

UNIT-4

PUBLIC AUTHORITY: MEANING AND SCOPE

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4.1 INTRODUCTION

The Right to Information Act, 2005 empowers the citizens to access information under the control of public authorities. Thus what constitutes a public authority under this Act becomes extremely important. Though the Act defines public authorities, this definition has been a contentious issue ever since the RTI Act came into force. The answer to the question “who is a public authority?” sets the boundaries of the scope of the RTI Act and the transparency regime in the country.

4.2 OBJECTIVES

After reading this unit you will be able to:

- Know the meaning of public authority.
- Classify public authorities as constitutional instrumentality, statutory bodies, notified authorities, body owned, controlled or substantially financed by government funds and substantially financed NGOs
- Learn the basis of classification of public authorities.
- Understand about the scope of public authorities

4.3 SUBJECT

4.3.1 Meaning of Public Authority

Section 3 of the Right to Information Act confers a right on every citizen to seek information from the government or public authorities within India. Thus a citizen of India of any age, gender, religion, place, caste or creed may seek information held either by the public authority or under the control of the public authority. It implies that a company, corporation, co-operative society or incorporated body does not come under the purview of Section 3.

The expression “public authority” has been defined by Halsbury’s Law Dictionary as a person or administrative body entrusted with the functions to perform for the benefit of the public and not for private profit. It has been explained by the Supreme Court of India as a body which has public or statutory duties to perform and which performs the duties and carries out its transactions for the benefit of public. Such an authority may make a profit for the public benefit (Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi, AIR 1975 SC 133).

Section 2(h) of the Right to Information Act defines the expression “public authority”. It means any authority or body or institution of self-government that is established or constituted:

- a) by or under the Constitution;
- b) by any other law made by the Parliament;
- c) by any other law made by the State Legislature;
- d) by notification issued or order made by the appropriate government.

It includes any:

- i. Body owned, controlled or substantially financed;

- ii. Non-Government organisation substantially financed, directly or indirectly by the funds provided by the appropriate government.

Thus the right to information is available only against public authority and not an individual. Further the government machinery from which the information is sought must be a body or authority or institution of self-government and should be substantially financed by the government.

4.3.2 Classification of public authority

The definition of the term public authority categories it into five parts:

- 1) Constitutional instrumentality
- 2) Statutory bodies
- 3) Notified Authorities
- 4) Body owned, controlled or substantially financed by Government Funds
- 5) Substantially financed NGOs

4.3.2.1 Constitutional Instrumentality

The category of the bodies recognised as public authority consists of the constitutional authorities. These may be executive, legislative or judicial. In this class two distinct types of authorities are included namely authorities constituted by the Constitution and the authorities constituted under the Constitution. The Houses of the Parliament, office of the President, office of the Vice- President, State Legislatures, office of Governor, Attorney General, Advocate General, administrative Heads of Union Territories, the Supreme Court of India, State High Courts, Comptroller and Auditor General of India, Public Service Commissions, Prime Minister and other Ministers in Union Cabinet, Chief Minister and other Ministers in State Cabinet are included in the authorities constituted by the Constitution. When the Chief Justice of India or Chief Justice of a High Court is taking any decision in the capacity of being the administrative head of judiciary he is functioning like any other head of the department. Therefore he falls within the ambit of public authority and therefore he has to provide any information sought through CPIO or SPIO. But while delivering any judicial decision he functions as a part of judiciary. Therefore he cannot be questioned on judgements given by him under RTI Act.

The authorities constituted under the Constitution include subordinate courts, Commissions, Tribunals, Panchayati Raj Institutions etc

4.3.2.2 Statutory bodies

This category includes all statutory bodies or institutions which are established or constituted by an Act of Parliament or State Legislature. The establishment of a body by the Parliament or State legislature is sufficient to make that body a public authority under the RTI Act. The University Grants Commission constituted under University Grants Commission Act, 1956, National Commission for Women established under National Commission for Women Act, 1990, National Commission for Protection of Child Rights constituted under Commission for Protection of Child Rights Act, 2005 and National Human Rights Commission established

under Protection of Human Rights Act, 1993 are some examples. The Office of Registrar under any Act, the Boards or Committees constituted for the enforcement of the enactment or rules made thereunder and a private self-financing university created by an Act also fall in this category. An institution of local self-government established or constituted by the Constitution or by Central or State legislation is a public authority. As the office of Public Prosecutor is constituted by the Code of Criminal Procedure, it is a public authority.

