IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 6129/2007

Reserved on: 12th March 2010
Decision on: 14th May 2010

KRISHAK BHARTI COOPERATIVE LTD. ..... Petitioner
Through: Mr. Om Prakash, Advocate

versus

RAMESH CHANDER BAWA ..... Respondent
in person

W.P.(C) 7787/2008

NATIONAL AGRICULTURAL COOPERATIVE FEDERATION OF INDIA LTD. ..... Petitioner
Through: Mr. V.P. Singh, Sr. Advocate with Ms. Anju Bhattarcharya, Mr. Om Prakash and Mr. M.I. Chaudhary, Ms. Maninder Acharya, Advocates.

versus

B.M. VERMA ..... Respondent
Mr. Brahm Dutt with
Mr. Deepak Pandey, Advocates

W.P.(C) 7770/2008

NATIONAL COOPERATIVE CONSUMER FEDERATION OF INDIA LTD. ..... Petitioner
Through: Mr. V.P. Singh, Sr. Advocate with Ms. Anju Bhattarcharya, Mr. Om Prakash and Mr. M.I. Chaudhary, Advocates.

versus

RAJ MANGAL PRASAD ..... Respondent
Through: Mr. Brahm Dutt with
Mr. Deepak Pandey, Advocates

CORAM: JUSTICE S. MURALIDHAR

1. Whether reporters of local paper may be allowed to see the judgment? Yes

2. To be referred to the report or not? Yes

3. Whether the judgment should be referred in the digest? Yes

JUDGMENT
14.05.2010

The Question

1. A feature common to the three petitioners - the Krishak Bharti Co-operative Ltd. (KRIBHCO) [the petitioner in W.P. (C) No. 6129/2007], the National Cooperative Consumer Federation of India Ltd. (NCCF) [the petitioner in W.P. (C) No. 7770/2008] and the National Agricultural Cooperative Federation of India Ltd (NAFED) [the petitioner in W.P.(C) No. 7787/2008] – is that each is a society deemed to be registered under the Multi-State Co-operative Societies Act, 2002 ('MSCS Act'). The question for consideration is whether each petitioner is a "public authority" within the meaning of Section 2(h) of the Right to Information Act, 2005 (RTI Act)? The Central Information Commission (CIC) has, by an order dated 9th September 2008 (in the case of NAFED and NCCF) and by an order dated 10th July 2007 (in the case of KRIBHCO) answered the question in the affirmative. The CIC's aforementioned orders have been challenged in these petitions.

The Context

2. Before proceeding to notice the facts in each of the petitions, it is necessary to interpret the words "public authority" under Section 2 (h) of the RTI Act given the context of the RTI Act and in relation to the MSCS Act. The Statement of Objects and Reasons (SOR) of the RTI Act indicates that in order to ensure greater and more effective access to information, the earlier Freedom of Information Act, 2002 was extensively overhauled. It was envisaged that there would be an appellate machinery with investigating powers to review the decisions of the Public Information Officers. The RTI Act has provisions that make the failure to provide any information as per law punishable with fine. It has "provisions to ensure maximum disclosure and minimum exemptions, consistent with the constitutional provisions, and effective mechanism for access to information and disclosures by authorities."

3. The preamble to the RTI Act indicates that it is a statute to provide for "setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or

incidental thereto." The preamble to the RTI Act notes that "democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;".

4. It is in the background of the above 'context' of the RTI Act that its provisions have to be interpreted. Section 2 which is the definition section begins with the words "In this Act, **unless the context otherwise requires**…". The learned author Justice G.P. Singh observes: "When the question arises as to the meaning of a certain provision in a statute, it is not only legitimate but proper to read that provision in its context." (G.P.Singh, **Principles of Statutory Interpretation**, 9th Edn. 2004, p.31) In ***R.S. Raghunath v. State of Karnataka, (1992) 1 SCC 335*** it was observed (SCC at p. 347):

> "It is also well settled that the Court should examine every word of a statute in its context and to use context in its widest sense. In *Reserve Bank of India* v. *Peerless General Finance and Investment Co. Ltd.(1987) 1 SCC 424* it is observed that: "That interpretation is best which makes the textual interpretation match the contextual." In this case, Chinnappa Reddy, J. noting the importance of the context in which every word is used in the matter of interpretation of statutes held thus: (SCC p. 450, para 33)
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> > "Interpretation must depend on the text and the context. They are the bases of interpretation. One may

> well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

5. In ***AG v. HRH Prince Ernest Augustus (1957) 1 All ER 49*** (at p. 61) it was observed by Sir John Nicholl: "The key to the opening of every law is the reason and the spirit of the law – it is the *animus imponentis*, the intention of the law-maker, expressed in the law itself, taken as a whole. Hence to arrive at the true meaning of any particular phrase in a statute, that particular phrase is not to be viewed detached from the context – meaning by this as well the title and the preamble as the purview or enacting part of the statute."

6. It is plain that the provisions of the RTI Act have to be interpreted keeping in view the SOR, the Long title and the Preamble to glean the legislative intent and the context. As observed in the above decisions, the other provisions of the RTI

Act also indicate its overall context. The expression 'right to information' has been defined in Section 2(j) to mean the right to information accessible under the Act "which is held by or under the control of any public authority". The expression 'information' under Section 2 (f) has been defined to mean "material in any form, including records, documents, memos…..which can be accessed by a public authority under any other law for the time being in force". Section 4 spells out the obligations of public authorities which include maintenance of all its records, publishing the particulars of its organization, functions, duties, the procedure followed in the decision-making process for the discharge of its functions and so on. What is interesting in the context of the present cases, is that the obligation under Sections 4 (1)(b) (xii) includes the dissemination by such public authority of "the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes". Under Section 4 (2), the public authority is expected to *suo motu* take steps to provide as much information to the public at regular intervals through various means of communications, including internet, so that "the public have minimum resort to the use of this Act to obtain information". There can, therefore, be no manner of doubt that the RTI Act casts a statutory obligation on a public authority to disclose the information held by it which is accessible to the public. The overall purpose and context is to usher

transparency and accountability into the working of every public authority.

7. The RTI Act, after several amendments to its predecessor statute i.e. the Freedom of Information Act 2002, received the assent of the President and came into force on 12th October, 2005. It is still the initial phase of the implementation of the RTI Act. Not surprisingly, therefore, many institutions and entities are unclear whether they are a 'public authority' and whether they are therefore required to comply with the statutory requirements under the Act. Section 24 exempts from disclosure information concerning certain organisations which are listed in the Second Schedule. Again this immunity is not a blanket one. It cannot be invoked where the information pertains to either violation of human rights or corruption.

