect of 135 sportspersons only and out of pocket allowance @ Rs.500/- per person per day in respect of sportspersons and coaches only.*

			Amount to the petitioner to be released on receipt of the audited statement of accounts.

30. The Central Government also submits, in relation to the IOA, that it has been receiving different forms of grant-in-aid, which clearly demonstrates that it is substantially financed by the Government. The IOA also claims to be the apex of all National level sports federations; it represents the national face of the IOC. It has the power to affiliate or recognize other domestic sports federations, which in turn can select and sponsor sportsmen to represent the country in games and events. In these circumstances, the IOA's funding by other sources, does not deflect from the fact that the Government treats it as the sole representative body, for all manner of sports. Therefore, it is a public authority.

31. The Central Government states that it released following grant-in-aid to the petitioner during the last three years 2006-07 to 2008-09 towards participation of Indian contingents in multi-disciplinary international sports events and hosting of the multi-disciplinary international sports events in India. The details are as follows:

S.No.	Year	Amount
1.	2006-07	Rs.5.38 crore.
2.	2007-08	Rs.2.44 crore.
3.	2008-09	Rs.2.38 crore.

It is submitted that in view of the above details of amounts approved and sanctioned, IOA is receiving substantial Central Government financial assistance and thus falls within the definition of Public Authority under Section 2(h) of the Act.

32. The Central Government denies the IOA's contention that it provides financial assistance only for limited activities of players for their participation in the international events. It submits that the Ministry of Youth Affairs and Sports pays for the entire

expenditure of travel, boarding and lodging, ceremonial dress and out of pocket allowance etc. of the teams cleared on cost to the Government. The participation of the national teams in major multi-disciplinary sports events such as Olympic Games, Commonwealth Games, Asian Games etc. is one of the main activities of IOA, entirely funded by the Ministry. It is argued that whenever IOA bids for hosting a major sporting event, it seeks and receives government support. For the bidding of Commonwealth Games, 2010, the Central Government committed huge financial resources for the successful holding of the games. It is submitted that IOA also receives financial assistance from State Governments. For the construction of Olympic Bhawan, State Governments contributed over Rs.2.5 crore out of Rs.3.8 crore spent of the building. It is stated that the Government directly pays to the travel agents for the tickets issued in the names of players. However, the expenditure on boarding and lodging, Ceremonial dress, out of pocket allowance etc. are paid to the petitioner. The Central Government further says that under the order of the Government of India (Allocation of Business) Rules, 1961 the Indian Olympic Association and National Sports Federations have been specifically listed as an item of Business allocated to Ministry of Youth Affairs & Sports. For these reasons, it is contended that the IOA is a public authority.

33. As far as the contentions relating to the Commonwealth Games are concerned, the Central Government submits, that the committee is not a grantee institution, but keeping in view that it (the Government) is providing unsecured loan of Rs.767.00 crore and the committee, by its letter dated 9.7.2008 has further asked for a further substantial fund, the transparency in its functional system in every manner is expected, to reply to the valid queries under the Act. The Central Government has also undertaken to meet the shortfall between revenue and expenditure of Games Committee. The Central Government submits that sports infrastructure being developed by the Govt. of NCT of Delhi, Sports Authority of India, DDA etc, which will be used by the Committee and would generate revenue. Any shortfall in the expenditure and revenue of the Games Committee is to be met by the Government. However any surplus generated, will not be returned to the

Government, but will be shared between the IOA and the Commonwealth Games Federation. In this background, it is the statutory duty of the Committee, to use public funds judiciously and be open for scrutiny at all times. The Central Government states that the Games Committee is an asset-less organization, and the loan which sanctioned by it (the Central Government) is unsecured. It is stated that the Central Government has agreed to provide such a huge loan without any security, and has full right to put forth required conditions to ensure, that these funds are used judiciously and reasonably in accordance with norms of transparency and accountability. This cannot be equated with the functioning of Banks/Statutory Financial entities, which would not agree to provide funds without proper safeguards including guarantors.

34. The Central Government submits that it has further undertaken to bear any shortfall in expenditure and revenue of the Games Committee; it also submits that its role is also to committing for the required institutional arrangements to ensure the success of the Commonwealth Games, and, also planning for and incurring, of enormous expenditure, amounting to thousands of crores of Rupees, on the construction/renovation/up-gradation of sports stadia; up-gradation of civic infrastructure; construction of hotels; operationalization of metro lines, etc. The revenues that will emanate from the 'Conduct of the Games' to the Committee, will be as a result of use of these stadia etc. by the petitioner for the Games, for which the Central Government has not insisted on any user charges or investment cost, from the Games Committee. The committee therefore has to use the public funds judiciously, and act transparency in its operations in expending the substantial funds provided to it. It is contended, importantly, that a sum of Rs.767.00 crores has already been sanctioned and out of which, a sum of Rs.272.72 crore has been given to the Games Committee; it is further submitted that a revised estimate of Rs.1780/- crore as sought by the Games Committee is under consideration. The Central Government emphasizes that even the interest on the loans advanced to the Games Committee had, at its request been waived off and it was been decided that the interest would be payable only from the surplus

generated by the Organizing Committee after meeting its expenditure. The letter of the Union Finance Minister, dated 11.10.2007, to that effect, to the Committee has been relied upon, for this purpose.

35. It is contended that the fact that the Games Committee is not a permanent body would not detract from the fact that it is a public authority under the Act. The nature of commitments made by the Central Government establish that there is not only substantiality about the financing of the Committee's activities, and also that it owns only the games, but is entirely dependent on physical infrastructure which admittedly belongs to the Government and public bodies.

36. The information applicant submits, in relation to the School's writ petition (WP 1161/2008) that the court cannot be limited by the circumstance- while considering whether it (the school) is covered by provisions of the Act, that it is an unaided school. It is submitted that being conceived and promoted by the most senior officials in the Central Government, drawn from among elite services such as the IAS, IFS, IPS, IRTS, etc, the school has been recipient of considerable public funds, which fits the definition of a public authority, under the Act. Reliance is placed on the response of the Union Ministry of Personal, Public Grievances & Pensions, Department of Personal & Training letter dated 27th August, 2008, to the queries sought, for the submission that the total grant-in-aid of Rs.15.94 crores and donations of Rs.22.50 lakh were received by the School between the years 1994-95 to 2001-2002. The land, says the applicant, for the School was allotted by the Ministry of Urban Development, at extremely nominal rates. The said letter also says that:

> *"Unable to meet its capital investment requirements etc the Civil Services Society/ Sanskriti School approached the Department of Personnel and Training for financial assistance. The Department of Personnel and Training released further grants-in-aid to the Sanskriti School with the approval for the Committee of Secretaries/ Cabinet. An amount of Rs.5.50 crore was released to the School by this Department during 2004-05 in installments. In the subsequent years 2006-07 and 2007 -08, an amount of Rs.2.37 crores was released in installments by the Department."*

37. The information applicant also relies on the sanction letter of the Central Board of Excise and Customs, dated 26th April, 1996, where the sum of Rs. 3 crores was sanctioned for the school. The letter also stipulated that:

