

**CENTRAL INFORMATION COMMISSION**  
**D- Wing, 2<sup>nd</sup> Floor,**  
**August Kranti Bhavan, Bhikaji Cama Place,**  
**New Delhi - 110066**

**Complaint No.CIC/MA/C/2008/000195/SS**

**PARTIES TO THE CASE:**

Complainant : Mr. Sanjay Ramesh Shirodkar

Respondents : Mumbai International Airport Ltd. (MIAL)

Third Parties

1. The CPIO, Ministry of Civil Aviation
2. The CPIO, Airport Authority of India (AAI)

Date of Decision : 30/05/2011

**BACKGROUND OF THE CASE:**

1. The RTI Application was filed by the Complainant Shri Sanjay Ramesh Shirodkar on 09/01/2008. The Authorized Signatory of MIAL vide his reply dated 13/02/2008 stated that MIAL is not a Public Authority under the RTI Act and that the decision of the CIC in the case of Anil Heble vs. AAI

(CIC/OK/C/2006/00125) is not final and was still pending before the CIC as on that date. It needs to be noted that the decision of the CIC in the case of Anil Heble vs. AAI was delivered on 17/01/2007 wherein Delhi International Airport Limited (DIAL) was declared a Public Authority under the RTI Act. MIAL vide their letter dated 13/02/2008 had stated that the DIAL Order was not final and was pending before the Commission. Such an averment cannot be admitted as the Commission has no power to review its own decisions. However, the Complainant, aggrieved by the said letter, filed a Complaint before the CIC on 20/02/2008 and the CIC thereafter took cognizance of the complaint (F.No.CIC/MA/C/2008/00195). Notice dated 30/04/2008 was issued to the Complainant on 09/05/2008 in the regular format for Complaints/Appeals and the Complainant was advised to submit a copy of that notice upon the Respondents.

2. The Complainant sent an e-mail on 26/05/2008 to the Secretary, CIC authorizing Lt Col (Retd.) Anil Heble to represent him in the complaint matter scheduled for hearing on 11/06/2008 and also requested the CIC to direct NIC, Pune for making necessary arrangements so that the Complainant could attend that hearing through Video Conferencing. The hearing on 11/06/2008 was attended by the Complainant as well as his authorized representative Shri Heble. The CIC passed an order (Decision No.2571/IC(A)/2008) dated

11/06/2008 after the hearing on that day and even dispatched it to MIAL who received it on 17/06/2008.

3. The Complainant then pursued his complaint on 16/07/2008 to the CIC stating how MIAL had not obeyed the order of the CIC. In the meanwhile, MIAL approached the Hon'ble Delhi High Court by instituting proceedings under WP(C) No.5049/2008. His Lordship Dr. S.Muralidhar, J. passed an Order on 22/11/2010 wherein the decision of the CIC dated 11/06/2008 was set aside on the ground that no opportunity provided to the MIAL for presenting its case. The High Court further directed the CIC to restore the appeal of Shri Shirodkar and hear both the sides and accordingly, pass a reasoned order thereon.
4. The CIC thereafter issued notice to the Respondents as well as the Complainant in the present case on 03/02/2011 directing that the hearing would be scheduled for 07/03/2011 and that the parties must make their written submissions 10 days prior to that date. The 1<sup>st</sup> hearing in this regard was held on 07/03/2011. All the Respondents were present but the Complainant was absent. The 2<sup>nd</sup> hearing was held on 18/04/2011 and was again attended by the Respondents but not by Complainant. As a result, Hon'ble Delhi HC passed a clarificatory Order on 21/04/2011 in CM No. 5412/2011 that the CIC should proceed with the hearing only after having satisfied itself with the proof of service of notice upon the Complainant. The reason given by the High Court was that such directions were

to obviate any grievance which the Complainant may raise at a future date that the matter was heard without notice to him.

