



RIGHT TO
INFORMATION

**STATE INFORMATION COMMISSION, HARYANA
SCO No. 70-71 & 114-115, SECTOR-8-C, CHANDIGARH**

Appeal Case No. 6932/2014

**Sh. S.K. Goel,
House No. 972, Sector-2,
Panchkula-134109.**

....Appellant

Versus

- 1. First Appellate Authority (FAA)-cum-Administrator, Haryana Urban Development Authority (HUDA), Sector-6, Panchkula-cum-General Secretary, Panchkula Golf Club, Panchkula.**
- 2. State Public Information Officer (SPIO)-cum-Deputy Superintendent O/o Estate Officer, HUDA, Sector-6, Panchkula.**
- 3. State Public Information Officer (SPIO)-cum-Superintending Engineer, HUDA Circle, Sector-8, Panchkula.**
- 4. Treasurer-cum-Manager, Golf Club, Panchkula.**

....Respondents

FACTS:

Sh. S.K. Goel, the appellant, filed an RTI application dated 18.06.2014 with the Administrator, HUDA, Panchkula-cum-General Secretary, Panchkula Golf Club, Panchkula seeking six point information regarding register/record



maintained for sale and receipt of the application forms for obtaining club membership, list of members and other related matter as mentioned in the RTI application related to the Panchkula Golf Club. In response, vide letter dated 11.07.2014, Sh. B.P. Singh, the Officiating General Manager, Panchkula Golf Club, Panchkula denied the information submitting that Panchkula Golf Club was not a public authority as defined in Section 2 (h) of the RTI Act 2005. Dissatisfied with the response, the appellant filed an appeal dated 21.07.2014 with the FAA-cum-Administrator, HUDA (HQ), Panchkula, who forwarded it to the FAA-cum-Administrator, HUDA, Panchkula-cum-General Secretary, Panchkula Golf Club, Panchkula vide letter dated 12.08.2014. Finding no response from the FAA, the appellant filed second appeal dated 10.10.2014 with the Commission with a prayer to direct the concerned official to furnish the requisite information and initiation of penal action against him. The Commission entertained the appellant's appeal under Section 19 (3) of the RTI Act and issued notice dated 28.10.2014 to the parties, directing them to appear for hearing of the matter on 05.12.2014.

2. The Bench of the State Chief Information Commissioner, Haryana heard the matter on 05.12.2014. Both the parties were present. The Bench observed that before directions for furnishing the information were given to the General Manager, Panchkula Golf Club, Panchkula, it was necessary to



adjudicate whether the Golf Club, Panchkula was a public authority in terms of Section 2 (h) of the RTI Act, 2005. Hence, the Bench decided to refer the matter to a Division Bench for adjudication and deciding the appellant's appeal. Accordingly, the State Chief Information Commissioner, in exercise of the powers conferred under Section 15 (4) of the RTI Act, 2005, constituted a Division Bench comprising of Maj. Gen. (Retd.) J.S. Kundu, the State Information Commissioner and Sh. Hemant Atri, the State Information Commissioner vide order dated 16.10.2014.

3. The Division Bench heard the matter on 05.02.2015. Following were present:-

1. Sh. S.K. Goel, the appellant.
2. Sh. Prem Singh, the Assistant, on behalf of the SPIO-cum-Deputy Superintendent O/o Estate Officer, HUDA, Panchkula.
3. Sh. Brij Mohan, the Assistant, on behalf of the FAA-cum-Administrator, HUDA, Panchkula.
4. Lt. Col. A.K. Dogra (Retd.), the Manager, Golf Club, Panchkula
Sh. S.K. Goel, the appellant was present.

The appellant submitted that in response to his RTI application dated 18.06.2014, the Manager, Panchkula Golf Club, Panchkula has denied the information to him submitting that Panchkula Golf Club, Panchkula is not a public authority. The appellant further submitted that land for the Panchkula Golf Club, including the Golf Course, has been provided and is being



maintained by HUDA. The Club is also controlled by the Administrator, HUDA, Panchkula. He contended that since the Club is substantially financed and controlled by HUDA, it is a public authority. He prayed that Panchkula Golf Club, Panchkula be declared a public authority in terms of Section 2 (h) of the RTI Act, 2005 and the designated SPIO be directed to furnish the requisite information to him.