> *"Seven (7) seats shall be reserved in the School for the nominees of the Chairman, CBEC, who could be children of any of the employees of the customs and Central Excise Department.*
>
> *(iii) A formal resolution of the Civil Services Society, conveying the acceptance of above conditions shall also be forwarded to the Chairman, Central Board of Excise and customs.*
>
> *(iv) The Society should abide by Rules 150 & 151 of the Grants-in-aid etc. and loans Rules. These rules require (a) the Accounts of the Institution/ Society to be audited by the C & AG, (b), submission of the certificate of actual utilization of the grants received, by a specific date and (c) laying on the Table of the House, the Annual Reports & Accounts of the Society."*

So far as the land allotted to the Civil Services Society for purposes of the school is concerned, it is argued that the letter of the Ministry of Urban Development, dated 16.09.2008 clarified that land area measuring to 7.797 acre was been allotted to the said Civil Service Society (for Sanskriti School) on lease hold basis @ Rs.1/- per acre, as ground rent per annum.

38. It is submitted that the court cannot be constrained in its interpretation of the term "public authority" by references to "State" under Article 12 of the Constitution of India, or "other authority or person" under Article 226 of the Constitution, since they are meant to further other objectives. It is contended that the purposes of the Act are wider, and meant to ensure transparent functioning of government and public bodies; in the scheme of things, if a non-governmental organization – regardless of its nomenclature, receives substantial finance for any of its activities, it is deemed to be a public authority, and obliged to follow the provisions of the Act.

Analysis and Conclusions

39. Before proceeding to discuss the rival contentions, it would be useful to recollect and analyze provisions of the Act. Under the scheme of the Act, "record", and "information", are held by defined "public authorities". By virtue of Sections 3, 5, 6 and 7, every public authority requested to provide information is under a positive obligation to do so; the information seeker is under no obligation to disclose why he requests it. Public authorities, are defined by Section 2(h) as-

> "*Section 2 (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 organization substantially financed, directly or indirectly by funds provided by the appropriate Government."*

40. Section 4 obliges public authorities to publish various specified classes of information. The information provider or the concerned agency is, under the Act, obliged to decide the applications, of information seekers, within prescribed time limits. A hierarchy of authorities is created with the CIC, at the apex to decide disputes pertaining to information disclosure. In this Scheme, the Parliament has in its wisdom, visualized certain exemptions. Section 6 enjoins that information disclosure is the norm; in case the public authority on being approached (for information), does not possess the information sought, the Public Information Officer (PIO) has to forward the application, under Section 6(3) to the authority which actually holds the information; in that situation, the latter authority is accountable for disclosure of the information. Section 8 lists exemptions; it opens with a *non-obstante* clause, signifying the intention that irrespective of the rights of the information seeker, in regard to matters listed under that provision, the information providers can justifiably withhold access to the information seeker the

record, information or queries sought for by him (i.e. the information seeker or applicant).

41. The Act marks a legislative milestone, in the post independence era, to further democracy. It empowers citizens and information applicants, to demand and be supplied with information about public records; Parliamentary endeavor is to extend it also to public authorities which impact citizens' daily lives. These documents and processes are such as to which the people previously had no access. The Act mandates disclosure of all manner of information, and abolishes the concept of *locus standi*, of the information applicant; no justification for applying (for information) is necessary; indeed, Section 6(2) enjoins that reasons for seeking such information cannot be sought- (to a certain extent, this bar is relieved, in Section 8). Decisions and decision making processes, which affect lives of individuals and groups of citizens are now open to examination. Parliamentary intention apparently was to empower people with the means to scrutinize government and public processes, and ensure transparency. At the same time, however, the needs of society at large, and governments as well as individuals in particular, to ensure that sensitive information is kept out of bounds, have also been accommodated, under the Act.

42. The central issue which the court has to consider and decide is if the three organizations which have approached this court, are "public authorities" under the Act.

43. The structure of Section 2(h) makes it obvious that it is in two parts. The first part refers to an "authority" "body" or "institution" of "self government". These bodies of "self government" are "established", or "constituted" by or under the Constitution, any central enactment, or any state enactment, or "by or under a notification issued by the appropriate government". (The expression "appropriate government" is defined by Section 2 (a) as, "*in relation to a public authority which is established, constituted owned, controlled or substantially financed by funds provided directly or indirectly" by (i) the Central Government or the Union Territory administration, the Central*

Government" likewise, if the funding-substantially, whether directly or indirectly is by the State Government, then the appropriate government is the state government.) The first three categories of this part are fairly clear; those established under the Constitution or any enactment, Parliamentary, or state, are public authorities. The fourth category of institution or body is that set up under notification issued by "the appropriate government". This is if the body, apart from being established by the notification is substantially financed, *directly or indirectly* by the appropriate government. The fourth category, therefore, presupposes the following:

(1) The body or institution to be one of self government;

(2) Established by or constituted under a notification, issued by the appropriate government.

Facially, the controlling expression here is "self-government" which the petitioners, perhaps correctly interpret, as limiting the reach of the definition. The reference to "appropriate government" and substantial financing, either directly or indirectly, to a certain extent, widens the scope of the definition. Yet, the direct allusion to "self-government" no doubt acts as a limitation to its amplitude. The requirement of the institution being constituted, or established by or under a notification, narrows its reach. It can arguably be said, that the allusion to such bodies or institutions, and placement along with statutory bodies, constituted by or under Parliamentary or State enactments, or under the Constitution, naturally means that such institutions (set up under notifications) should possess the same characteristics of those referred to in the first three categories. So far, the writ petitioners' construction appears not only to be feasible, but the correct one; it could even be said that but for the extended definition- (the extension being the term *"and includes"* after which the express reference to non-governmental organizations is made), the petitioners' interpretation is the reasonable and correct one. However, the entire definition has to be considered; the extension by use of the term "and includes" acquires significance, in this context.

44. As to the legislative intent in using the expression "includes", in *Associated Indem Mechanical (P) Ltd. v. W.B. Small Industries Development Corpn. Ltd.,(2007) 3 SCC 607,* the Supreme Court held that:

> *"The definition of premises in Section 2(c) uses the word "includes" at two places. It is well settled that the word "include" is generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute; and when it is so used those words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. (See Dadaji v. Sukhdeobabu 1980 (1) SCC 621; Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. 1987 (1) SCC 424 and Mahalakshmi Oil Mills v. State of A.P. 1989 (1) SCC 164) The inclusive definition of "District Judge" in Article 236(a) of the Constitution has been very widely construed to include hierarchy of specialised civil courts viz. Labour Courts and Industrial Courts which are not expressly included in the definition. (See State of Maharashtra v. Labour Law Practitioners' Assn. 1998 (2) SCC 628) Therefore, there is no warrant or justification for restricting the applicability of the Act to residential buildings alone merely on the ground that in the opening part of the definition of the word "premises", the words "building or hut" have been used."*

The principle was endorsed, more recently, in *Karnataka Power Transmission Corpn. v. Ashok Iron Works (P) Ltd.* (2009) 3 SCC 240:

> ***"15.*** *Lord Watson in Dilworth v. Stamps Commr.*[3] *made the following classic statement: (AC pp. 105-06)*
>
> *"... The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. But the word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to shew that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include', and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions."*
>
> ***16.*** *Dilworth*[3] *and few other decisions came up for consideration in Peerless General Finance and Investment Co. Ltd.*[2] *and this Court summarised the legal position that (Peerless case*[2]*, SCC pp.449-50, para 32) inclusive definition by the legislature is used:*
>
> > *"32. ... (1) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it; (2) to include meanings about which there might be some dispute; or (3) to bring under one nomenclature*

all transactions possessing certain similar features but going under different names."