8. The initial attempt by most organizations and entities is to avoid the obligations under the RTI Act. Since the culture of transparency has not fully set in, and old habits die hard, there is a resistance on the part of institutions and entities to avoid being declared a 'public authority'. So it is with the three petitioners, KRIBHCO, NCCF and NAFED.

Reading Section 2(h)

9. Now turning to Section 2 (h) of the RTI Act, it reads as under:

> "2. In this Act, unless the context otherwise requires -
> (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 made by the appropriate Government, and includes any-
> (i) body owned, controlled or substantially financed;
> (ii) non-Government Organisation substantially financed,
> directly or indirectly by funds provided by the appropriate Government;"

10. On a plain reading of the provision, the expression "public authority" can mean:

(a) an authority or a body or an institution of self-government established or constituted by or under the Constitution,

(b) an authority or a body or an institution of self-government established or constituted by a law made by Parliament,

(c) an authority or a body or an institution of self-government established or constituted by a law made by the State legislature,

(d) an authority or a body or an institution of self-government established or constituted by a notification issued or order made by the appropriate government.

11. While there is no question that each of the three entities, KRIBHCO, NCCF and NAFED, is a 'body' none of them is either an institution constituted or established "by or under" the Constitution or "by" a central or state legislation. The legislature

has made a conscious distinction between "by or under" (which is used in relation to the Constitution) and "by" in relation to a central or state legislation. If, therefore, it was enough for the body to be established "under" a central or state legislation to become a public authority then each body registered or deemed to be registered under the MSCS Act or for that matter every company registered under the Companies Act would be a 'public authority'. However that is not the case here.

12. If, therefore, none of these entities is a body that answers the description of being established or constituted under a Constitution, or by a law made by the Parliament or by the State Legislature, then the question that next arises is, if any of them is a body established or constituted "by notification issued or order made by the appropriate Government" in terms of Section 2 (h) (d) of the RTI Act. It is nobody's case that any of these entities has been established or constituted only by a notification issued or an order made by the appropriate Government. That leaves us with the remaining limb of Section 2 (h) (d) which is conjoined with the main provision by the words "and includes". Therefore, in relation to the present cases, what requires to be examined is whether each of these entities is, in terms of Section 2 (h) (d) (i), a body owned, controlled, or substantially financed by the appropriate government, or in terms of Section 2 (h) (d) (ii), a non-government

organisation substantially financed directly or indirectly by funds provided by the appropriate government?

Implication of "includes"

13. Before embarking on a more detailed analysis it is necessary to recapitulate the law concerning interpretation of the conjunctive "and includes". The expression "and includes" connotes that those entities which answer the description following those words need not fall within the definition of entities that precede those words. The word "includes" is generally understood in statutory interpretation as enlarging the meaning of the words or phrases in the body of the statute. In ***CIT v. Taj Mahal Hotel (1971) 3 SCC 550*** the Supreme Court was considering whether the word 'plant' in Section 10 (2) of the Income Tax Act 1922, include sanitary pipes and fittings in a building as well? Section 10 (5) had defined 'plant' to include "vehicles, books, scientific apparatus, surgical equipment purchased for the purpose of business." The Court held:

> "The word "includes" is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, those words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include."

14. In ***Mahalakshmi Oil Mills v. State of A.P. (1989) 1 SCC 164*** the Supreme Court was construing the meaning of the word 'tobacco' under the Andhra Pradesh General Sales Tax Act, 1957 which by incorporation referred to definition in the Central Excises and Salt Act, 1944. The latter Act defined 'tobacco' to mean "any form of tobacco, whether cured or uncured and whether manufactured or not, **and includes** the leaf, stalks and stems of the tobacco plant, **but does not include** any part of a tobacco plant while still attached to the earth." Since an exemption was granted to such products from sales tax, the assesses wanted the expression to be interpreted as widely as possible and the State as narrowly as possible. In the background of these arguments, it was held (SCC, p.168):

> "We are inclined to accept the contention urged on behalf of the State that the definition under consideration which consists of two separate parts which specify what the expression means and also what it includes is obviously meant to be exhaustive. As Lord Watson observed in *Dilworth* v. *Commissioner of Stamps1899 AC 99* the joint use of the words "mean and include" can have this effect. He said, in a passage quoted with approval in earlier decisions of this Court: (AC pp. 105-06)
>
> > "Section 2 is, beyond all question, an interpretation clause, and must have been intended by the legislature to be taken into account in construing the expression "charitable devise or bequest," as it occurs in Section 3. It is not said in terms that "charitable bequest" shall mean one or other of the things which are enumerated, but that it shall "include" them. 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 show 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*.' (emphasis ours)"

15. It must straightway be noticed that Section 2 (h) (d) (i) and (ii) have not been happily worded. The provision has added to the confusion rather than clarifying the position. Perhaps an appropriate manner of reading the said provision would be to ask:

(i) is the entity in question a body

owned by the appropriate government? or

controlled by the appropriate government? or

substantially financed by the appropriate government? or

(ii) is the entity a non-government organisation substantially financed directly or indirectly by funds provided by the appropriate government?

16. It needs to be further clarified that it is not the case of the respondents here that any of these entities is a "non-government organisation substantially financed directly or indirectly by funds provided by the appropriate government". That takes them out of the purview of Section 2 (h) (d) (ii). Although it must also be noted that in relation to KRIBHCO the CIC wrongly mentions this provision. The Respondents also do not contend that any of these

entities is wholly "owned" by the appropriate government. That then leaves us with only the following question to answer in relation to these three entities: **Are KRIBHCO, NCCF and NAFED bodies that are either controlled or substantially financed by the appropriate government?** That in turn brings up the question as to when it can be said that a 'body' is "controlled" by the appropriate government and when can it be said that it is "substantially financed" by the appropriate government?