5. The 3<sup>rd</sup> hearing in this case was held before the CIC on 21/04/2011. On 26/04/2011, the CIC issued notice intimating the date of next hearing in furtherance of the High Court's order to all the parties, i.e. MIAL, AAI , Ministry of Civil Aviation and the Complainant. The Complainant sent an e-mail on 07/05/2011 to the CIC acknowledging the service of the notice upon him. On 10/05/2011, Respondent made an application before the Commission to constitute a larger bench for hearing and disposal of the present matter after taking photocopies of the relevant documents from the file. On the same day, the Complainant had sent a facsimile to the CIC containing his submissions in the present case since he was unable to attend the hearing personally. The same document was already been placed on record with a copy to the Respondent and third parties.
6. The 4<sup>th</sup> hearing was then held on 11/05/2011 wherein all the Respondents were present. The proof of service of notice upon the Complainant was shown to the Counsel appearing on behalf of Respondent No.1, who also acknowledged the same. The 5<sup>th</sup> and final hearing was held on 16/05/2011. The Complainant sent an e-mail to the CIC on 13/05/2011 wherein he confirmed that he was updated about the latest hearing and wished to stick to his earlier submissions only.

**ISSUE INVOLVED IN THE CASE:**

7. After the due course of proceedings and various submissions advanced before us, there is only one issue which needs to be apprised of, i.e. “Whether or not the MIAL is a Public Authority under the RTI Act.”
8. The learned Senior counsel Shri K. Venugopal, appearing on behalf of MIAL, had advanced arguments at length before us and made submissions with full vehemence as to how MIAL is not a Public Authority under the RTI Act. Learned Senior Counsel, had elaborately taken us through the jurisprudence behind the requirements imposed by clauses (a) to (c) of Section 2(h) of the RTI Act. Since we concur with the learned senior counsel’s submission and believe that MIAL does not fit into any of the categories as under clauses (a) to (c) of Section 2(h), hence, there is no need to engage ourselves in further discussion on this point.
9. The only provision which concerns us is clauses (d) and (i) respectively, of Section 2(h). Section 2(h) is reproduced here for the sake of clarity:

*2. Definitions – In this Act, unless the context otherwise requires,--*

*XXX XXX*

*(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 organisation substantially financed,*

*directly or indirectly by funds provided by the appropriate Government; (emphasis added)*

10. What needs to be seen now is (A) whether MIAL was established or constituted by an order by the appropriate Government, (B) whether MIAL is a body controlled by the appropriate Government, and (C) whether MIAL is a body substantially financed either directly or indirectly by funds provided by the appropriate Government. We find it pertinent to mention at this juncture that any of the above three conditions, if satisfied, will result in MIAL being a Public Authority within the ambit of Section 2(h) of the RTI Act.
11. The relevant and material facts for deciding the above framed issues are as follows. As a part of the Government of India's avowed policy of privatization

of strategic national assets, the first step appears to be privatization of two airports i.e. Mumbai and Delhi on a joint venture basis. In March, 2003 AAI initiated process to consider modernization of Delhi and Mumbai Airports on the basis of an earlier decision taken on 12/01/2000 by the Union Cabinet relating to re-structuring of airports of AAI through long term leasing route. On 11/09/2003 the GOI approved restructuring of airports of Mumbai and Delhi through joint venture (hereinafter “JV”) route and constituted Empowered Group of Ministers (hereinafter “EGoM”) to decide the detailed modalities including design parameters, bid evaluation criteria etc., based on which the JV partners were to be selected. It was required to submit the final proposal for Central Government's approval. An Inter Ministerial Group (hereinafter “IMG”) was set up to assist EGoM for re-structuring of two airports. On 4.2.2006, the Government of India announced the names of the successful bidders i.e. GVK for Mumbai and GMR for Delhi Airport. As mandated by the Government, on 2.3.2006, Special Purpose vehicle (SPV) was formed for the Mumbai airport. On 04/04/2006, Operations Management and Development Agreement (hereinafter “OMDA”) was signed by the concerned parties. The Shareholders agreement GVK was signed. Consequently 26% shares in the SPV were allotted to AAI and 74% shares allotted to GVK.