17. *It goes without saying that interpretation of a word or expression must depend on the text and the context. The resort to the word "includes" by the legislature often shows the intention of the legislature that it wanted to give extensive and enlarged meaning to such expression. Sometimes, however, the context may suggest that word "includes" may have been designed to mean "means". The setting, context and object of an enactment may provide sufficient guidance for interpretation of the word "includes" for the purposes of such enactment."*

Earlier, in *State of Bombay –vs- Hospital Mazdoor Sabha* AIR 1960 SC 610, the Supreme Court emphasized that the term "includes" denotes legislative intent to widen the ambit and scope of the thing defined, to include other objects or things which do not fall within the ordinary scope of the expression:

"…It is obvious that the words used in an inclusive definition denote extension and cannot be treated as restricted in any sense. Where we are dealing with an inclusive definition, it would be inappropriate to put a restrictive interpretation upon terms of wider denotation…"

Similar instances of the term "include" being held to widen the scope of a definition can be found in decisions reported as *Commissioner Income Tax –vs- Taj Mahal Hotel, Secunderabad* AIR 1972 SC 168; *Scientific Engineering House Pvt. Ltd. –vs- Commissioner of Income Tax* AIR 1986 SC 338 and *Lucknow Development Authority –vs- M.K.Gupta* 1994 (1) SCC 243.

45. Now, if the Parliamentary intention was to expand the scope of the definition "public authority" and not restrict it to the four categories mentioned in the first part, but to comprehend other bodies or institutions, the next question is whether that intention is coloured by the use of the specific terms, to be read along with the controlling clause "authority…of self government" and "established or constituted by or under" a notification. A facial interpretation would indicate that even the bodies brought in by the extended definition:

(i) "….Body owned, controlled or substantially financed;

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

are to be constituted under, or established by a notification, issued by the appropriate government. If indeed such were the intention, sub-clause (i) is a surplusage, since the body would have to be one of self government, substantially financed, and constituted by a notification, issued by the appropriate government. Secondly – perhaps more importantly, it would be highly anomalous to expect a "non-government organization" to be constituted or established by or under a notification issued by the government. These two internal indications actually have the effect of extending the scope of the definition "public authority"; it is thus not necessary that the institutions falling under the inclusive part have to be constituted, or established under a notification issued in that regard. Another significant aspect here is that even in the inclusive part, Parliament has nuanced the term; sub-clause (i) talks of a "body, owned, controlled or substantially financed" by the appropriate government (the subject object relationship ending with sub-clause (ii)). In the case of control, or ownership, the intention here was that the irrespective of the constitution (i.e it might not be under or by a notification), if there was substantial financing, by the appropriate government, and ownership or control, the body is deemed to be a public authority. This definition would comprehend societies, co-operative societies, trusts, and other institutions where there is control, ownership, (of the appropriate government) or substantial financing. The second class, i.e non-government organization, by its description, is such as cannot be "constituted" or "established" by or under a statute, or notification.

46. The term "non-government organization" has not been used in the Act. It is a commonly accepted expression. Apparently, the expression was used the first time, in the definition of "international NGO" (INGO) in Resolution 288 (X) of ECOSOC on February 27, 1950 as *"any international organization that is not founded by an international treaty"*. According to Wikipedia http://en.wikipedia.org/wiki/Non-governmental_organization..accessed on 28-12-2009 @19:52 hrs)

> *"…Non-governmental organization (NGO) is a term that has become widely accepted as referring to a legally constituted, non-governmental organization created by natural or legal persons with no participation or representation of any*

government. In the cases in which NGOs are funded totally or partially by governments, the NGO maintains its non-governmental status and excludes government representatives from membership in the organization. Unlike the term intergovernmental organization, "non-governmental organization" is a term in general use but is not a legal definition. In many jurisdictions these types of organization are defined as "civil society organizations" or referred to by other names…"

Therefore, inherent in the context of a "non-government" organization is that it is independent of government control in its affairs, and is not connected with it. Naturally, its existence being as a non-state actor, the question of its establishment or constitution through a government or official notification would not arise. The only issue in its case would be whether it fulfills the "substantial financing" criteria, spelt out in Section 2(h). Non-government organizations could be of any kind; registered societies, co-operative societies, trusts, companies limited by guarantee or other juristic or legal entities, but not established or controlled in their management, or administration by state or public agencies.

47. In view of the above discussion, it has to be concluded that the requirement for an organization, which is not established by statute, or under the Constitution, but is a non-government organization, need not be constituted by or under a notification, due to the extended meaning of the expression "public authority" in terms of Section 2 (h) of the Act.

48. The next issue is the meaning of the expression "substantially financed". This is, in the opinion of this court, crucial for a determination as to whether the body or institution is a public authority. The petitioners' arguments on this point have been that for a body to be "substantially financed" state finance or funding has to be more than 50%; there should be an element of permanent dependence about such financing, that such financing should not be only in respect of capital expenditure, and that the body receiving the funds or finances should not be a venture or ad-hoc body, but a continuous one. It is also argued that loans advanced, as in the case of commercial transactions, do not amount to "substantial financing" of the institution.

49. The term "substantially financed" has not been defined. The Lexicon Webster Dictionary – Vol. I at page 365 defines "financing" as follows:

> *"financial, a money payment, < finare, to pay a fine, < L. finis.] The management of pecuniary affairs, esp. in the fields of government, corporations, banking, and investment; the system of public revenue and expenditure; pl. income or resources of corporations, governments, or individuals.-v.t.-financed, financing. To supply with finances or money; provide capital for.-v.i."*

According to *Black's Law Dictionary*, – Page 630

> ***"Finance.*** *As a verb, to supply with funds, through the payment of cash or issuance of stocks, bonds, notes, or mortgages, to provide with capital or loan money as needed to carry on business.*
>
> *Finance is concerned with the value of the assets of the business system and the acquisition and allocation of the financial resources of the system."*

Chamber Law Dictionary – (at page 627) says that "finance" is:

> *"finance fi, fi-nans' or fi, n money affairs or revenue, esp. of a ruler or state; money, esp. public money; the art of managing or administering public money; (in pl) money resources – v to manage financially; to provide or support with money – vi to engage in money business. – adj. finan'cial (-shal) pertaining to finance. – n finan'cier (-si-ar; US fin-an-ser') – adv finan'cially."*

According to the *Legal Glossary – 1992* (published by the Govt. of India) the term means:

> *"finance: 1. the pecuniary resources of a government or a company.*
>
> *2. to provide with necessary funds."*

Oxford's Shorter English Dictionary defines the term "substantial" as follows:

> *"substantial….A adjective..*
>
> *3. Of ample or considerable amount or size; sizeable, fairly large.*
>
> *4. Having solid worth or value, of real significance; solid, weighty; important, worthwhile.."*

The term "substantial" denotes something of consequence, and contrary to something that is insignificant or trivial. It implies a matter of some degree of seriousness. The question is whether the term itself suggests, in the context of "substantial financing" a predominant or overwhelming financing. In other words, does "substantial" read with "financing" mean that the major funding should from the relevant source, i.e state or governmental source.