"Controlled"

17. The expression "appropriate government" has been defined under Section 2 (a) of the RTI Act. The government which either establishes or controls or constitutes or owns or controls or substantially finances the entity would be the 'appropriate government'. In the context of the entities deemed to be registered under the MSCS Act, it is possible to have more than one appropriate government. This aspect will be discussed in some detail later. However, the expressions "controlled" or "substantially financed" have not been defined. In order to understand whether a body is "controlled" by the appropriate government one would have to examine its organizational structure, its bye-laws and memorandum and articles of association, if any, and the statutory provisions which envisage control over such bodies by the appropriate government. For the

limited purpose of understanding the word "controlled", an examination is also to be undertaken of the pattern of shareholding or any other form of control of such bodies by the appropriate government. It is in this last context that the provisions of the MSCS Act are relevant. These too will be discussed shortly.

18. A this juncture a brief reference may be made to the legal and ordinary meanings of the word "control". The word "control" has been defined in **Black's Law Dictionary** (6th Edn.) to mean "power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. The ability to exercise a restraining or directing influence over something." The **Shorter Oxford English Dictionary** (5th Edn.) defines it as "the act of power of directing or regulating; command, regulating influence" or "a means of restraining or regulating; a check; a measure adopted to regulate prices, consumption of goods etc." In both senses therefore the key word is "influence" and not necessarily "domination".

19. The learned Senior Counsel for the petitioners referred to case law concerning the interpretation by the Supreme Court and the High Courts of the expression 'State' under Article 12 of the Constitution and whether a body is one which is discharging a public function for the purposes of Article 226 of the Constitution.

In the considered view of this Court, neither case law is relevant to the questions that arise in the context of the RTI Act. That is why this Court dwelt on the principles governing 'contextual' interpretation. In the context of the RTI Act it may well be that a body which is neither a "state" for the purposes of Article 12 nor a body discharging public functions for the purpose of Article 226 of the Constitution might still be a 'public authority' within the meaning of Section 2 (h) (d) (i) of the RTI Act. To state it differently, while a 'body' which is either a 'state' for the purposes of Article 12 or a 'body' discharging public functions for the purpose of Article 226 is likely to answer the description of 'public authority' in terms of Section 2 (h) (d) (i) of the RTI Act, the mere fact that such body is neither, will not take it out of the definition of 'public authority' under Section 2 (h) (d) (i) of the RTI Act. To explain further, it will be noticed that in all the decisions concerning the interpretation of the word 'state' under Article 12 the test evolved is that of "deep and pervasive" control whereas in the context of the RTI Act there are no such qualifying adjectives "deep" and "pervasive" vis-à-vis the word "controlled." To illustrate, in ***Pradeep Biswas v. Institute of Chemical Biology 2002 (5) SCC 111,*** the Supreme Court summarized the 'test' as under (SCC at p.134):

> "The picture that ultimately emerges is that the tests formulated in *Ajay Hasia* are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State

> within the meaning of Article 12. **The question in each case would be whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government**. **Such control must be particular to the body in question and must be pervasive**. If this is found them 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." (emphasis supplied)

20. Therefore while applying the above test to determine if the body in question was "state" the question to be asked was whether there was 'pervasive' control over the body by the appropriate government and if that was answered in the affirmative then it may "afford an indication whether a corporation is a State agency or instrumentality." In the considered view of this Court, since Section 2 (h) (d) (i) RTI Act uses the word "controlled" without any qualification as to the degree of control, it is not to enough show that there is "no deep or pervasive control" over these entities by the appropriate Government. The question is not whether there is "deep" control, whether there is "dominance" by the appropriate government or whether the government's nominee directors are in 'majority'. If they are, no doubt, it would indicate that the entity is a 'public authority' but if they are not, that does not mean that the entity is on that ground not a public authority for the purposes of the RTI Act. What may be a 'public authority' for the purposes of the RTI Act need not be 'state' under Article 12 or

amenable to Article 226 of the Constitution. It is the context of transparency and accountability, of accessibility of its working to the public that controls the interpretation of the expression 'public authority', not the amenability to judicial review of its decisions. If one asks the wrong question in the context of the RTI Act one is unlikely to get the right answer. In the present cases, the petitioners would have to show that there was or is no control or there is unlikely to be any control whatsoever over their affairs by the appropriate government if they want to escape the definition of 'public authority' under the RTI Act.

21. It is for the same reason that this Court does not find the judgments of the High Courts, holding these entities not to be amenable to the writ jurisdiction under Article 226 of the Constitution, to be relevant for the purpose of the present cases. While, if that question had been answered in the affirmative, it would make the task of holding them to be public authorities for the purposes of RTI Act simpler, the mere fact that for the purpose of Article 226 of the Constitution any or all of these entities are held to be not amenable to the writ jurisdiction cannot be determinative of the question whether they are 'public authorities' for the purposes of the RTI Act. To elaborate, although in ***J.S. Arneja v. NCCF 1994 (28) DRJ 546*** the Division Bench of this Court held the NCCF not to be 'State' within the meaning of

Article 12, and in ***NAFED v. National Processed Food Cooperative Marketing Federation of India Employees Union 2001 (58) DRJ 799 (DB)*** this Court held that NAFED is not amenable to the writ jurisdiction under Article 226 of the Constitution and in ***D.G. Katti Shetty v. NCCF*** [judgment dated 3rd June 2003 in W.P.(C) No. 28014 of 1999 (DB)], the Karnataka High Court held likewise as regards NCCF, it is not helpful for deciding whether either entity is a 'public authority' within the meaning of Section 2 (h) (d) (i) of the RTI Act.

22.The decision of this Court in ***Krishak Bharati Co-operative Ltd. v. Union of India, 2008 (154) DLT 452***, quashing an order of the Government of India directing the repatriation to itself of equity held in KRIBHCO is also not relevant in the present context. As a result of the repatriation, the government's share in KRIBHCO as on 31st December 2009 was reduced to 48.36%. This only meant that government did not have 'majority' shareholding in KRIBHCO. If the question was whether government had 'deep and pervasive' control over KRIBHCO after this development the answer undoubtedly would be in the negative. But for the purpose of Section 2 (h) (d) (i) of the RTI Act the question to be asked is whether it can be said that the government that holds 48.6% shares of KRIBHCO has no control whatsoever over its affairs? The answer to that question cannot

certainly be in the negative. The concept of a 'controlling interest' in a company or a body governed by shares is a well known one. Even a 10% shareholding in a large company that is not closely held can be construed as a 'controlling interest'.