12. The MIAL is a company registered under the Companies Act 1956 and is a Joint Venture Company which was incorporated on 02/03/2006. It is a consortium of GVK Airport Holdings Pvt.Ltd., ACSA Global Limited; Bid Services Division (Mauritius) Ltd., and the AAI. The MIAL has been created with the objective of operating, maintaining, developing, designing, constructing, upgrading, modernizing, financing and managing Airports. After the Airports Authority of India Act, 1994 (hereinafter "the AAI Act") was amended by the amendment Act of 2003, pursuant to the provisions of Section [12A](#) of the Act the OMDA was signed whereby and where under the AAI had leased out the Chhatrapati Shivaji International Airport to MIAL for a period of 30 years. The lease is renewable for further period of 30 years. The OMDA was signed on 04/04/2006 and the Lease Deed was subsequently executed on 26/04/2006.

13. MIAL is a Joint Venture Company in which 26% shareholding is held by the AAI and this gives control to the AAI over vital matters which require 3/4th majority. MIAL had been specially incorporated "inter alia with the objectives of operating, maintaining, developing, designing, constructing, upgrading, modernizing, financing and managing the Airport". Airport is defined in Clause 1.1 of OMDA to mean "the Chhatrapati Shivaji International Airport". MIAL is the lessee of the AAI under Section [12A](#) of the AAI Act, which provides that

some of the functions of the AAI may be transferred to the MIAL and that the MIAL shall have all the powers of the AAI in the performance of any such functions in terms of the lease. The operation, maintenance and development of the airport is governed by OMDA executed between the AAI and MIAL. Thus, MIAL is a special purpose joint venture Company formed only because of Section [12A](#) of AAI Act.

14. The restructuring of the Mumbai and Delhi International Airports was to take place only through JV route and the bidders were thus under an obligation to create a special purpose vehicle – one of the forms being a Private Company like MIAL – in order to execute the OMDA. Clause (d) of Section 2(h) of the RTI Act contemplates exactly such kind of situation by using the words “body established or constituted by an order made by the appropriate Government”. A gazette notification of such an Order has not been necessarily mandated by the RTI Act.

15. The relationship between the shareholders is governed by the Shareholders Agreement dated 04/04/2006 entered into between the shareholders of MIAL including AAI. The governmental services to be provided to MIAL is governed by the State Support Agreement dated 26/04/2006 entered into between MIAL and the Government of India. MIAL also entered into a separate State Government Support Agreement with Government of Maharashtra.

16. The relevant provisions of OMDA and also the State support agreement and the provisions of the AAI Act need to be given reasonable analysis in order to reach a final decision in the present case. Section 12 of the AAI Act delineates the functions of the AAI and under Section 12(3) thereof, the specific functions of AAI have been mentioned. Section [12-A\(1\)](#), introduced by Act 43 of 2003 , begins with a non-obstante clause and empowers the AAI "in the public interest or in the interest of better management of airports" to make a lease " to carry out some of its functions under Section 12." This lease cannot be made without the previous approval of the Central Government under Sub-section (2). Under Sub-section (4) "the lessee, who has been assigned any function of the Authority under Sub-section (1) shall have all the powers of the Authority necessary for the performance of such functions in terms of the lease." Therefore, the MIAL carries out and performs the statutory functions of the AAI imposed upon the Authority by the Parliamentary enactment. A lease has been executed between the Airport Authority of India and MIAL dated 26/04/2006 whereby Chhatrapati Shivaji International Airport has been leased to the MIAL for a period of 30 years from the effective date and for a further period of thirty years. It is this Lease which makes Section [12A](#) operational. It is under this provision that MIAL has been assigned functions by the OMDA and granted a lease.

17. Section [22-A](#) empowers the Authority to levy on and collect from embarking passengers, 'development fees' for the purpose of Clauses (b) and (c) viz. 'establishment or development of a new airport in lieu of the airport referred to in Clause (a)' and for 'investment in the equity in the shares to be subscribed by the Authority in Companies engaged in establishing, owning, developing, operating or maintaining a private airport....' Thus money is collected from the air- traveling public under law for the funding of the new airport and for the Authority to acquire shares in the company setting up the same or for developing or maintaining an existing airport leased under Section [12A](#). The decision of the Hon'ble Supreme Court of India in **Consumer Online Foundation vs. UOI [2011 (5) SCALE 193]** must be appreciated in this regard which holds that “the rate at which the tax is to be levied is an essential component of a taxing provision and no tax can be levied until the rate is fixed in accordance with the taxing provision. Until the rate of development fees is in consonance with the Rules provided in Section [22A](#) of the AAI Act, development fees could not be levied on the embarking passengers at the Delhi as well as Mumbai Airports.” Thus, MIAL cannot levy any development fee on the passengers at the Mumbai Airport unless the Airports Economic Regulatory Authority determines the rates of such development fee.