50. It would undoubtedly be tempting to look at previous decisions on what constitutes "public authority" rendered in the context of whether a body is "State" as defined by Article 12 of the Constitution of India, or for its being subject to jurisdiction of the Courts, for judicial review purposes, under Article 226 of the Constitution of India. The Petitioners also rely on a few decisions, such as *Pradeep Biswas –vs- Institute of Chemical Biology* 2002 (5) SCC 111 and *Zee Telefilms –vs-Union of India* 2005 (4) SCC 649.

51. Article 226 confers wide powers on the High Courts to issue writs to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose". The term "authority" used in Article 226, it has been held, should be widely construed, unlike the term "authority" occurring in Article 12, which is relevant in the context of enforcement of fundamental rights under Art.32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as other rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or bodies performing public. The form of the body or institution is irrelevant; what is of relevance is the nature of the obligation imposed, the breach of which is complained against, or the enforcement of which is sought. It has thus been ruled that judicial control over ever changing nature of bodies affecting the rights of people cannot be stereotyped or straight-jacketed. This was emphasized in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors,-vs- V. R. Rudani* 1989 (2) SCC 691, as follows:

"20. In Praga Tools Corporation v. Shri C.A Imanual and Ors., (1969) 3 SCR 773 : (AIR 1969 Supreme Court 1306) , this Court said that a mandamus can issue against a person or body to carry out the duties placed on them by the Statutes even though they are not (WP(C) 5410-1997) Page 51 of 70

public officials or statutory body. It was observed (at 778) ; "It is however not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body, A mandamus can issue, for instance, to an official or a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibilities. (See Halsbury's Laws of England (3rd Ed. Vol. II p. 52 and onwards)."

21. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute Commenting on the development of this law, Professor De Smith states : "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." (Judicial Review of administrative Act 4th Ed. p.540). We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice whenever it is found'. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

52. More recently, in ***Binny Ltd. & Anr. v. V.V. Sadasivan,*** 2005 (6) SCC 657, while deciding when a private body can be said to be performing public function, the Supreme Court observed:

"Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the government to run industries and to carry on trading activities. These have come to be known as Public Sector Undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between the public

functions and private functions when it is being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. In a book on Judicial Review of Administrative Action (Fifth Edn.) by de Smith, Woolf & Jowell in Chapter 3 para 0.24, it is stated thus:

> *"A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. This may happen in a wide variety of ways. For instance, a body is performing a public function when it provides "public goods" or other collective services, such as health care, education and personal social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of the criminal and civil courts and tribunal system). They also do so if they regulate commercial and professional activities to ensure compliance with proper standards. For all these purposes, a range of legal and administrative techniques may be deployed, including: rule-making, adjudication (and other forms of dispute resolution); inspection; and licensing. Public functions need not be the exclusive domain of the state. Charities, self-regulatory organizations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public function. As Sir John Donaldson M.R. urged, it is important for the courts to "recognize the realities of executive power" and not allow "their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted". Non-governmental bodies such as these are just as capable of abusing their powers as is government."*

53. In ***G.Bassi Reddy*** v. ***International Crops Research Institute and Another,*** (2003) 4 SCC 225 it was observed that:

> *"It is true that a writ under Article 226 also lies against a person' for "any other purpose". The power of the High Court to issue such a writ to "any person" can only mean the power to issue such a writ to any person to whom, according to well-established principles, a writ lay. That a writ may issue to an appropriate person for the enforcement of any of the rights conferred by Part III is clear enough from the language used. But the words "and for any other purpose" must mean "for any other purpose for which any of the writs mentioned would,*

according to well established principles issued. A writ under Article 226 can lie against a "person" if it is a statutory body or performs a public function or discharges a public or statutory duty."

53. There are decisions which have ruled that even in the contractual sphere, there is no bar to entertaining a writ petition or if it involves some disputed question of facts. The Supreme Court observed in *LIC of India v. Consumer Education & Research Centre,* (1995) 5 SCC 482, that:

> *"Every action of the public authority or the person acting in public interest or its acts give rise to public element, should be guided by public interest. It is the exercise of the public power or action ' hedged with public element becomes open to challenge. If it is shown that the exercise of the power is arbitrary unjust and unfair, it should be no answer for the State its instrumentality, public authority or person whose acts have the insignia of public element to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions as private citizens, simplicitor, do in the field of private law. Its actions must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations. Every administrative decision must be hedged by reasons....The actions of the State, its instrumentality, any public authority or person whose actions bear insignia of public law element or public character are amenable to judicial review and the validity of such an action would be tested on the anvil of Article 14. While exercising the power under Article 226 the Court would be circumspect to adjudicate the disputes arising out of the contract depending on the facts and circumstances in a given case. The distinction between the public law remedy and private law field cannot be demarcated with precision. Each case has to be examined on its own facts and circumstances to find out the nature of the activity or scope and nature of the controversy. The distinction between public law and private law remedy is now narrowed down. The actions of the appellants bear public character with an imprint of public interest element in their offers regarding terms and conditions mentioned in the appropriate table inviting the public to enter into contract of life insurance. It is not a pure and simple private law dispute without any insignia of public element. Therefore, we have no hesitation to hold that the writ petition is maintainable to test the validity of the conditions laid in Table 58 terms policy and the party need not be relegated to a civil action….."*

The decision relied upon by some of the petitioners, i.e *Pradeep Biswas* was for interpreting if a body or institution is "State" to be bound to by provisions of Part III of the Constitution of India. After reviewing the previous decisions, the seven member bench of the Supreme Court, in that ruling approved the previously established tests to decide if the body or institution was "state" was as follows:

(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

(3) It may also be a relevant factor whether the corporation enjoys monopoly status which is State-conferred or State-protected.

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government.