23. Reliance was placed by learned Senior Counsel appearing for the petitioners on the decision of the Supreme Court in ***Federal Bank Ltd. v. Sagar Thomas (2003) 10 SCC 733.*** The issue there was about the amenability of a private bank to the jurisdiction of the High Court under Article 226 of the Constitution. The ratio of ***Pradeep Biswas*** and ***Ajay Hasia v. Khalid Mujib (1981) 1 SCC 722*** was followed. It was held that "any business or commercial activities whether bank, manufacturing units or relate to any kind of business generating resources, employment, production and resulting in circulation of money are no doubt, such which do have impact on the economy of the country in general. But such activities cannot be classified as one falling in the category of discharging duties or functions of a public nature." At the cost of repetition, this Court would like to emphasise that the above tests are not relevant for the present cases. The key words as far as the RTI Act is concerned are the opening words of Section 2 which read: "unless the context otherwise requires". Therefore, the interpretation of the words "public authority" has to be in the context that has been laid out in the SOR, the preamble, the long

title and other provisions of the RTI Act itself. The question is not whether there is "deep" and "pervasive" control of the bodies in question by the appropriate government, but whether there is the absence of any "control" over such bodies by the appropriate government.

"Substantially financed"

24. The second limb of Section 2 (h) (d) (i) of the RTI Act requires an examination if any of the petitioners is "substantially financed by the appropriate government"? It is important to note that the word "financed" is qualified by the word "substantially" indicating a degree of financing. Therefore, it is not enough for such bodies to merely be financed by the government. They must be "substantially financed". In simple terms, it must be shown that the financing of the body by the government is not insubstantial. The word 'substantial' does not necessarily connote 'majority' financing. In an annual budget of Rs. 10 crores, a sum of Rs. 20 lakhs may not constitute a dominant or majority financing but is certainly a substantial sum. An initial corpus of say Rs.10 lakhs for such an organization may be 'substantial'. It will depend on the facts and circumstances of a case. Merely because percentage-wise the financing does not constitute a majority of the total finances of that entity will not mean that the financing is not 'substantial'. A reference may be made to two different meanings of the word

'substantial'. In **Black's Law Dictionary** (6th Edn.) the word 'substantial' is defined as "of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real: not seeming or imaginary; not illusive; solid; true; veritable. Something worthwhile as distinguished from something without value or merely nominal. Synonymous with material." The word "substantially" has been defined to mean "essentially; without material qualification; in the main; in substance; materially." On the other hand in the **Shorter Oxford English Dictionary** (5th Edn.) the word 'substantial' means "of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; sold; weighty; important, worthwhile; of an act, measure etc. having force or effect, effective, thorough." The word "substantially" has been defined to mean "in substance; as a substantial thing or being; essentially, intrinsically." Therefore the word 'substantial' is not synonymous with 'dominant' or 'majority'. It is closer to "material" or "important" or "of considerable value." "Substantially" is closer to "essentially". Both words can signify varying degrees depending on the context.

25. This has been brought out well in a recent judgment of this Court in ***Indian Olympic Association v. Veeresh Malik*** [judgment dated 7th January 2010 in W.P. (C) No. 876 of 2007]. The question

before the learned Single Judge was whether the Indian Olympic Association, the Sanskriti School and Organising Committee Commonwealth Games 2010, Delhi were 'public authorities' under the RTI Act. While answering that question in the affirmative, it was held as under (para 58):

> "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."

26. The approach of other High Courts in interpreting Section 2 (h) (d) of the RTI Act is instructive. They have adopted a contextual and liberal interpretation keeping in view the purpose and object of the RTI Act. In ***Diamond Jubilee Higher Secondary School v. UOI*** [W.P. No. 36901 of 2006, judgment dated 16th March 2007] the Madras High Court held that an aided private recognized school came under the provisions of the RTI Act. It was held: "It is too late in the date to hold that the RTI Act, 2005 will not apply to the petitioner school, which is a non-governmental organisation that has been substantially funded by the State". It was found that

there were 59 teaching staff and all of them were paid 100% salary from the aid received from the government. The management was getting about Rs.1.1 crores every year from the government for running the school. In ***DAV College Trust and Managemet Society v. Director of Public Instruction AIR 2008 P & H 117***, wherein it was held that DAV College, Chandigarh was a 'public authority' it was observed that merely because the grant-in-aid to the entity had reduced from 95% to 45% it would not take it out of the purview of the RTI Act. The two factors that weighed with the Court were that the entity was performing a public function affecting the life of a huge segment of society and in addition it was receiving substantial grant-in-aid. The Allahabad High Court in ***Dhara Singh Girls High School v. State of Uttar Pradesh AIR 2008 All 92*** likewise held that a private school receiving grant from the State Government was a public authority for the purpose of RTI Act. It was held that "whenever there is even an iota of nexus regarding control and finance of public authority over the activity of a private body or institution or an organization etc. the same would fall under the provisions of Section 2(h) of the Act." In ***Committee of Management Shanti Niketan Inter College v. State of U.P. AIR 2009 All 7***, it was held by the Allahabad High Court that the RTI Act would apply to that institution.

27. The Karnataka High Court in ***Dattaprasad Co-operative***

Housing Society Ltd. v. Karnataka Chief Information Commissioner & Registrar of Cooperative Societies, Govt. of Karnataka AIR 2009 Kant 1 held that a cooperative housing society was not a public authority within the meaning of the RTI Act. It was held that "solely on the basis of supervision and control by the Registrar of Societies; and definition of 'public servant' in the cooperative societies and in the Karnataka Lokayukta Act, 1984 a society cannot be termed as public authority". It was noticed that in the said case the society in question "was neither owned nor funded or controlled by the State". However, in the context of present cases, it cannot be said that neither of these entities neither controlled nor funded by the State. This will be discussed shortly hereafter in respect of each petitioner. A second distinguishing feature is that the concerned statute under which the society was registered was not examined to determine if there was any control over the society by the government.

28. On the other hand, the Kerala High Court in ***Thalapalam Service Co-operative Bank v. Union of India AIR 2010 Ker 6*** held that co-operative societies registered under the Kerala Co-operative Societies Act are public authorities for the purposes of the RTI Act. It was held that a body substantially financed by the funds provided by the appropriate Government would fall within Section 2 (h). It was further held that the expression 'substantially

financed' had no fixed meaning.

29. In ***Tamil Nadu Road Development Co. Ltd. v. Tamil Nadu Information Commission [2008] 145 Comp Cas 248 (Mad)***, a Division Bench of the Madras High Court held that Tamil Nadu Road Development Company Ltd. was substantially controlled by the Government both in terms of the composition of the Board of Directors and also the manner in which the Articles of Association had been drawn up. Reliance was placed on the observations in ***R. Anbazhagan, Dy. Manager (Mech.), Tamil Nadu Newsprint and Papers Ltd. v. State Information Commission 2009 (1) ID 7,*** whereby the Tamil Nadu Newsprint and Papers Ltd. was held to be a public authority.