18. Chapter VA (comprising of Section [28A](#) to Section [28R](#)) of the AAI Act provides the procedure for eviction of unauthorized occupants of airports. The provisions are on the lines of the Public Premises (Eviction) Act. Thus the property of the airport is public property even when given on lease and the lessee can resort to the provisions for eviction, without having to file a regular civil suit. This section is a strong and powerful indicator that airports are public premises and the company running them is backed by the control of the appropriate Government because had it been any private body, it would never have been allowed to avail of the summary power of eviction and would instead have been relegated to the ordinary civil law for eviction of unauthorized occupants or trespassers. Section [37](#) authorizes the issuance of directions by AAI to 'person or persons engaged in aircraft operations or using any airport, heliport, airstrip or civil enclave' under specified clauses of Section [5\(2\)](#) of the Aircraft Act, 1934, under which Rules have been framed in the Aircraft Rules, 1937. A perusal of the contents of the foregoing paragraphs leads us to conclude that MIAL performs statutory functions and exercises statutory powers under the AAI Act.

19. Central Government exercising control over MIAL in various ways is absolutely clear. The 26% of the share capital of MIAL is held by the AAI, which can therefore block any Special Resolution that is to be passed under the

Companies Act. Further, no change in the Memorandum of Understanding or Articles of Association of the company can be made unless AAI gives its consent, since it can block a special resolution. Both under the State Support Agreement and under OMDA, a Master Plan has to be formulated by MIAL in accordance with the criteria set out. After the Master Plan is so formulated a final Master Plan can only come into existence after the Central Government makes comments and suggests changes, which are binding on MIAL. Further, monthly and other reports of the day-to-day functioning of MIAL have to be submitted by it to the AAI.

20. The Central Government has a large financial stake in MIAL. Not only does the AAI own 26% of the paid up share capital of MIAL (which can never be reduced but can only be increased) the MIAL also has to give 38.7% of its gross revenue (quite apart from the down payment made by way of consideration for the grant of the lease) to the AAI.

**DECISION NOTICE:**

21. We now revert back to the issues as framed above in paragraph 10 of this Order and shall answer each of them one at a time.

22. So far as Issue (A) is concerned, i.e. whether MIAL was established or constituted by an order by the appropriate Government, the answer lies in the

affirmative. It is so because MIAL was established by GVK Airport Holdings Pvt. Ltd., ACSA Global Limited; Bid Services Division (Mauritius) Ltd., and the AAI only for the special purpose of participating in the bids and to execute the OMDA and the State Support Agreement with the AAI and the GOI respectively. The Government Order is implied in the sense that the privatization of Mumbai and Delhi airports were to take place only through JV route and the bidders were under an obligation to form MIAL if they were to get the privatization tender and execute the project. Hence, MIAL is a Public Authority under Clause (d) of Section 2(h) of the RTI Act. Furthermore, it needs to be settled at the outset that in light of the decision of the Hon'ble Madras High Court in **Tamil Nadu Road Development Co. Ltd. vs. Tamil Nadu Information Commission and Anr. ([2008] 145 Comp Cas 248 (Mad))**, merely because a body is a private company incorporated under the Companies Act, 1956 is not a ground *per se* to put it outside the net of Section 2(h) of the RTI Act.

