



RIGHT TO
INFORMATION

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STATE INFORMATION COMMISSION, HARYANA
SCO NO. 70-71, SECTOR 8-C, CHANDIGARH
COMPLAINT NO.115 of 2014
RIGHT TO INFORMATION ACT-UNDER SECTION 18 (2)

Relevant facts emerging from the complainant:

Name of the complainant	Shri Harinder Dhingra, D4 A/7, DLF, Phase No. 01, Gurgaon. Phone No.:- 09873929500
Name of the Respondents	<ol style="list-style-type: none">1. SPIO-cum-Deputy Superintendent O/o Estate Officer-II, HUDA, Sector-56, Gurgaon. M. No. 09958938038.2. SPIO-cum-Executive Engineer, Division-V, Nursery School Building, M-Block, South City-I, HUDA, Gurgaon. Phone No. 0124-23811403. The Kingdom of Dreams, Great Indian Nautanki Company Private Limited, Auditorium Complex, Sector 29, Gurgaon and on its registered office K-804/2, Mahipalpur, Vasant Kunj Road, New Delhi (private respondent)
RTI-application filed on	20.03.2014
SPIO replied on	Not responded
Date of Complaint Filed	20.06.2013 and 31.12.2013
Date of earlier hearing	17.09.2014
Date of present hearing	31.10.2014
Division Bench consisting of	<ol style="list-style-type: none">1. Shri Naresh Gulati, SCIC;2. Maj. Gen. (Retd) J.S. Kundu, SIC
Presence	<ol style="list-style-type: none">1. Shri Harinder Dhingra, appellant.2. Shri Anil Verma, SDE.3. Shri Raj Pal Lamba, SPIO-cum-Deputy Superintendent O/o EO-II.

This matter has arisen in pursuance of the earlier interim orders passed by the Commission in this case on 17.09.2014.

2. The Division Bench of the Commission while hearing the matter recorded the averments submitted by the complainant and the respondents on 17.09.2014. Before arriving at any conclusion, the Bench decided to afford an opportunity to the private respondent also. Accordingly a notice dated 01.10.2014 through registered post was served to the Kingdom of Dreams, Great Indian Nautanki Company Private Limited, Auditorium Complex, Sector 29, Gurgaon and on its registered



office K-804/2, Mahipalpur, Vasant Kunj Road, New Delhi. The private respondent through this notice was asked to submit his written arguments in advance and be present before the Commission on 31.10.2014 at 3.30 PM to submit why the firm be not declared a public authority as defined in Section 2 (h) of the RTI Act, 2005. The Commission advised the complainant to provide the SPIO-cum-Executive Engineer, HUDA Division-V, Gurgaon a statement of expenditure on the project/ building depicting Government expenditure as well as amount funded by the company for verification. The Commission directed the SPIO-cum-Executive Engineer, HUDA Division-V, Gurgaon and the Deputy Superintendent office of the Estate Officer-II, HUDA, Gurgaon to place the expenditure incurred to set up the auditorium and file written comments on complaints dated 26.06.2013 and 31.12.2013 including the rejoinder dated 17.09.2014. The Bench adjourned the matter for hearing on 31.10.2014.

3. The Great Indian Nautanki Company Private Limited (herein after referred to as the private respondent) vide written reply dated 28.10.2014 admitted the receipt of complaint filed by Shri Harinder Dhingra alongwith a copy of the interim order dated 17.09.2014. The private respondent through comments submitted that legal opinion from "Messer Classic Law, New Delhi" a reputed Law firm was sought in the matter which is as under:

- a. *We are a private limited and a closely held company incorporated and registered under the Companies Act, 1956;*
- b. *We do not fall under the ambit of the "Public Authority" as defined under Section 2 (h) of the Right to Information Act, 2005, amended upto date (the Act);*
- c. *Any company, which is not a Public Authority is not required and are not under obligation to disclose its information under the Act as the provisions of the Act do not apply to a person who is not a "Public Authority";*

In view of the above legal expert advice, the private respondent submitted that their above submissions be noted and personal appearance during hearing be dispensed with. The private respondent further



submitted that since they are not covered under the provisions of the Act and hence not obliged to disclose the information as sought by the complainant and prayed the Commission to pass the order as deemed fit in the interest of justice.