30. Therefore for the purposes of Section 2 (h) (d) (i) for determining whether there is 'control' over the entity or there is 'substantial financing' of such entity by the appropriate government the approach should not be to ask if there is 'predominant' or 'majority' control or financing by the appropriate government. The financing may not be a majority one and yet be 'substantial'. The shareholding or the membership of the nominee directors on the board may not be in the majority and yet there may be 'control'. The provisions of the statute under which the entity is registered has also to be examined for this purpose.

31. One other aspect that needs to be mentioned is that the `control' or `substantial financing' need not necessarily be *in presenti*. An entity had in the past been controlled or substantially financed by the appropriate government, and has ceased to be so at present, need not cease to be a `public authority' as long as the potential for being so controlled or substantially financed in future exists. Also, once an entity has been established or substantially financed by the appropriate government at any point in time it acquires the tag of a `public authority' for the purposes of the RTI Act.

The MSCS Act

32. That brings up the need to undertake an examination of the various provisions of the MSCS Act to determine if there is a control over these petitioners by the appropriate government. Chapter XV of the MSCS Act is relevant. Under Section 106 a copy of the bye-laws is to be kept open for inspection at the registered office of the society. Likewise the various registers including the register of members, copies of annual returns and the register of debenture holders are to be kept at the registered office, and is open for inspection by any member or debenture holder, without fee or by any other person, on payment of such sum as may be prescribed for each inspection. Under Section 108 the books of account and other books and papers are open to

inspection by the Central Registrar, by an officer of the Government and by members of the society. The annual accounts and balance-sheet are to be laid before the society. Under Section 113 the inspection of minutes' book of general meetings and meetings of the board is open to any of the members of a society. Therefore, barring the registers of members and debenture holders, the indexes, the annual returns and other certificates referred to in Section 106, the other documents referred to in Sections 108 onwards are not open to inspection by public.

33. Turning to the provisions that indicate some form of control by the government of a MSCS, it is seen that it is possible for a government to have 'majority' shareholding in an MSCS which then is a 'specified' MSCS under Section 122 and the central government can issue directions thereunder to such MSCS. It can also supersede the Board of such MSCS under Section 123. However, in terms of the 'Explanation' to Sections 122 and 123 the Central Government may not have the power to give directions to or supersede the board of a specified MSCS if the government's shares in it are below 50%. However, this by itself does not mean that there is no control whatsoever of the government over a non-specified MSCS. Under Section 124 of the MSCS Act, the power to make rules which affects and controls the functioning of a MSCS is with the central government. The power of the Central

Registrar, an appointee of the central government, is detailed in a range of provisions including Sections 78, 79, 80, 81, 82, 83, 86, 89, 93, 115 and 117. Further under Section 61 the Central Government on a request from a MSCS society can subscribe to the share capital of such MSCS. Under Section 77 the central government can direct a special audit of the MSCS in certain cases. Under Section 82 the debts due to the central government get a high priority in insolvency proceedings concerning the MSCS. Therefore through various provisions of the MSCS Act, the central government, or the state government where the context requires, exercises control over the MSCS.

34. The position in regard to each of the petitioners is examined next.

KRIBHCO

35. KRIBHCO is a national level MSCS deemed to be registered under the MSCS Act, 2002. It is engaged in manufacturing and selling, inter alia, chemical fertilizers and urea. It is stated that the authorized share capital of KRIBHCO is Rs. 500 crores and the subscribed and paid-up share capital is Rs. 396.50 crores. It had a membership of 6306 as on 31st March 2007. It is stated that Government of India is a member of KRIBHCO and as on 31st March 2007 had a shareholding worth Rs. 267.71 crores i.e.

67.59%. Subsequently, Government of India's shareholding was reduced to Rs. 188.90 crores, i.e., 48.36%. KRIBHCO'S object is to promote economic and social betterment of its members by undertaking the business of manufacture, production, development, processing, conversion, sale, distribution, marketing, import, export, trade or otherwise deal in, store, or transport, build, construct, fabricate or otherwise turn to account, in India and abroad of chemical fertilizers, bio-fertilizers, man-made fibers, detergents, soaps, chemicals, petro-chemicals, refining hydro-carbons, drugs and pharmaceuticals, industrial products, cement, steel, electronic products, satellite receivers, pesticides, seeds, agricultural machinery and implements and other agricultural inputs/outputs, agricultural items, agro-based industrial items, food products, aquaculture, forestry products, power generation and distribution from conventional or non-conventional energy sources, automobiles, breweries, housing and real estate, construction and fabrication, and to provide/undertake the business of oil exploration, communication and telecommunication, information technology, shipping, trading, banking and insurance and to undertake such other activities which are conducive and incidental thereto, through self-help and mutual aid in accordance with cooperative principles. The membership of KRIBHCO is open among others to various cooperative societies as per bye-law 6 of KRIBHCO which are primarily engaged in development of

agriculture. Bye-law 24 gives the source of funds of the society which includes loans and deposits, debentures, bonds, commercial papers within India and abroad, grant-in-aid and donation. Bye-law 27 provides that the final authority shall vest with its General body constituted under its bye-laws. There is a representative general body consisting of the members of the Board of Directors, one delegate to be nominated by each organization holding shares of the value of Rs. 5 lacs, and above and delegates to be elected from amongst their representatives of member society/organization in each State/Union Territory at the rate of one delegate for every 100 members. However, the maximum number of delegates from State/Union Territory shall not exceed 20.

36. Bye-law 30 enlists the powers of General body which includes powers like election and removal of Board of Directors, distribution of net profits, expulsion of members, review of operational deficit, approval of annual budget etc. Bye-law 38 sets out the composition of the Board of Directors of KRIBHCO. The maximum number of Directors is 21 excluding the functional and co-opted directors. 8 directors are to be elected by the General Body of whom 3 shall be representatives of the "Apex Marketing Federations" of the different States/Union Territories. Not more than 3 directors are to be nominated by the Government of India based on the equity share capital held by the Central Government.

If any organization is providing long term credit to KRIBHCO then it shall also be eligible to nominate one Director; 2 Experts as Directors from amongst eminent economists or management experts could be co-opted by Board, if there is a provision to that effect in the loan agreement.