The court went on to hold that:

> *"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 a State."*

54. The decisions of the Supreme Court, cited in this case, and discussed previously, all concerned themselves with the issue of reviewability of actions, policies, or decisions taken by specific bodies – in most instances sponsored by the government or public agencies, where the state or such sponsoring body exercised pervasive control, either financially, or in the management of affairs of the subject body. Here, however, the issue is a wider one. Parliament had the benefit of the debate on the interpretation of the expression "authority" and the rulings of the Supreme Court, which became law under Article 141 of the Constitution. Those decisions were rendered in the context of the court's power to enforce fundamental rights, and the jurisdiction to supervise policies and actions of the bodies. In other words the highlight of the judgments was whether the courts could rule on such actions and policies. The object of the Act, here, is entirely different. It is not about the scope of judicial review, and any relief that courts may be capable of granting. The object of the Act is to ensure that information with bodies which are "public authorities" are open to scrutiny to those seeking such information. One may well ask why this is necessary, when courts exist to guarantee enforcement of fundamental and other rights. The answer to this is not in the remedy available to a citizen against wrong- suffered or perceived- but in the value of transparency in decision making and general information dissemination to the people at large, in our knowledge based, and information driven millennium. As our society progresses, its goals of achieving equality, social justice and furthering democratic principles remain constant – indeed current levels of wealth disparities underline the criticality of achieving those goals for all citizens as an urgent objective.

55. In *Ramana Dayaram Shetty v. The International Airport Authority of India & Ors.* (1979) 3 SCR 1014, the Supreme Court noticed state pervasiveness and ubiquity in the economy as follows:

> *"To-day the Government, in a welfare State, is the regulator and dispenser of special services and provider of a large number of benefits. The valuables dispensed by Government take many forms, but they all share one characteristic.*

They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government are of many kind leases, licenses, contracts and so forth. With the increasing magnitude and range of governmental functions as we move closer to a welfare State, more and more of our wealth consists of these new forms. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. But on that account, it cannot be said that they do not enjoy any legal protection nor can they be regarded as that they do not enjoy any legal protection nor can they be regard as gratuity furnished by the State so that the State may withhold, grant or revoke it at its pleasure..."

The decade of the nineteen nineties has witnessed a shift; the state has now retreated from major areas of the economy, like finance, insurance, power, communications, energy resources and infrastructure. Its current role is to ensure effective regulation, and put in place strong rules that protect the participants in the market place, as well as the consumers, or users, of the goods and services, even while assuring growth and distribution of wealth. As a result of these policies, companies, and non-state actors have assumed considerable economic power. Concurrently, the state's obligation to promote development and ensure that the effects of growth are available to all sections of the society, has resulted in new methods of channelizing development. Thus, the state, if not as an interventionist "actor" (participant- as it hitherto was) now frames policies, which promote this obligation. Key growth areas, and general welfare measures which may otherwise not interest business "players" for various reasons such as commercial un-viability and so on, are nevertheless pursued by funding non-government and voluntary agencies, which are not under state control, but perform specific welfare, social and commercial tasks are recipients of funding, assistance and state promotion. Their existence and functions are considered crucial for the growth and development of areas like health care, women and child development, viable and sustainable livelihoods for marginalized sections of the society, education, gender justice, tribal welfare, environment preservation, poverty eradication, and so on. The states' policies are aimed at realization of social welfare and social justice objectives through a combination of measures, where these bodies and institutions play a vital role.

56. An interesting aside. Even on the issue of judicial control of non-state bodies, the growth of law in India and other parts of the world have been parallel. In *Nagle v. Feilden and Others* [1966 (2) QB 633], a Jockey Club was entitled to issue licences training horses meant for races. An application for grant of licence was refused, on the ground that the request was by a woman. The action of the Club (a private body) was set aside by the court, which held that it exercised licensing functions, and controlled the profession and, thus, had to be judged and viewed by higher standards. It was held that it could not act arbitrarily. In *Greig & Others v. Insole & Others* [1978 (3) All ER 449], a Chancery Division considered in great details the rules framed by the International Cricket Council as also the Test and County **Cricket Board of** United Kingdom. The question which arose there was whether the ICC and consequently the TCCB could debar a cricketer from playing official cricket as well as county cricket as the plaintiffs, well-known and talented professional cricketers (who had played for English County Club and test matches for some years) participated in the World Series Cricket which promoted sporting events of various kinds. In *R. v. Panel on Take-overs and Mergers, ex parte Datafin plc & Anr* [1987 (1) All ER 564] the Court exercised the power of the judicial review over a private body. The grounds of judicial review, which was granted, are:

(a) The Panel, although self-regulating, do not operate consensually or voluntary but had imposed a collective code on those within its ambit;

(b) The Panel had been performing a public duty as manifested by the government's willingness to limit legislation in the area and to use the Panel as a part of its regulatory machinery. There had been an "implied devolution of power" by the Government to the Panel in view of the fact that certain legislation presupposed its existence.

(c) Its source of power was partly moral persuasive. Such a power would be exercised under a statute by the Government and the Bank of England.

Lloyd LJ in his separate speech said that:

> *"On the policy level, I find myself unpersuaded. Counsel for the panel made much of the word 'self-regulating'. No doubt self-regulation has many advantages. But I was unable to see why the mere fact that a body is self-regulating makes it less appropriate for judicial review. Of course there will be many self-regulating*

> *bodies which are wholly inappropriate for judicial review. The committee of an ordinary club affords an obvious example. But the reason why a club is not subject to judicial review is not just because it is self-regulating. The panel wields enormous power. It has a giant's strength. The fact that it is self regulation, which means, presumably, that it is not subject to regulation by others, and in particular the Department of Trade and Industry, makes it not less but more appropriate that it should be subject to judicial review by the courts." [Aston Cantlow, Wilmcote and Billesley Parochial Church Council v. Wallbank [2001] 3 W.L.R. 1323].*

In *Poplar Housing and Regeneration Community Association Ltd. v. Donoghue* [2001] 4 All ER 604, the issue was whether eviction of the defendant by a housing association from one of the premises violated provisions of the Human Rights Act. Lord Woolf CJ upon considering the provisions as well as several previous decisions held that the Association discharged public functions:

> *"The emphasis on public functions reflects the approach adopted in judicial review by the courts and text books since the decision of the Court of Appeal (the judgment of Lloyd LJ) in R v. Panel on Take-overs and Mergers, ex p Datafin plc (Norton Opax plc intervening) [1987] 1 All ER 564, [1987] QB 815. (ii) Tower Hamlets, in transferring its housing stock to Poplar, does not transfer its primary public duties to Poplar. Poplar is no more than the means by which it seeks to perform those duties"*

These decisions, as well as previous judgments in India, have demonstrated that attempts have been made to account for actions of bodies that broadly perform "public" functions, through judicial review. The court is mindful that such attempts are part of the larger move to make such bodies accountable. In the case of coverage of the Act, however, the only value is transparency. It is not as if the actions of bodies which fall within its provisions, are otherwise judicially reviewable, if they are not "state" under Article 12, or not "authorities" under Article 226. The objective is to ensure information dissemination, so that members of the public are empowered in the decisions that they take, and the manner in which they wish to decide how policies should be made by the state, in granting largesse, aid, or finance to such bodies.