23. So far as Issue (B) is concerned, i.e. whether MIAL is a body controlled by the appropriate Government, the answer again lies in the affirmative. It needs to be appreciated first that Central Government is the "Appropriate Government" for the purpose of MIAL in this case. "Appropriate Government" has been defined under Section 2(a) of the RTI Act as follows:

*“2. Definitions – In this Act, unless the context otherwise requires,--*

*(a) "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, the State Government;”*

Thus, “Appropriate Government” is the Central Government in relation to a body which is controlled by the Central Government. The control of Central Government on the functioning of MIAL is apparent from the provisions of the AAI Act as already discussed at length above. Three out of 13 Directors in the Board of Directors of MIAL are also AAI nominees. It must be understood that the word “control” is not qualified by expressions such as “overall, effective, direct, indirect etc.” and thus, it will be patently wrong to read such conditions into the definition clause of Public Authority.

24. The interpretation of the word “control” as appearing in Clause (i) of Section 2(h) needs to be delicately done rather than to misread it as “deep and pervasive control”, an expression propounded by the Hon’ble Supreme Court with respect to the interpretation of the word “control” in Article 12 of the Constitution.

Following excerpts from the decision of the Hon'ble Delhi High Court in **Indian Olympic Association vs. Veeresh Malik [W.P. (C) Nos. 876/2007, 1212/2007 and 1161/2008]** elucidate the interpretation of the term "control" under Section 2(h) of the RTI Act and makes it clearer for us to distinguish it from the interpretation of the word "control" in Article 12 of the Constitution:

"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 colored 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.

Thus, the Parliamentary intention was to bring even those co-operative societies, societies, trusts etc. within the scope of "Public Authority" under Clause (i) of Section 2(h) of the RTI Act where there was control, ownership or substantial financing by the Appropriate Government. Such bodies may not have any "deep and pervasive" control being enjoyed by the Appropriate Government and yet be a "Public Authority" under the RTI Act.

25. The situation is akin to two concentric circles (having a common Center or Locus) and with radii  $R_1$  and  $R_2$  respectively. The Locus symbolizes the point of "Absolute Control" and the area covered by the smaller circle having Radius  $R_1$  denotes "Deep and pervasive" Control. Thus, as one moves away from the

Locus towards the circumference of Smaller circle (having Radius  $R_1$ ), the control is diminishing from being “Absolute” to “Deep and pervasive” in nature. This whole area within the smaller Circle having Radius  $R_1$  is what the Supreme Court has recognized as being “control” for the purpose of interpreting Article 12 of the Constitution. Now, if one moves from circumference of Smaller Circle towards the circumference of Larger Circle having radius  $R_2$ , then the control is diminishing even further. This area covered in between the two circles is what denotes “control” for the purpose of Clause (i) of Section 2(h) of the RTI Act. That is why perhaps those entities or bodies (like societies, co-operative societies, trusts etc.) which do not necessarily qualify to be ‘State’ under Article 12 of the Constitution may still manage to qualify as ‘Public Authority’ under Clause (i) of Section 2(h) of the RTI Act. Hence, any difficulty involved in the interpretation of the expression “Control” under Clause (i) of Section 2(h) of the RTI Act needs to be put at rest once and for all in light of the above reasoning and the above quoted decision of the Hon’ble Delhi High Court.

26. Finally, coming to Issue (C), i.e. whether MIAL is a body substantially financed either directly or indirectly by funds provided by the appropriate Government or not. Learned senior counsel on behalf of MIAL, Shri K. Venugopal, had submitted that substantial financing can only be through appropriate

Government and not by a Public Authority and thus, the financing by AAI in the share capital of MIAL could not be said as substantial financing by the Central Government. The counsel had relied on various judicial authorities to support his argument, such as *Manoj Kumar Kamra vs. IL&FS* (CIC/AT/C/2007/000091) and *Indian Institute of Banking and Finance (IIBF) vs. Mukul Srivastava* [AIR 2010 Del 203]. So far as the IL&FS case (supra) is concerned, it needs to be noted that the learned Information Commissioner who had passed that order was also present in the case of *Nisar Ahmed Sheikh vs. LIC Housing Finance* (CIC/AT/A/2008/1420) wherein the Full-Bench consisting of the Chief Information Commissioner and two other Information Commissioners of the Commission had considered the IL&FS case (supra) and then overruled it. As far as the IIBF's case (supra) is concerned, it needs to be noted that the factual matrix of that case is completely different from the present one and in any case, the decision of the Delhi HC is grounded on Clause (ii) of Section 2(h) and not Clause (i) as in the present case.