37. Clause 47 gives a range of powers to the Board of Directors, which includes the power to admit members, convene meetings, fill up vacancies in the General Body amongst the elected delegates and to recommend to the General Body for distribution of profits, to appoint, suspend or remove the Managing Director or other directors and to take all important decisions relating to withdrawal, transfer or forfeiture of shares. Under Clause 55, there shall be an Audit Committee consisting of Chairman, Vice Chairman, 3 non official Directors, Managing Director and Finance Director.

38. KRIBHCO contends that in terms of its bye laws the final authority vests in the General Body in which the Non-Government Members far exceed the Government nominees. It is submitted that KRIBHCO functions independently and without any financial assistance or interference of any nature by the Government. It is submitted that transparency in discharge of day to day business is maintained by KRIBHCO in the normal course of its business in

terms of provisions contained under Chapter-XV of the MSCS Act.

39. To complete the narration of relevant facts concerning KRIBHCO it must be noted that the present case emanated from an application made by Respondent 2, who was an employee of KRIBHCO and had been transferred from Chandigarh to Bhopal for administrative reasons. While the litigation initiated by him challenging his transfer order was pending, he sought information from KRIBHCO. However, it was declined on the ground that KRIBHCO is not a public authority. Among other grounds urged by KRIBHCO is that the CIC had wrongly observed that "Department of Fertililzers of Government of India is one of the major promoters of the KRIBHCO". It is stated that this finding was entirely incorrect. There were 12 promoter members of KRIBHCO. It is submitted that KRIBHCO is neither dependent on the aid/fund or financial assistance of the Government or local body in any manner nor does it receive any financial assistance/grant for its day to day business. The employees of KRIBHCO are not subject to the disciplinary proceedings as applicable to government servants or employees of public sector undertakings. KRIBHCO is not a government organization or establishment and its employees are neither government servants nor public servants.

40. KRIBHCO seeks to draw comparison with the Indian Farmer's Fertilizer Cooperative Ltd. (IFFCO), which is also an MSCS registered under the MSCS Act. Reliance was placed on the judgment of Rajasthan High Court in ***Chittar Singh v. IFFCO*** (CWP No. 139 of 1986) and ***Bihar State Cooperative Marketing Union v. IFFCO*** (CWP No. 7303 of 1993) of the Patna High Court in which it was held that IFFCO is not an authority within the meaning of Article 12 of the Constitution. Likewise, in ***Ashok Kumar v. Union of India*** (CM WP 21772 of 2006)**,** the Allahabad High Court held that KRIBHCO is not a State or other authority under Article 12 of the Constitution. Reliance was also placed on the decision of the Supreme Court in ***S.S.Rana v. Registrar Co-op. Societies (2006) 11 SCC 634*** where it was held that the Kangra Central Cooperative Bank Ltd., against whom an employee had filed a writ petition challenging an order terminating his services, was not amenable to Article 226. It was observed that a control by the State as a general regulation under the Cooperative Societies Act was only meant to ensure proper functioning of the societies and that the state "would have nothing to do with its day-to-day functioning." Here again, the emphasis was on examining whether the bank in question satisfied the tests laid down in ***Pradeep Kumar Biswas***. As already noted before, this is not relevant in the present context of the RTI Act. The question whether a body is a 'public authority' for the purposes of the RTI Act is not the same

as the question whether such body is a 'state' under Article 12 or discharging a public function for the purposes of Article 226.

41. In the instant case, the CIC has in its impugned order, noticed the contentions of the respondents herein as under:

> "Even if KRIBHCO does not receive any grant from the Government to meet its expenditure, it is covered u/s 2(h)(d)(ii) of the RTI Act, as the Government is the major stakeholder by way of providing funds for its sustenance.
>
> KRIBHCO is a public authority as defined under aforesaid section of the RTI Act as the total share capital of Govt. of India (excluding the share capital of 20 other States of India) in KRIBHCO is more than 68% and every year dividend is also given to all the share holders which includes the Govt. of India also. Section 2(h)(d)(ii) of the RTIU Act is therefore duly applicable.
>
> Govt. of India has both administrative and regulatory control over the affairs of KRIBHCO. The Registrar of Multi-State Co-operative Societies, an officer appointed by the Central Government, has a wide control over the affairs of the Co-operative Society like KRIBHCO.
>
> As a major shareholder, the Govt. of India has a wide control, though indirectly, over the functioning of the respondent."

42. In the context of the present case, this court proceeds on the footing that the appropriate government for KRIBHCO would be the central government. It is significant that Government of India's paid-up share capital in KRIBHCO in monetary terms was Rs. 268 crores as on 31st March 2007. It was reduced to Rs.188.90 crores subsequently. Investing in share capital is a known means of

financing an entity. A sum of Rs. 189 crores, cannot be said to be insubstantial financing. A shareholding of 48.36% cannot mean that government has no `control' over KRIBHCO. 'Substantial' financing does not have to mean 'majority' or 'dominant' financing. A `controlling' interest through shareholding does not necessarily mean `majority' shareholding.

43. As regards 'controlled', it is significant that the Registrar of the MSCS is an officer appointed by the Central Government. Direct or indirect control over the affairs of an MSCS like KRIBHCO is possible even through the nominee directors of the Central Government. The nominee Directors may not constitute a majority of the Board of Directors. However, they could well influence, directly or indirectly control its decisions. In the meeting of the Board of Directors, even if some members are in a minority, they may still be able to persuade the others to agree to their point of view. On a case by case, it is very difficult to say that three among 21 members of a Board do not or cannot exercise control over its decisions. There is a mistake in assuming that word 'control' has to mean majority control. There can be a control by a minority as well. The controlling interest need not be numerically in the majority.