57. That brings the court to the question as to what is "substantial financing". It is apparent that Parliament was aware of previous enactments and laws (obvious because of reference to other Acts, such as Official Secrets Act, and rights under other laws such as intellectual property laws, etc). Yet, there was no deliberate attempt to define "substantial" financing for the purpose of discerning whether any institution or body was a public authority. Had it been so intended, Parliament could have clarified that "substantial financing" had the same meaning as in Explanation to Section 14 (1) of the CAG Act. Here, one may recollect that in the absence of a clearly manifested legislative intent, the meaning of a term, not defined in one enactment, should not be deduced or borrowed, with reference to another enactment. Thus, the Supreme Court quoting the following passage from *Craies* on Statutes (Sixth Edition, p. 164):

> *"In construing a word in an Act caution is necessary in adopting the meaning ascribed to the word in other Acts. "It would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the purposes of that Act alone." (Macbeth & Co. v. Chislett (1910 AC 220, 223 : 79 LJKB 376 : 102 LT 82 (HL)).*"

held, in *M/s MSCO Ltd. –vs- Union of India* 1985 (1) SCC 551, that:

> *"But while construing a word which occurs in a statute or a statutory instrument in the absence of any definition in that very document it must be given the same meaning which it receives in ordinary parlance or understood in the sense in which people conversant with the subject matter of the statute or statutory instrument understand it. It is hazardous to interpret a word in accordance with its definition in another statute or statutory instrument and more so when such statute or statutory instrument is not dealing with any cognate subject."*

This construction was followed in *State of Kerala –vs- Mathai Verghese* 1986 (4) SCC 746. It is therefore, held that this court cannot accept the petitioner's contention that the meaning of the term "substantial financing" has to be gathered from the provisions of the CAG Act.

58. In a previous section of this judgment, this court noted the meanings of "substantial" and "financing". To discover the meaning of the expression, since it is undefined, the common parlance test, as well as the contextual setting (of the term), having regard to objects of the Act, are to be examined. There is no yardstick, in this context to determine what is meant by "financing". As discussed earlier, the expression has wide import. It is not inhibited by considerations such as "revenue" or "capital" funding. An organization may be infused with public funds, the character of which is such that the vital functioning of the institution depends on it. It may be also the recipient of special attention, together with funds, which is otherwise unavailable to organizations or institutions of a similar class. Likewise, the fact that financing is by way of a loan, is immaterial, if the conditions for such advance are not available to others or organizations involved in the same activity. The quantitative test may not be appropriate. For instance, in a project for Rs. 10,000 crore, if the Central Government commits, and infuses Rs. 1000 crore, such amount cannot be termed insubstantial, because it is a small percentage of the overall value of the project. In the ultimate analysis, the funding or financing, (if not a part of uniform policy measures, such as price support to agriculturists, farm subsidies, etc) by the Government would be a significant factor in determining whether the recipient is a public authority. Public funds, for whatever reasons, retain their imprint or character as an obligation of fruition of the purposes for which the amounts are given. There is therefore, the imperative in the value of ensuring transparency, to secure such ends.

59. This idea was explained in *Electronics and Computer Software Export Promotion Council Vs. Central Information Commission and Ors.* (WP. 11434/2006, decided on 19-7-2006) by this court:

> *"4. The petitioner has impugned the orders holding him to be a public authority contending that the Grants-in-Aid are released by the Department of Commerce, Department of Information Technology for specific programs/projects and the grants are also received from international agencies like the United Nations Industrial Development Organization (UNIDO). The learned Counsel for the*

petitioner contended that since there is a distinction between funding of an organization and funding of promotional programs/projects, therefore, it cannot be inferred that the petitioner is substantially financed by the Government as contemplated under the Right to Information Act, 2005. The petitioner also relied on a letter dated 15th February, 2006 by the Ministry of Commerce and Industry stipulating that petitioner is treated as an autonomous non- Governmental organization and the employees of petitioner are not government servants nor petitioner is required to seek clearance from the Government for the appointment of officers. Post are created and so do the rules are framed by the petitioner governing the service conditions of its employees and therefore it is not under the Administrative Control of Department of Information Technology.

5. The learned Counsel for the petitioner has also contended that the Working Committee members of petitioner are the persons from private industries and has relied on list of Working Committee members of the petitioner for 2004-2006 to contend that it is not a public authority.

6. For the purpose of Section 2(h) of Right to Information Act, 2005, 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 and can also specify the manner and the programs on which 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 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 circumstances, as has been done in the orders impugned by the petitioner, that the petitioner is substantially funded by the Government in the facts and circumstances.

7. The Central Information Commission has held that petitioner is a public authority on account of administrative control of Department of Information Technology on the petitioner on the basis of various factors stipulated in its order which are not negated on account of autonomous character of the petitioner in framing its rules governing the service conditions of its employees and the employees of the petitioner being not the Government servants. On the plea that its employees are not government servants, the control of Department of Information Technology cannot be negated. Therefore the probable inference is that the petitioner is under the administrative control of Department of Information Technology.

8. The Working Committee Members of the petitioner from different industries will also not negate the control of Department of Information Technology on the petitioner and Petitioner's substantial funding by the Government as contemplated under Right to Information Act, 2005. Perusal of list of Working Committee Members of petitioner for 2004-2006 rather reflects that it also has the Government nominees and, consequently, it cannot be inferred that petitioner will not be a public authority under the definition of the Right to Information Act, 2005. From the objects of the petitioner also, the character of the petitioner discharging public functions and being a public authority cannot be negated."

(emphasis supplied)

The above decision was approved by a Division Bench of this court, in LPA 1802/2006 (decided on 1-9-2008), where it was clarified that:

"10. The 'public authority' is amenable to the jurisdiction of the respondent No. 1 on the basis of it being a non-governmental organization which is substantially financed by the Union of India. The respondent No. 1 has recorded and the learned Single Judge has affirmed that out of funds of the sum of Rs. 11.8 crore income for the year 2004-05, the Grant-in-aid to the appellant from the Department of Commerce and Information Technology was about Rs. 6.8 crore and consequently, it was held by the respondent No. 1 and affirmed by the learned Single Judge that the appellant was substantially financed by the Government. The appellant has challenged the above finding not on the quantum of the aid given but on the ground that the grant-in-aid is provided by the Government for specific promotional programmes and projects and not for administrative expenses.