4.3.2.3 Notified Authorities

A body or institution established or constituted by the notification issued or by the order made by the appropriate Government is a public authority. This category includes all the bodies and authorities established or constituted by order or notification of appropriate Government for discharging public functions. A body or an institution not constituted under any Act but which has been notified or ordered by the appropriate Government, such notification or order has been published in the official gazette by the appropriate Government and the body or institution is either owned or controlled or substantially financed by the appropriate Government is a public authority under the RTI Act.

A Home is recognised as a Children's Home under the Juvenile Justice (Care and Protection of Children) Act, 2000 and it is owned and funded by a trust or a private body but is notified by the appropriate Government to take care of the children under the provisions of JJ Act and rules framed thereunder is a public authority. Similarly a company recognised or established by a notification or order issued by an appropriate Government is a public authority within the meaning of Section 2(h) of RTI Act.

4.3.2.4 Body owned, controlled or substantially financed by Government Funds

This category includes all establishments or bodies that are constituted by the appropriate Government through notification in official gazette or by the order of the Government issued in this regard irrespective of ownership, control or substantial finance by the Government funds. A Children's Home built on the land of the Government but maintained by a trust registered and recognised under the Juvenile Justice (Care and Protection of Children) Act, 2000 and notified by the appropriate Government is a public authority even if the entire expenditure is met by the trust and the said Children's Home is taken care of by the staff of the trust. If either the Children's Home is maintained by the trust on its own land but by accepting some financial aid from the Government or the Children's Home is controlled by the trust but the Government has deputed its own staff or the government funds the salary of some or all members of staff, it will be a public authority as the Government provides direct substantial funding irrespective of the share contribution.

National Stock Exchange of India Ltd is a company limited incorporated, established and created as a company under the provisions of the Companies Act, 1956. Section 29A of the Securities Act authorises the Central Government to delegate powers to SEBI. Under the authority delegated by the Central Government the SEBI granted recognition/ registration to National Stock Exchange of India Ltd. Thus NSE is a public authority. A private body under the control of public authority is a public authority (*Dhara Singh Girls High School v. State of Uttar Pradesh AIR 2008 All 92*). A company providing service to Government like sewerage

treatment system, sanitation conservancy and solid waste management is a public authority (New Tirupur Area Development Corporation Ltd v. State of Tamil Nadu, ASIR 2010 Mad 176).

4.3.2.5 Substantially financed NGOs

All NGOs are not public authority under RTI Act. Only those NGOs that receive funds either directly or indirectly from the Government are public authorities irrespective of their share contribution. Where an NGO runs a school funded substantially by the appropriate Government, such a school is a public authority.

4.3.3 Scope of Public authority

4.3.3.1 Universities as Public Authority

The University is an “authority” under Article 12 of the Constitution of India. Therefore it is a “public authority” under Section 2(h) of the RTI Act, 2005. It shall provide the information when sought under the said Act. (Shivanna Naik v Bangalore University, AIR 2006 (NOC) 145 (Kant)). The academic institutions are providing the photocopy of the answer book to the examinee on the payment of prescribed fee. Different Boards and Universities have framed different rules and regulations in this regard. However this does not involve any public interest or activity and therefore such request cannot be accede to as a matter of right under the RTI Act.