27. The expression "indirectly by the appropriate Government" typically contemplates a situation as manifested in the present case, viz. where the Central Government is funding a Special Purpose Vehicle JV Company in the form of MIAL through the AAI. AAI has purchased its 26% shareholding in MIAL and the strength which such a shareholding delivers to AAI in decision

making of MIAL has already been elaborated in the foregoing paragraphs. We understand that this line of reasoning is even more appropriate and suitable in light of the following example. Suppose, there is a body which is a Public Authority under Section 2(h) of the RTI Act and the Central Government is the Appropriate Government for such body under Section 2(a) of the RTI Act. Now, for a purely commercial basis, this Public Authority enters into a private contract with another private body, say a Company called X, and henceforth it purchases certain percentage of shares in Company X. If while doing so, the Public Authority was neither under any statutory obligation to seek prior approval of the Government of India nor was it required under some law that a commercial contract can only be entered by that Public Authority only if the Central Government approves it, then in such case, any funding which that Public Authority provides to Company X through equity shareholding will not qualify as “indirect funding”. However, in the present case, AAI holds 26% equity in MIAL not because it can do so autonomously and without seeking GOI’s sanction but because there has been a prior approval by the Central Government authorizing AAI to do so under the OMDA and State Support Agreement.

28. It has been held in *Karanthai Tamil Sangam Vs, R. Sivaprakasham and another* (AIR 2011 Mad 13):

“24. Dilating on the inclusive component of the definition of "public authority", it was held in Thalapalam (AIR 2009 (NOC) 2185 (Ker)) that the legislative provision by funds provided by is a clear and specific expression that such funds need not necessarily belong to the Government but which would be within the regulatory control of the Government for being provided to such authorities. It was laid down that the essence of the act of providing is the making available of what is required to be provided. In this view of the matter, it was held that "funds provided by the appropriate Government" is not necessarily providing funds from what belong to the appropriate Government, either exclusively or otherwise, but also those provisions which come through the machinery of the appropriate Government, including by allocation or provision of funds with either the concurrence or clearance of the appropriate Government. This view emanates on a plain reading of the provision under consideration, having regard to the object sought to be achieved by the RTI Act and in this view, the said provision has to be read to take within its sweep all funds provided by the appropriate Government, either from its own bag or funds which reach the societies through the appropriate Government or with its concurrence or clearance.”

29. Whenever the appropriate Government has a vital role to play in providing funding to a private body through one of the Public Authorities under the RTI Act and that role is of such an important nature as to denude that Public Authority of the autonomy and discretion to decide the quantum, quality and terms of funding without prior approval of the appropriate Government, then it leaves no room for doubt that such funding qualifies as nothing but “indirect financing by the appropriate Government” and brings the Private body within the net of Clause (i) of Section 2(h) of the RTI Act. We understand that the list

of such elaborate examples cannot be exhaustive and that is why, we have particularly emphasized upon this very example as it wholly fits into the factual matrix of the present case.

30. The expression “substantial financing” also needs some thread bare analysis and the decision of the Hon’ble Delhi High Court in Indian Olympic Association case (supra) is of utmost relevance in this regard:

“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.

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.”

31. Instances which show how such indirect financing in the present case was “substantial” in nature are evident from the document which has been placed on Record by the Complainant before us on 10/05/2011 through facsimile. The Letter bearing S.Ref No.1008/1265/28-A dated 02/07/2008 was sent by Government of Maharashtra to the Complainant wherein it is categorically agreed that the State Government has waived stamp duty worth ` 200-250 crore with respect to MIAL. The Complainant had submitted before us that MIAL is using 2000 acres of AAI leased land at concessional rates, the actual market value of which is otherwise close to ` 50,000 crore. Having perused the contents of the Lease Deed executed between AAI and MIAL on 26/04/2006,

Article IV titled 'Lease Rent' states under clause 4.1 that MIAL shall pay an annual lease rent of ₹ 100 payable in advance on April 1<sup>st</sup> of every year. Thus, MIAL clearly reaps the benefits of the substantial amounts received by way of waiver, equity, concessional land use *inter alia* which otherwise, will not be extended to a private incorporation by the Central Government without any reasons. Such contributions are crystal clear in themselves to affirm our conclusion as to how MIAL has received "substantial financing indirectly" by the funds provided by the appropriate Government.