4. Shri Raj Pal Lamba, the SPIO-cum-Deputy Superintendent office of the Estate Officer-II, HUDA, Gurgaon present during hearing submitted a copy of the Lease Agreement dated 15th February, 2008 entered into the private respondent company and the Haryana Urban Development Authority through Administrator, HUDA, Gurgaon wherein possession of auditorium site measuring 5.66 acre in Sector 29 in Gurgaon Estate was leased out to the said private respondent, for a period of fifteen years with a provision that it could be extended on mutual consent with the approval of the Chairman, HUDA. He further submitted that as per settled terms and conditions, the lessee as per clause 2 of the Agreement was required to *"complete the building works at his own cost. The lessee shall spend a minimum of Rs. 40 crore for completing the remaining works pertaining to the auditorium and development of additional facilities in a professional manner"*. Further, as per clause 3, the lessee was required *"to submit the final building interior plan, improvement plans and designs with details of the project alongwith cost for approval to the HUDA within a period of two months of the Agreement"*. It was also agreed by the lessee under clause 4 and 5 of the Agreement that he *"shall pay Rs.36 lac per month to the HUDA by seventh day of each month on account of lease money after the expiry of twelve months from the date of offer of possession of the site/auditorium"*. The lease money as per clause 6, was required to be increased by 10% after expiry of every three years. The Lessee in compliance with the clause 7, was required to *"furnish security deposit guarantee by depositing security amount or Bank Guarantee for Rs. 432 lacs i.e. equal to twelve times the monthly lease money"*. On completion of lease period, the auditorium Complex alongwith additions, improvements made by the lessee and other fitting and fixture alongwith ~~seating~~ arrangement etc. except temporary structures constructed ~~outside~~ the auditorium, are required to be handed over to the HUDA by the Lessee in good condition. Besides the other usual terms and conditions mentioned in



the agreement, clause 20 of the Lease Agreement provides that *"the Lessee shall allow 25% discount on tickets of all the shows to the residents of HUDA Sectors of Gurgaon for which at least 10% seats shall be reserved. However, in case, the reserved seats are not purchased by residents of HUDA Sectors, seven days prior to the date of show, these tickets can be sold to other customers/tourists"*.

5. Shri Anil Kumar Verma, Sub Divisional Engineer appeared on behalf of the SPIO-cum-Executive Engineer, HUDA Division-V, Gurgaon. The respondent SPIO vide letter dated 22.09.2014 has submitted that auditorium building in question is spread on an area of 5.66 acres of land belonging to the public authority. The public authority spent Rs. 7.02 crore on Civil Works undertaken to construct the auditorium building. The SPIO-cum-Executive Engineer, Horticulture Division, HUDA, Gurgaon vide letter dated 29.10.2014 submitted that no expenditure was incurred regarding development of horticulture works in the project area. The SPIO-cum-Executive Engineer, Electrical Division, HUDA, Gurgaon has reported that a sum of Rs. 251.96 lac was incurred to set up the auditorium Building.

6. Shri Harinder Dhingra, the complainant was present and submitted that vide RTI application dated 20.03.2013 addressed to Public Information Officer office of the Kingdom of Dreams, Great Indian Nautanki Private Limited, Gurgaon he had sought seven point information which was not responded to within time provided under the RTI Act, 2005. Hence he filed a complaint dated 20.06.2013 submitting that six acres of prime location land worth Rs. 500 crore in Sector 29 in Gurgaon estate was provided to the Kingdom of Dreams on lease payment of Rs. 36 lac per month for 15 years which amounts to substantial financing to lessee by the Public Authority as the interest cost on land, had it been sold at the time of lease agreement, by the Government through the public authority could have earned Rs. 50 crore per annum as interest on fixed deposit against Rs. 4.32 crore per annum being paid by the private respondent. The complainant argued that the private respondent is not even making the payments as settled between the parties in the Lease Agreement. The complainant referred to the contents of the latest CAG report for the year ended March 2013 where it has been observed that "an auditorium at



Gurgaon was leased out (February 2008) to M/s Great Indian Nautanki Company for 15 years at a lease rent of Rs. 0.36crore per month to be increased by 10 percent after the expiry of each three years. The lease rent required to be enhanced by 10 percent i.e. Rs. 3.7 lac from 01.03.2012 was not enhanced and the company paid only Rs. 10.65 crore upto August 2013 and an amount of Rs. 9.33 crore was recoverable alongwith the penalty of Rs. 90.03 lac for delayed payments". The complainant further submitted that the private respondent is charging entry fee of Rs. 700/- to Rs. 1000/- per visit to the auditorium. The private respondent is not only serving drinks to the visitors but contraband items like E-cigarettes were seized by the Food and Drug Administration team during a raid. The complainant vide undated rejoinder filed on 17.09.2014 submitted that when the construction work of the auditorium building was in progress on 29th August, 2007, the public authority gave a proposal to the Government that it shall be appropriate if the auditorium is leased out to some individual/firm/company having specialization in holding big shows of international standard and well established in this field. The subsequent expenditure could be borne by the successful bidder. He alleged that eligibility category for searching such a company was tailor made. The proposal was approved by the Government on 11.09.2007 and the bids were invited through press. The complainant vide comments submitted that two of the three bids turned out to be non-responsive as they appeared to have been manipulated. Only one bidder namely Great India Nautanki Company Private Ltd., the private respondent, fulfilled the requisite terms and conditions of the tender documents who submitted two bids, of course both with same conditions but different lease offer and project cost. The financial bids of the two non-responsive bidders were not opened. The complainant through his comments alleged that the public authority has not adjudged the reasonability or the competitiveness as there was only one bidder and the auditorium spread on the 5.66 acres of land was leased out for 15 years in favour of the private respondent.