4.3.3.2 Trust as Public Authority

Trusts are not public bodies. Therefore they do not come within the scope of RTI Act, 2005. This implies that they cannot be asked to provide information under the provisions of said Act even though they are regulated under Indian Trust Act, 1872. (Nagar Yuvak Shikshan Sansthan v. Maharashtra State Information Commission, Nagpur AIR 2010 Bom 61)

4.3.3.3 Trade Facilitation Organisation as Public Authority

A trade facilitation organisation is a Public Authority under the RTI Act as it is substantially financed and controlled by the Government. The Government exercises administrative control over such organisation by conducting audit through its department and receiving subsequent reports from the department concerned. (Electronics and Computer Software Export Promotion Council v. Central Information Commission 2008)

4.3.3.4 Temple as public Authority

The Temple Advisory Committees are not public authorities under RTI Act if neither the Temples are established by the Government nor does the Government finance them. (A.C. Bhanunni v SIC 2011(2) KLT 709)

4.3.3.5 Public Service Commission as Public Authorities

Public Service Commission is established under Article 315 of the Constitution of India. Therefore it is “public authority “under Section 2(h).The court while deciding whether the Council for Indian School Certificate Examinations is a public authority or not, held that it is neither a statutory body nor has the government issued any notification nor is it receiving any fund from government. Thus it is not a “public authority”. (Apavitrav.Union of India 2015 (3) ALJ 697.)

4.3.3.6 Cooperative Society/ Society as Public Authority

A cooperative society or a society substantially funded by the government or supported substantially by the government in any way, is a “public authority”. However merely the registration of a society with the Registrar appointed under the Societies Act, 1860 or registration of a cooperative society with the Registrar appointed under the State Cooperative Societies Act, is not a public authority under the RTI Act.

The Supreme Court in Thalappalam Ser. Coop. Bank Ltd. v State of Kerala , 2013 (12) SCALE 527 stated that for arriving at the conclusion that a State has a deep and pervasive control over the society the following relevant questions must be answered:

- 1) How was the society created?
- 2) Whether it enjoys any monopoly character?
- 3) Do the functions of the society partake to statutory functions or public functions? And
- 4) Can it be characterised as public authority?

In the instant case the Supreme Court held that there is no material to show that the cooperative societies registered under Kerala Cooperative Societies Act own, control or substantially finance these cooperative societies. Therefore these cooperative societies do not fall in the domain of “public authority”.

The Kerala High Court held that only the Registrar has the power to issue directions to the cooperative societies and thus the State has no control on affairs of society.(Trivandrum DistrictCooperative Bank v. State of Kerala, 1992(1) KLT 381) A cooperative society bank neither substantially financed nor controlled by the Government is not a “ public authority” under the RTI Act.(Dr Panjabrao Cooperative Housing Society Ltd. v. SIC, AIR 2009 Bom 75). Similarly a Cooperative Housing Society is not a “public authority” even though it is under the supervision and control of the Registrar of Societies. (Dattaprasad Cooperative Housing Society Ltd. v. SIC, Karnataka, AIR 2009 Kant 1). Where the Cooperative Bank remitted back the share capital received from the State Government and the State Government then exercised only supervisory control over it, the said bank cannot be held to be a “public authority” under RTI Act.

Different High Courts have different views on the status of cooperative society or society as a” public authority”. The Kerala High Court held that if a cooperative society is substantially financed either directly or indirectly by the State Government is a “public authority” under RTI Act. Further it was stated that the information related to cooperative society can be accessed by the Registrar of cooperative societies. This means that despite being a private body, the Registrar has deep, pervasive and effective control over cooperative societies.(Princy v Jose,

AIR 2010 Ker 6) The Andhra Pradesh High Court in Sri Bhavana Rishi Cooperative House Building Society v. A.P.Information Commission, AIR 2010 AP 127 held that Registrar of Cooperative Societies is a “public authority”. The Kerala High Court held that cooperative societies financed substantially by the appropriate government and registered under the Kerala Cooperative Societies Act are public authorities for the purpose of RTI Act.

Tamil Nadu Road Development Company Ltd. and Tamil Nadu Newsprint and Papers Ltd. were substantially controlled by the Government. Therefore both these bodies were held to be public authorities under the RTI Act.(Tamil Nadu Road Development Company Ltd.v. SIC, Tamil Nadu (2008)145 Comp Cas 248(Mad)).