32. Thus, the answer to Issue (C) as framed above has to lie in the affirmative, i.e.

MIAL is a body substantially financed indirectly by funds provided by the Central Government.

33. Before concluding, we also find it necessary to dispose of the Application for Directions moved before us by the learned counsel on behalf of Respondent No.1. It has been prayed therein that there has been conflict among various decisions of the CIC on the issue Of deciding whether a body is a Public Authority or not and hence, to settle the matter once and for all, the present case be referred to a larger bench of the Commission. We find no merit in this Application for three reasons. Firstly, it may appear or seem to the Respondent No.1 that the Commission has pronounced conflicting decisions on the Public

Authority issue but that is a wrong presumption vitiated by lack of research. The decision of the CIC in the IL&FS case (supra) has already been overruled by a larger bench.

34. Secondly, as per the decision of the Commission in the case of **Chanderkant J. Karira vs. High Court of Delhi (CIC/WB/C/2010/000030)** dated 28/09/2010, the Commission has dealt with the issue at great length and had clarified that the Commission draws its authority to constitute Benches under Section 12(4) of the RTI Act and not from the Central Information Commission (Management) Regulations, 2007 which were quashed by the Division Bench of the Hon'ble Delhi HC in WP(C) 12714/2009. Thus, to constitute a larger bench is a statutory prerogative which needs to be exercised by the Single Information Commissioner reasonably and when the situation justly demands and not upon a mere application of the Respondent which will unnecessarily prolong the matter. In Our opinion, the Hon'ble Delhi High Court has carefully considered the submissions made by the Respondent No.1 before them and having understood the gravity of the issue, made appropriate orders whereby the case was remitted to the CIC and the Complaint of the Complainant was simply restored for fresh hearing. The order of the Hon'ble Delhi High Court did not require the CIC to constitute a bench of a particular strength to decide this case

which implies that the Hon'ble High Court did not see any need for such a step to be taken.

35. Thirdly and finally, the CIC has given fair and reasonable opportunity to the Respondents to present their case and has ensured that the Complainant was served the notice of hearing of the present case so that he cannot agitate the ground of lack of notice before the Hon'ble Delhi High Court later on.
36. During arguments, Shri K. Venugopal had raised a contention that the Complainant had not filed his Complaint in accordance with the RTI Appeal Procedure Rules, 2005 since he did not sign Verification along with his complaint. We find such an argument not only tenuous but also unnecessary to raise at this stage. The provisions of Order 6 Rule 15 of the Code of Civil Procedure, 1908 speak of mandatory verification of pleadings but what needs to be understood is that a Complaint before the Commission is neither of the nature of a Civil Suit nor a Writ Petition. Rule 3 sub-rule (viii) of the Appeal Procedure Rules, 2005 require verification by the "Appellant" as one of the many contents of his "Appeal". The word "Appeal" cannot be read *ejusdem generis* with "Complaint" as both of them are dealt with under different provisions of the RTI Act, viz. Section 19 and 18 respectively. Furthermore, as a principle of statutory interpretation, "it is not the duty of the Court to enlarge the scope of the legislation or the intention of the Legislature when the language

of the provision is plain and unambiguous” [UOI vs. Deoki Nandan Aggarwal (AIR 1992 SC 96)]. With the above reasoning, the Application before us is dismissed.

37. We find no hesitancy in declaring MIAL as a Public Authority under Clauses (d) and (i) respectively, of Section 2(h) of the RTI Act. MIAL shall appoint a CPIO and FAA within 30 days of the receipt of this Order and shall also fulfill the mandate of Section 4(1) disclosure as mandated under the RTI Act, within 2 months of the receipt of this Order.

(Sushma Singh)  
Information Commissioner

Authenticated True Copies

(Aakash Deep)  
Additional Registrar