The complainant in his argument also cited a decision ~~dated~~ 30.8.2013 of the Central Information Commission titled Shri ~~Subhash~~ Chandra Agrawal Vs. Delhi Golf Club wherein the Central Government

leased out a huge chunk of land measuring 179 acres in the heart of Delhi city to the club at hugely concessional rate. The Central Information Commission in its decision held the lease out of prime location land as indirect financing to the club and declared the club a public authority in term of Section 2 (h) (d) (i) of the Act. He further submitted that on 08.10.2012, the Central Information Commission on complaint no. 001345 of 2014 titled Sukhdev Singh V/s. Chandigarh Golf Club, Chandigarh has noted that there is a vast difference between the monthly rent being paid by the Chandigarh Golf Club and the commercial rent that the premises could fetch in the open market, hence being indirectly financed and controlled by the Chandigarh Administrator, the Chandigarh Golf Club is the public authority under Section 2 (h) (ii) of the Act. Similarly, the complainant cited decisions dated 16.09.2013 and 01.07.2013 of Karnataka Information Commission wherein it has been decided that Mysore Race Club Ltd., Mysore and Bangalore Turf Club, to whom the Government has allotted land on concessional rates are public authorities. Accordingly, the complainant prayed the Commission that the Kingdom of Dreams be declared "Public Authority" as stipulated under Section 2 (h) (d) (i) (ii) of the RTI Act, 2005.

Decision:-

7. The Bench heard the arguments of the parties put forth during hearing on 17.09.2014 and 31.10.2014. There are two major issues to be decided; (a) whether the Great Indian Nautanki Company Private Limited is a public authority within the meaning of Section 2(h) of the RTI Act, 2005 and hence, legally obliged to furnish information sought by a citizen under the RTI Act and (b) whether the public authority can access information from the private respondent in view of the Lease Agreement?

8. The material facts which have been placed on record by the respondent and the complainant reveal that the Kingdom of Dreams is functioning in an auditorium building constructed on the HUDA land of 5.66 acres. The HUDA authority had spent Rs. 7.02 crore on Civil Work and approximately Rs. 2.52 crore on Electric work. The public authority decided to hand over the auditorium to a firm which had specialized experience in this field. The public bids were invited by advertisement and



it was decided to hand over the auditorium on lease basis to the private respondent. The Commission does not have the mandate to examine the appropriateness of the procedure adopted by the public authority in leasing out the auditorium and restraints itself from examining that aspect of the matter. The facts are that according to the Lease Agreement dated 15.02.2008, the private respondent was to spend Rs. 40 crore for completing the remaining works pertaining to the auditorium and development of additional facilities and that the HUDA allotted the auditorium site to the private respondent on a lease rent of Rs. 0.36 crore per month increasable by 10% after expiry of each three years. Initially the lease agreement was executed for fifteen years, extendable on mutual consent as per clause 27 of the Lease Agreement. The Public Authority as per Lease Agreement made with the lessee is authorized to initiate action against the private respondent in case any clause mentioned therein is violated by the lessee. The lessee agreed to allow 25% discount on tickets of all the shows to the residents of HUDA Sectors of Gurgaon and undertook to reserve minimum 10% seats with the stipulation that in case, the reserved seats are not purchased by residents of HUDA Sectors, seven days prior to the date of show, these tickets could be sold to other customers/tourists.