4.4 SUMMARY

The review of emerging law on the definition of public authorities and their scope reveals that the courts have considered several criteria for adjudging whether an entity is or isn't public authority. The courts have given liberal interpretation to words like 'control' and 'substantial' to widen the scope of the RTI Act by bringing a variety of entities within the definition of public authority. However, there is no straight jacket formula on this issue and courts continue to pronounce judgments on a case-to-case basis. While one school of thought believes firmly in the need for greater legal certainty in what would be construed as a public authority, another school of thought perceives an inherent advantage in keeping it an open-ended definition. This Brief does not seek to resolve this debate.

4.5 GLOSSARY

1.Appropriate Government:Section 2(a) RTI Act, 2005 defines appropriate Government as appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly-

- i. by the Central Government or the Union territory administration, the Central Government;
- ii. by the State Government,

2. CPIO :According to Section 2(c) RTI Act, 2005 CPIO or Central Public Information Officer" means the Central Public Information Officer designated under sub-section (1) and includes a Central Assistant Public Information Officer designated as such under sub-section (2) of section 5;

3. SPIO: According to Section 2(m) RTI Act, 2005 SPIO or"State Public Information Officer" means the State Public Information Officer designated under sub-section (1) and includes a State Assistant Public Information Officer designated as such under sub-section (2) of section 5;

4. Includes: The word “includes” when used in interpretation clause enlarges the meaning of words and phrases occurring in the body of the statute. It connotes the entities which

answer the description following those words need not fall within the definition of entities that precede those words.

5. Control/ Controlled: The words control or controlled has not been defined by the RTI Act. The scope of these words can be understood with reference to the words used before and after it. The Supreme Court held that the meaning of the word control figuring in between the words “body owned” and “substantially financed” means the control of the substantial nature by the appropriate government. Mere supervision or regulation of a body by the Government would not make that body a “public authority”. The control of the appropriate Government on the body must be of substantial nature. (Thalappalam Ser. Coop. Bank Ltd. V State of Kerala 2013 (12) SCALE 527)

6. Substantially financed: The literal meaning of the term substantial is massive. The term “substantially financed” means the degree of finance must be actual, positive and real and not merely moderate. Giving privileges, grants, subsidiaries or exemptions cannot be termed as substantial funding. Further the schemes of the Government for the betterment or welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD is not included in the term “substantially financed”. The appropriate Government could provide for direct or indirect substantial finance. Also the term substantial finance cannot be interpreted to mean hundred per cent finance. It simply means that if an institution or body is not entirely financed by the appropriate Government it would still be included in the definition of public authority. The disbursement of substantial amount of loan cannot be considered as substantial financing.

4.6 SAQS

1. Short Answer Question.

- a. What do you mean by “public authority” under the Right to Information Act, 2005?
- b. Give brief classification of public authority” under the Right to Information Act, 2005.

2. Fill in the blanks

- a. Section _____ of the Right to Information Act confers a right on every citizen to seek information from the government or public authorities within India.
- b. Section _____ of the Right to Information Act defines the expression “public authority”.

3. True or False

- a. A trade facilitation organisation is a Public Authority under the RTI Act.
- b. All NGOs are not public authority under RTI Act.

4.7 REFERENCES

<http://www.accountabilityindia.in>

Right to Information and Protection to Whistle blowers by Krishna Pal Mallik, Allahabad Law Agency, Haryana (2016)

4.8 SUGGESTED READINGS

Right to Information Law in India by [N.V. Paranjape](#)

Right to Information Act, 2005 by [JiteshDhanrajani](#)

4.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

a. Explain the constitutional instrumentality as “public authority” under Right to Information Act, 2005.

b. Discuss the scope of “public authorities” as provided in the Right to Information Act, 2005.

4.10 ANSWERS

SAQs

1. a. refer 4.3.1 b. refer 4.3.2

2. a. 3 b. 2(h)

3. a. True b. True

TERMINAL QUESTIONS AND ANSWERS

a. refer 4.3.2.1

b. refer 4.3.3