44. Therefore, the absence of any adjective like "deep" or

"pervasive" qualifying the word "controlled" in Section 2 (h) of the RTI Act, means that any control over the body by the central government will suffice to make it a 'public authority'. On a reading of KRIBHCO's bye laws, it is not possible to come to the conclusion that there is no control over the affairs of KRIBHCO by the Central Government. It was contended that Government of India no longer holds 51% of the paid-up share capital and, therefore Sections 122 and 123 do not apply to KRIBHCO. While, it is correct that in terms of the Explanation to Sections 122 and 123 the Central Government cannot issue directions, it can still make rules under Section 124 for various matters governing the functioning of KRIBHCO. Even if KRIBHCO has repatriated a substantial investment in its share capital by the Government of India, the latter still holds 48.38% of the total paid-up share capital of KRIBHCO. It would therefore not cease to be a "public authority" as this extent of shareholding is sufficient for government to 'control' KRIBHCO. Financing through investment in share capital which is of a 'substantial' kind cannot be ignored in this context. Also, the mere fact that the extent of shareholding might come down to less than 50% at a given point in time is not relevant. That KRBHCO is amenable to government control through various devices as spelt out in the MSCS Act itself, is what is significant. For the above reasons, this Court upholds the decision of the CIC that KRIBHCO is a public authority for the

purpose of Section 2 (h) of the RTI Act.

NCCF

45. The NCCF describes itself as a co-operative society which was sponsored by the co-operative leaders with the main objective of promoting co-operative marketing and ensuring that farmers get ready market and remunerative prices for their produce. The objectives of NCCF are to organize, promote and develop marketing, processing and storage of agricultural, non-agricultural items, horticultural and forest produce, undertake inter-state, import and export trade and to act and assist the technical advice in agricultural, non-agricultural, non traditional production for the promotion and working of its members, partners, associates and co-operative marketing, processing and supply societies in India. The objectives include (i) carrying on importing and exporting activities relating to consumer goods such other articles; (ii) establishing, running or sponsoring processing and manufacturing units for the production of consumer goods; (iii) establishing trade connections with suppliers and manufacturers and other dealers, preferably co-operative organizations and arranging for the procurement and distribution of consumer goods, (iv) rendering technical guidance and assistance to its member institutions in particular and consumer societies in general in regard to grading, packaging, standardization, bulk-buying, storing, pricing, account

keeping and other business techniques. It is also permitted to secure requisite facilities, assistance and financial aid both for itself and for its member institutions, either from the Government or from other sources. NCCF is also permitted to act as agents of Central/State Government or other undertakings or cooperative institutions or any other business enterprises for selling, storing and distributing the consumer goods.

46. The membership of NCCF is stated to be open. The members listed out in Bye law 5 are:

> "(a) Apex Level Cooperative Marketing organizations for Union Territories,
>
> (b) State Level general purpose cooperative marketing federation excluding Union territories.
>
> (c) State and Regional level cooperative institutions like special cooperative federations, tribal cooperative federations and tribal cooperative development corporations engaged primarily in the marketing processing or distribution of agricultural, minor forest and allied produce agricultural requisites and consumer goods
>
> (d) Cooperative marketing/Processing societies other than those covered above engaged primarily in the marketing, processing or distribution of agricultural, minor forest and allied produce, agricultural requisites and consumer goods and having a minimum turnover of Rs. 50 lacs and above during the year preceding the date of application.
>
> (e) Government of India;
>
> (f) National Cooperative Consumer's Federation and any other national level cooperative organization;
>
> (g) Any other National level Cooperative

Organisation on reciprocal basis."

47. It is claimed that NCCF has not received any assistance from the Government of India, either in the form of share capital contribution, loan or subsidy since 1996. As regards the share capital the position is as follows:

> "The authorized share capital of the Federation is Rs. 20 crores consisting of one lakh shares of the value of Rs. 2000/- each to be subscribed by members. The government has also been holding 10,137 non-redeemable shares in the NCCF ever since 1994-95. On the other hand, the non-redeemable shares held by others were 13,725 during the year 1999-2000, 14,475 during the year 2000-01 and 14,550 during the year 2001-02 of Rs. 2000/- each, fully paid up. Thus, the contribution to the share capital by persons other than government is more than the contribution by the Government. The government has also been holding redeemable shares which arise from 35,875 held in the year 1994-95 to 72,625 in the year 2001-01 and reduced to 71,625 in 2001-2002. As on 31st March 2007, the total paid share capital of NCCF was Rs. 13.79 crores of which the redeemable contribution made by the Government of India was of Rs. 10.74 crores. But what is significant about these shares is that they are redeemable after five years from the date of allotment in ten equal annual instalments. Therefore, the funding by the Government by way of redeemable shares is virtually a loan repayable in 10 installments by the NCCF."

48. As far as the Board of Directors are concerned, in terms of Bye law 24, there is one nominee each of National Cooperative Union of India, National Cooperation Development Corporation and NAFED on reciprocal basis. The membership of Non-Government members is stated to far exceed the Government Members. The question however is of the cumulative effect of the above factors. This Court is unable to accept the submission that because the government does not hold a majority of the shares or that its nominees do not constitute a majority of the Board of Directors, there is no control over the NCCF by the appropriate Government. Even as regards financing, the financing through the holding of shares cannot be said to be insubstantial. The total paid up capital is Rs. 13.79 crores in which the contribution of Government of India is Rs. 10.74 crores.

49. There is a third aspect of the matter as noticed by the CIC. NCCF provides technical guidance to its constituent members to sub-serve the interests of consumer cooperation movement in India. The Department of Agriculture & Cooperation, in its communication dated 7th May 2008 informed the CIC about the objectives of the NCCF as under:

> "2.2 Objective
>
> The main object of the NCCF is to assist, aid and counsel its member institutions as per principle of cooperation and to facilitate their working including providing supply support to consumer cooperatives

> and other distributing agencies for distribution of consumer goods at reasonable and affordable rates and rendering technical guidance and assistance to them for improving their managerial and operational efficiency and generally to act as spokesman of consumers' cooperative movement in India and also to assist organization and promotion of Consumer Cooperative Institutions in areas, where the State Consumer Federations or the Wholesale Stores are not functional."

50. On a conspectus of the above factors, this Court is unable to find any error in the conclusion of the CIC that NCCF is a public authority within the meaning of Section 2 (h) of the RTI Act.