9. The Bench, before arriving at any conclusion, afforded the private respondent an opportunity to submit their comments on the complaints. Documents including complaints dated 20.06.2013, 31.12.2013 and undated rejoinder submitted before the Commission during hearing of the matter on 17.09.2014 were made available to the private respondent. The Commission also afforded the private respondent an opportunity of personal hearing on 31.10.2014. The private respondent filed comments dated 28.10.2014. He has, however, neither contested or contradicted the assertion of the complainant that the company is substantially financed by the Public Authority nor even responded to this critical issue. The Public Authority has also not rebutted the material placed on record by the complainant. It has been argued by the complainant in his complaint and rejoinder that had the land in question been sold by auction, the HUDA or the Government would have earned a huge sum of Rs. 50 crore per



annum as interest on the fixed deposit on principal amount against the payment of Rs. 4.32 crore on account of rent per annum as agreed with HUDA by the private respondent which ultimately resulted in a notional loss of Rs. 685.2 crore within 15 years (i.e. Rs. 50 crore - Rs. 4.32 crore = Rs. 45.68 crore x 15 years). The complainant concluded that the appropriate Government is indirectly financing the private respondent, hence he is liable to furnish information under the Act. Again, the private respondent while filing his written statement has chosen to remain silent on this issue and has refrained to comment on the report of CAG for the year ended March, 2013 wherein it is pointed out that the private respondent is not making the payment of the agreed rent on which penalty is liable to be paid. The public authority has also not rebutted any of the assertions made by the complainant.

10. The Commission perused the judgement dated 07.10.2013 of the Hon'ble Apex Court in Thalappalam Ser. Coop. Bank Ltd. and others Vs. State of Kerala and others which has been received after the decision of the Central or Karnataka Information Commission cited by the complainant. The observation of the Hon'ble Apex Court in para 38 of the order dated 07.10.2013 is as under:

"38 Merely providing subsidies, grants, exemptions, privileges etc., as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist. The state may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD etc., but those facilities or assistance cannot be termed as "substantially financed" by the State Govt. to bring the body within the fold of "public authority" under section 2(h) (d) (i) of the Act. But, there are instances, where private educational institutions getting ninety five percent grant in aid from the appropriate government may answer the definition of public authority under Section 2(h) (d) (i)."



The definition of public authority as defined in clause (h) of Section 2 of the Act and reproduced below has been perused:

(h) **"public authority"** means any authority or body or institution of self-government established or constituted—

(a) by or under the Constitution;

(b) by other law made by Parliament;

(c) by any other law made by State Legislature;

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

and includes any—

(i) Body owned, controlled or substantially financed;

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

W The Bench noted that the Private respondent in his reply dated 28.10.2014 has argued that it is a private limited company incorporated and registered under the Companies Act, 1956 and running the project on a building taken on rent by entering into a lease agreement with the HUDA. The Bench observes that the auditorium building has been constructed on a prime location land owned by HUDA and leased out on rent to the private respondent. The facts submitted by the complainant indicate that the private respondent was the only bidder in the fray. The lone bid of the private respondent was accepted by the competent authority and leased out on rent on certain terms and conditions mentioned in the lease agreement. The Commission observes that the auditorium building constructed on 5.66 acres of prime land in Gurgaon was handed over to the private respondent on a rent of Rs. 36 lac per month. It is a facility created by the public authority to meet the entertainment needs of the resident of the area/estate. The resident of the area have huge interest in the Kingdom of Dreams as the public authority has invested in creating this facility and leased prime land to the private respondent. The Act has been enacted with the aim of promoting transparency and accountability in the affairs of every public authority. In the instant case, the public authority has made investment in terms of



prime land on a nominal rent, which amounts to substantial funding. The bench hence observes that, it is a clear case of indirect financing to the private respondent by the public authority of HUDA under Section 2 (h) (d) (i) of the RTI Act, 2005. As reported by CAG, the settled amount of rent is also not being paid by the private respondent. If the public authority had not leased out the prime land at a nominal rent, the private respondent will struggle to exist. Hence, it meets the test laid down by the Apex Court that the project 'will struggle to exist'. The bench observes that undoubtedly the Great India Nautanki Company Pvt. Ltd. is a private company incorporated and registered under the Companies Act, 1956, as stated by the private respondent. There is also general agreement on the issue that the private company does not automatically fall within the ambit of RTI Act, 2005 and is not bound to disclose information under the provisions of the Act. But the distinguishing fact in the instant case is that this private company has entered into an agreement with HUDA for setting up of the ' Kingdom of Dream Project' with substantial funding from the public authority, hence to that extent, the private respondent becomes amenable to the RTI Act and is accountable to the citizen. The Bench, therefore, holds that the Great India Nautanki Company Pvt. Ltd. is a public authority under this provision on this ground till the agreement made with HUDA exists. Hence, the Great India Nautanki Company Pvt. Ltd. is hereby directed to put in place a mechanism for servicing the RTI Act, 2005 within one month of the receipt of this order.

The above cited complaint is decided accordingly.

Order reserved and pronounced on the 30th day of December, 2014.

To be communicated to the parties.

Place:Chandigarh

Date: 30.12.2014


[Maj. Gen. (Retd) J.S. Kundu]
State Information Commissioner
Haryana.


(Naresh Gulati)
Chief Information Commissioner.
Haryana.