11. In our view, all that the Act requires is that the non-governmental organization ought to be substantially financed by the Government. The dictionary meaning of ' substantial' is instructive and reads as follows:

Oxford English Dictionary

Constituting or involving an essential point or feature; essential, material…"

60. This court therefore, concludes 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 organization is not controlled, and is autonomous is

irrelevant; indeed, the concept of non-government organization means that it is independent of any manner of 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. To the extent of such funding, indeed, the organization may be a tool, or vehicle for the executive government's policy fulfillment plan. This view, about coverage of the enactment, without any limitation, so long as there is public financing, is supported by a recent decision of the Chancery Division in *Sugar -vs- British Broadcasting Corporation & Anr* [2009] UKHL 9 (where the court considered the coverage of the UK Information Act, in respect of the British Broadcasting Corporation, which was notified as a "public authority" in regard to a certain class of information). It was held that:

> *"49. The contrary argument appears to assume that a body must be one and indivisible, either a public authority or not. This argument is supported by the invention of another new term, a "hybrid authority", which is intended to suggest that there is a single authority which can be characterized as a public authority. But this construction is contrary to the plain statutory intention to treat the body in question as if it were two bodies, one of which is a public authority and the other not. But once one accepts that this was the effect of the Act, there can be no distinction between a decision as to whether a body (such as an institution "in the nature of a college") is for all purposes a public authority, and a decision as to whether a body's relevant persona is a public authority. In both cases the question is anterior to the jurisdiction of the Commissioner and in neither case does the Act confer upon him jurisdiction to decide it."*

61. It would now be necessary to decide whether each petitioner is a "public authority" under the Act, and therefore, bound to set up mechanisms for information dissemination, as mandated by its provisions.

The Indian Olympic Association

62. The facts of the IOA's petition have been discussed elaborately earlier. Its assertion that it is not covered by the Act stems from the Olympic Charter, the Aomori

resolution, by the International Olympic Committee, both of which require autonomy of the national association (such as IOA). It also contends that there is no state or public involvement in its functioning, constitution or management, and that state financing or funding is directly to the sportspersons who are selected by its affiliate associations.

63. The IOA is a registered society. No doubt, there is no state or public involvement in its establishment, or administration. It does not receive grants as is traditionally understood. It is the national face of the Olympic movement in India. Its word determinates the fate of the sport, and sportspersons, who are to attend and participate in Olympic events (not confined to the Olympics, but also embracing other, sport specific international events, and regional meets, etc). It affiliates or recognizes bodies which regulate sports that aspire to participate in Olympic and international events. Its approval is essential for any sport – in India- continuing to be part of the Olympic and international movement.

64. The factual position emerging from the Auditors' Reports, which are part of the record, is discussed now. The Report for the year 1995-95 discloses that the grants received/ receivable from the Central Government for that year was Rs. 35,05527/- (out of a total expenditure of Rs. 11,227,034/-) for the previous year it was Rs. 55,10,339 (out of a total expenditure of Rs. 92,16,534). For the year 1996-97 it was Rs. 18,69,264/- (out of a total expenditure of Rs. 76,50,817/20); for 1998-99, the report showed that of an amount of Rs. 46,16,919/- shown as recoverable, the amount of Rs. 46,09,046/- was to be recovered from the Central Government. The same report also reflects that an amount of Rs. 5,09,040/- had to be recovered from the Central Government for that year, as well as previous years towards "Salary grant". The report for the period 2000-2001 shows that Rs. 1,43,45,523/- out of the total receipt (income, of Rs. 2,84,08,729) received by IOA as grants from the Central Government. Rs.14,93,750/- was shown as recoverable from the Central Government, in the Report for 2001-2002. The figures for the later years, have been shown in Paras 29-30 of this judgment.

65. It would be useful to recollect the majority judgment of the five judge Bench of Supreme Court, in *Zee Telefilms Ltd. v. Union of India*,(2005) 4 SCC 649, where the issue was if the Board of Control for Cricket (BCCI) was "State" under Article 12 of the Constitution, and bound by Article 14. The court had observed in the said ruling that:

> *"...It cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32."*

Having regard to the pre-eminent position enjoyed by the IOA, as the sole representative of the IOC, as the regulator for affiliating national bodies in respect of all Olympic sports, armed with the power to impose sanctions against institutions –even individuals, the circumstance that it is funded for the limited purpose of air fare, and other such activities of sports persons, who travel for events, is not a material factor. The IOA is the national representative of the country in the IOC; it has the right to give its nod for inclusion of an affiliating body, who, in turn, select and coach sportsmen, emphasizes that it is an Olympic sports regulator in this country, in respect of all international and national level sports. The annual reports placed by it on the record also reveal that though the IOA is autonomous from the Central Government, in its affairs and management, it is not discharging any public functions. On the contrary, the funding by the government consistently is part of its balance sheet, and IOA depends on such amounts to aid and assist travel, transportation of sportsmen and sports managers alike, serves to underline its public, or predominant position. Without such funding, the IOA would perhaps not be able to work effectively. Taking into consideration all these factors, it is held that the IOA is "public authority" under the meaning of that expression under the Act.

The Organizing Committee of the Commonwealth Games 2010

66. The Games Committee, as discussed earlier, contests the application of the Act, stating that it is not a permanent body, that the amounts received from the Central Government, towards financing its activities, are in the form of advances or loans, on commercial terms, that it is autonomous from the Central Government, and the Government of NCT, and that the latter do not exercise any element of control over it. It further contends to not owning any physical assets, and that surpluses generated from the Games are to be given to the IOC.

67. The materials on the record disclose that the Games Committee is a society, set up as part of the commitment given to the Commonwealth Games and the International Olympic Committee. It has an autonomous management structure, and is not dependant on the Central or NCT Government for any its decision making processes. It owns the games, which means its conduct, and all the rights associated with it. As far as Central and NCT Government involvement is concerned, they are committed to investing and improving physical infrastructure. The Central Government has also committed to pay Rs. 767 crores as advance. The Central Government has placed on the record its letter dated 16-12-2008, which indicates that Rs. 349,72,16,350/- out of the amount committed (Rs. 767 crores) has been released. The Central Government has stated that the Games Committee wants the allocation (advance) to be increased to Rs. 1780 crores – which has not been denied. Equally, the uncontroverted position regarding repayment of interest is that the Central Government has agreed that such repayment can be from the surplus generated due to receipts during the games. In other words, if there is no surplus, interest on the loan stands waived. Also, the Central Government is committed to meet any shortfall in financing arrangements.

68. Now, the disbursement of a substantial amount of loan –as assistance by itself, cannot be considered as "substantial financing". There has to be something more to the transaction. In this case, the Games Committee owns the conduct of the games; it is

responsible, and reaps the benefit of the substantial amounts received, by way of licensing fee, sponsorship fee collected, etc. The Central Government does not share these revenues; rather they flow back to the Commonwealth Games and the International Olympic Committee. The Central Government has also agreed to allow the use of the stadia, and other infrastructure, without any user charges. Doubtless, the Central Government has its reasons to extend these benefits to a body which is otherwise private. They may include economic "spin off" that indirectly accrue to the people, as a result of the construction and up-grading of infrastructure, as well as anticipated benefits from tourists who are expected to visit the country before and during the event. Yet, the fact remains that writing off – even on contingent basis- interest on loans, of such scale, and agreeing not to demand any use charges or license fee for infrastructure, as well as agreeing not to take any part of the surplus generated, is not an ordinary loan transaction. Undeniably, the "investment" if one may term that to be so, is not a priority one. In these circumstances, the court concludes that the financing or funding of the Games Committee, concededly a non-governmental organization, is substantial; it is therefore, a public authority, within the meaning of Section 2(h) of the Act.