NAFED

51. As far as NAFED is concerned, the Department of Agricultural & Cooperation, in its communicated dated 7th May 2008, informed the CIC about the role of the NAFED as under:-

> "1.4 *Role of the Government*
>
> 1.4.1 NAFED is the Central nodal agency of the government of India to undertake procurement of oilseeds and pulses under Price Support Scheme (PPS). The objective of the scheme is to provide regular marketing support to the farmers to sustain and improve the production of oilseeds and pulses. The 100% loses incurred by NAFED in the implementation of the Price Support Scheme is borne by the Government of India.
>
> 1.4.2 NAFED is also the Central nodal agency of the Government of India to make purchase of horticultural/agricultural commodities (not covered under Price Support System) under Market Intervention Scheme (MIS). Purchases under MIF are made after the Government of India, on the specific request of the concerned State Government approves the proposal as per guidelines of the scheme. The

losses in the implementation of the MIS are shared by the Government of India and the state Government concerned in ratio of 50:50 basis. (In case of the North Eastern Region States 75:25)

1.4.3 The business activities of NAFED may be broadly divided two categories: (1) NAFED functions as a Central agency for carrying out Minimum Support Price operations under Price Support Scheme & implementing Market Intervention Scheme; and (2) NAFED undertakes commercial activities on its own without policy guidelines, approval or monetary assistance from the Central Government. The officers of NAFED (including office bearers and members of the Board) discharge their functions within the ambit of its bye law, policies laid down by its General Body and guidelines of its Board of Directors. In this respect also NAFED discharges its functions as an autonomous body.

1.4.4 There is no shareholding of the Central Government in NAFED nor the Central Government provides any grants for its commercial operations. There is no role of the Central Government in the business programmes of NAFED for marketing of various agricultural and non-agricultural products considerations and under Public Private Partnership business with its business associates.

1.4.5 While reviewing the working of NAFED, the autonomy and self-governance of NAFED in respect of its all other commercial activities should be kept in view. The limited role of the Central Government is providing budgetary support to NAFED to meet the losses incurred on Price Support operations undertaken on behalf of the Government. A copy each of bye-laws and Annual Report of NAFED for the year 2006-07 are at Annexure-I & II respectively. (sic)"

52. It seems that even according to the petitioner the main objective of NAFED is to organize, promote and develop marketing, processing and storage of agricultural, non-agricultural and non-traditional items, horticultural and forest produce,

undertake inter-state, import and export trade and to act and assist for technical advice in agricultural, non-agricultural, non-traditional production for the promotion and working of its members, partners, associates and co-operative marketing, processing and supply societies in India. Like the NCCF, the Bye-laws of NAFED also contain similar provisions as regards its membership.

53. The shareholding pattern in NAFED is as under:-

> "The authorized share capital of the Federation is Rs. 20 Crores consisting of 4000 shares of the value of Rs. 25,000/- each to be subscribed by members categorized under bye-law 4(a)(i), 4(A)(ii), 4(a)(iii) and 4(a)(v) and, 40,000 shares of Rs. 2,500/- each to be subscribed by the members categorized under Bye law 4(A)(iv).
> The entire share capital are held by the members mentioned above and no share capital is held by the Government of India."

54. According to NAFED, they are neither financed nor administratively controlled or dominated by the Central Government or State Government. There is no shareholding of the Central Government, and Central Government has no role in the business programme of NAFED. Reliance was placed on the judgment of a Division Bench of this Court in ***NAFED v. NPFCMFIEU*** where it was held that NAFED is not an 'instrumentality' or 'State' and therefore not amenable to its jurisdiction under Article 226 of the Constitution.

55. The CIC observed that NAFED is a nodal agency of the Government of India for the purchase of agricultural and non-agricultural commodities (not covered under Price Support System) under Market Intervention Scheme and the losses incurred in the implementation of the schemes by NAFED are shared by the Government of India and the State Government concerned in the ratio of 50:50. It is contended by NAFED that "the limited role of the Central Government is providing budgetary support to NAFED to meet the losses incurred on Price Support operations undertaken on behalf of the Government".

56. However, the above features assume significance in the context of the RTI Act. The Market Intervention Schemes affect a large number of farmers all over the country. It has bearing on the vast market of agricultural commodities. It affects the way the agricultural commodities market behaves. NAFED plays a central role in this context. The cumulative effect of these factors go to show that there is control over the activities of NAFED by the Central Government. Further, even if at a given point in time there is no tangible, visible control, the structure of an MSCS like NAFED is such that it is always amenable to government control. This is what is relevant for the purpose of the definition of 'public authority' under Section 2 (h) of the RTI Act.

Epilogue

57. Waiting for little bits of information to percolate to them on urea prices, fertilizer stocks and their movements, the market position and availability of agricultural commodities are millions of farmers all over the country, some of whom may be members of the myriad co-operative societies that in an indirect manner participate in the functioning of multi-state co-operative societies like KRIBHCO, NCCF and NAFED. The information held by these entities is relevant not just to the farmers but millions of workers on land and traders in the agricultural commodities sector. The information held by these entities is also vital to the lives and livelihoods of millions of 'little' persons that look to the sky every morning to hope that they will be able to survive the day. Then there are those who are interested in how the various schemes that are to be implemented through the multi-state co-operative societies are in fact being implemented. Are the monies well spent? Are the schemes benefiting those whom it should? And so on. This information too is held by these three and other multi-state co-operative societies. That then is the significance of the CIC's ruling that KRIBHCO, NCCF and NAFED are 'public authorities' under the RTI Act, a decision with which this Court concurs.

58. Over three decades ago Justice Krishna Iyer speaking for the

Court in ***Mohinder Singh Gill v. The Chief Election Commissioner (1978) 1 SCC 405*** had occasion to talk of the "little man." He recalled the following words of Winston Churchill about the power of the vote of that little man:

> "At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper - no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point."

59. Just as the right to vote of the 'little' citizen is of profound significance in a democracy, so is the right to information. It is another small but potent key in the hands of India's 'little' people that can 'unlock' and lay bare the internal workings of public authorities whose decisions affect their daily lives in myriad unknown ways. What was said of the working of a government in a democracy in ***S.P.Gupta v. Union of India (1981) Supp SCC 87*** should hold good for the working of a multi-state cooperative society too. The Court there said (SCC, p.453): "In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries." In the context of the working of multi-state co-operative societies, which by their very nature facilitate participatory decision-making through a network of elected bodies

at different levels, the opening up of their working to public scrutiny through the RTI Act can only be in their best interests. Instead of shying away from the RTI Act, large multi-state co-operative societies like KRIBHCO, NCCF and NAFED should view it as an opportunity.

Conclusion

60. For the aforementioned reasons, this Court finds no error having been committed by the CIC in its conclusion that KRIBHCO, NCCF and NAFED are 'public authorities' within the meaning of Section 2 (h) of the RTI Act.

61. Each of the writ petitions is accordingly dismissed with costs of Rs. 20,000/- which will be paid by each Petitioner to the respective Respondent within four weeks.

S. MURALIDHAR, J.

MAY 14, 2010
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