Sanskriti School

69. The school had argued that to being a private institution, in whose governance the Central Government, nor any public agency has any say; its membership is from amongst Central Civil Services officers. It submits that though the Ministry of Urban Development allotted land for establishment of the school, which was part of a larger policy, to allot institutional land for educational purposes. It also mentioned that the initial amounts received by various Central Government departments and the Reserve Bank of India, were for the purpose of school construction, and that they were one time capital receipts. The school states that it is self financed, and is not dependant on any grants by the Central or State Government; nor does it discharge any public law functions, to be called a "public authority" under the Act.

70. The materials on record show that the Sanskriti School was promoted undoubtedly by private individuals (serving, retired members of central civil services and their wives). Its management structure appears to be drawn predominantly from wives of senior civil servants. Therefore, that part of the reasoning by the CIC, holding it to be a public authority (as wives of civil servants are part of the managing structure, or governing council) cannot be upheld. In the absence of any thing further, the involvement of wives of senior bureaucrats *ipso facto* would not establish any degree of control by the Central Government. Such a conclusion is premised on untenable grounds. However, there can be no doubt that the society is a non-government organization.

71. As far as the question of financing is concerned, the allotment letter issued by the Union Urban Development Ministry is part of the record. It states that the 7.67 acre plot, located in a prime New Delhi colony (Chanakya Puri) is leased on a token annual rent and premium of Rs. 2/- . Neither the school, nor the allotment letter alludes to any general policy or programme, whereby such valuable land is made available as a matter of right to educational institutions, let alone at rates as not to be called any rate at all. The school asserts that it is run independently, on self-financing basis, which naturally implies that subject to other limitations, there is freedom to charge fees from pupils. This concession – though one time, has placed the school at a great advantage over others run on "commercial" but "self finance" lines.

72. The materials on record, in the form of letters of Directorate of Logistics, Customs and Central Excise, (date 15-7-2008); Department of Personnel and Training (dated 28-8-2008) and Department of School Education and Literacy, Union Ministry of Human Resource Development show that a total amount of Rs. 23.81 crores was given to the school for cost of construction; the amount included grants for later years, to meet the shortfall in capital expenditure. The letter of the Customs Department, dated 26th April, 1996 whereby the sum of Rs. 3 crores was sanctioned to the school, states that:

> *"(iv) The Society should abide by Rules 150 & 151 of the Grants-in-aid etc. and loans Rules. These rules require (a) the Accounts of the Institution/ Society to be*

audited by the C & AG, (b), submission of the certificate of actual utilization of the grants received, by a specific date and (c) laying on the Table of the House, the Annual Reports & Accounts of the Society."

The allotment letter issued by the Union Urban Development Ministry, dated 1-5-1995, stipulates, *inter alia*, as a condition of allotment that:

"xviii) There shall be three nominees of the Govt. (not below the rank of Joint Secy. to the Govt. of India) from Ministry of Human Resources Development (Dept. of Education) Ministry of Personnel & Training) & Ministry of Urban Affairs and Employment on the Management Committee of the School."

The letter of the Reserve Bank of India, dated 23-10-2008, disclosing that Rs. 1 crore was given to the school, in 1999, to facilitate admission of wards and children of its officers who face frequent transfers, is also on the record. The letter of the Customs Department, dated 26th April, 1996 whereby the sum of Rs. 3 crores was sanctioned to the school, also imposed a condition that preference had to be given to wards of children of officers from Customs and Central Excise Department, in admissions to the school, and that seven seats were to be reserved in the school for nominees of the Chairman, Central Board of Customs and Excise, who could be children of employees of that department. These conditions were accepted by the school, as evident from the Society's letter dated 25-4-1996.

73. The factual picture which emerges from the above discussion, in relation to the school's petition, is that it received amounts in excess of Rs. 24 crores by way of grants. There is opaqueness about these grants; interestingly, the Ministry of Human Development did not sanction the grant; individual ministries and agencies (such as the Customs Department, Reserve Bank of India) etc sanctioned monies apparently from their budgets. Whether this kind of grant or donation to private schools could be budgeted for, is not in issue. Yet, the fact established from the record is that the school could access, and muster these funds, which undeniably cannot be done by other private schools. There is no policy suggestive of the Central Government agreeing to donate such

large amounts to private schools, even if a larger public objective of education is furthered. Moreover, all indications are that the school operates as an unaided institution, and does not charge subsidized fees. Therefore, only children of those wards *who can afford such fees*, can access its services. Another interesting aspect is that the departments or agencies (or at least some of them) imposed a condition that the wards of their *officers* would be given admissions. There is nothing on record to suggest any Central Government policy to prioritize education of wards of children of its employees, through donations to private schools – even on one time basis. The school agreed to maintain its accounts in terms of the rules of the Government applicable to Grants in Aid institutions (insisted upon by the Customs Department); its accounts are to be subject to scrutiny and audit by the CAG. Further, nominees of the Central Government are required to be part of its Managing Committee – mandated by the allotment letter, issued by the Union Urban Affairs Ministry.

74. As discussed earlier, grants by the Government retain their character as public funds, even if given to private organizations, unless it is proven to be part of general public policy of some sort. Here, by all accounts, the grants – to the tune of Rs. 24 crores were given to the school, without any obligation to return it. A truly private school would have been under an obligation to return the amount, with some interest. The conditionality of having to admit children of employees of the Central Government can hardly be characterized as a legitimate public end; it certainly would not muster any permissible classification test under Article 14 of the Constitution. The benefit to the school is recurring; even if a return of 10% (which is far less than a commercial bank's lending rate) is assumed for 6 years, the benefit to the school is to the tune of Rs. 14.88 crores. This is apart from the aggregate grant of Rs. 24.8 crores, and the nominal concessional rate at which the school was allotted land for construction.

75. On a consideration of all the above factors, this court holds that the school fulfils the essential elements of being a non-government organization, under Section 2(h) of the

Act, which is substantially financed by the Central Government, through various departments, and agencies. It is therefore, covered by the *regime* of the Act.

76. India is in the midst of challenges. On the one hand is a continuing task to ensure social justice and equity to all the people, and on the other, the imperative of economic growth and development, as well as the spread of its benefits to all. Educating, clothing and providing shelter, employment and basic health care to all the people are non-derogable priorities. The model chosen by the government of ensuring spread of welfare and its benefits, include functioning through non-government agencies, who are tasked and assisted for this purpose. The crucial role of access to information here cannot be understated. It is in this context that Section 2 (h) recognizes that non-state actors may have responsibilities of disclosing information which would be useful, and necessary for the people they serve, as it furthers the process of empowerment, assures transparency, and makes democracy responsive and meaningful.

77. In view of the above conclusions, in relation to each petition, the court holds that the reliefs sought cannot be granted; each of the petitioners is a public authority, and therefore bound to give effect to provisions of the Act. They are granted 30 days time to set up appropriate mechanisms to enable access to information held and required to be held by them. For these reasons, W.P (C) Nos.876/2007, 1212/2007, and 1161/2008 are dismissed, without any order on costs.

JANUARY 07, 2010 (S.RAVINDRA BHAT)

JUDGE