Lt. Col. A.K. Dogra (Retd.), the General Manager, Panchkula Golf Club, Panchkula submitted that Panchkula Golf Club is an autonomous body and a society registered under the Societies Registration Act, 1860 formed with an object of promoting the game of Golf as sports activity amongst the general public. He also submitted that complete expenditure of the Club for purchase and maintenance of the assets and salary of the employees etc. is borne by the Club through its own resources and there is no substantial financial help given by the State Government. He further submitted that officials of the Government of Haryana or the HUDA in the Governing Body of the club are there in ex-officio capacity and do not interfere in the day to day functioning of the Club. He contended that Panchkula Golf Club is neither substantially financed nor controlled by the State Government and hence is not a public authority as defined under Section 2 (h) of the RTI Act.

4. Having heard both the parties, the Commission observed that the parties were unable to substantiate their submissions due to non-availability



of the relevant documents with them. The Commission, therefore, adjourned the case to 28.05.2015 with the direction to the parties to submit their written arguments along with the relevant documents for consideration of their contentions.

5. The matter was again heard on 28.05.2015. Following were present:-

1. Sh. S.K. Goel, the appellant along with Sh. Jaivir Chandail, Advocate.
2. Lt. Col. A.K. Dogra (Retd.), the Manager, Golf Club, Panchkula.
3. Sh. Daler Singh, the Assistant, on behalf of the FAA-cum-Administrator, HUDA, Panchkula.
4. Sh. Sandeep Vats, Clerk, on behalf of the Superintending Engineer, HUDA Circle, Panchkula.

Ld. Counsel for the appellant submitted that Panchkula Golf Club, including the Golf Course, has been established over approximately 131 acres of the Government land provided, free of cost, by HUDA. The HUDA has also incurred an expenditure of Rs. 770.74 lacs from 01.04.2009 to 30.10.2012 for developing the undulating terrain into Golf Course and creation of the assets, including the Club building. He also submitted that Club is controlled by the Governing Body comprising of the Government of Haryana and the HUDA Officials, justifying the test of deep and pervasive control. For this, he relied upon the Memorandum of Association of the Panchkula Golf Club, which shows that management and affairs of the



society have been entrusted to the Governing Body. He further submitted that Panchkula Golf Club is owned, controlled and substantially financed by the appropriate Government and is thus covered under definition of the public authority. In support of his submissions he relied upon the judgment passed by the Hon'ble Supreme Court of India dated 16.04.2002 in Civil Appeal No. 992 of 2002 titled as Pardeep Kumar Biswas, appellant Vs. Indian Institute of Chemical Biology, respondents and in Civil Appeal No. 9017 of 2013 (arising out of SLP (c) No. 24290 of 2012) dated 07.10.2013 titled as Thalappalam Ser Cooperative Bank Ltd. and others Vs. State of Kerala and others. He prayed that Panchkula Golf Club, Panchkula be declared a public authority in terms of Section 2 (h) of the RTI Act and the respondent SPIO be directed to furnish the requisite information to the appellant.

Lt. Col. A.K. Dogra (Retd.), the General Manager, Panchkula Golf Club submitted that Panchkula Golf Club, Panchkula is a self sustaining autonomous body and a society registered under the Societies Registration Act 1860 vide Registration No. 992 dated 12, July 2002, copy of which has already been furnished along with his comments dated 05.02.2015. No Financial Assistance has been given to the Club by HUDA or the Government of Haryana. The building of the Club has also been constructed with their own funds and the loan taken from HUDA, which is being repaid. Members of the Governing Body for management of the Club are officers of the State



Government and HUDA, functioning as ex-officio members and are rendering services on honorary basis. He further submitted that since the Club is neither owned, nor controlled or financed by the appropriate Government, it does not fall under purview of Section 2(h) of the RTI Act and hence is not a public authority. He also submitted that instant case is similar to that of Gymkhana Club, Hisar decided by the Commission vide order dated 26.07.2013, wherein operation of the order has been stayed by the Hon'ble Punjab and Haryana High Court, Chandigarh in CWP No. 25354 of 2013 (O&M) vide order dated 18.02.2014 in a case titled Gymkhana Club Vs. State of Haryana and others. He prayed that in order to avoid conflicting judgment this case also be adjourned sine-die.

Having heard both the parties, record available on the case file was perused. The Commission observed that General Manager, Panchkula Golf Club was not in a position to clarify queries of the Commission i.e. amount of loan received by the Golf Club from HUDA, the amount liquidated, amount of money spent by HUDA on construction and maintenance of the Club till date and status of the land i.e. whether on lease or without any consideration etc. The Commission, therefore, decided to adjourn the matter to 22.07.2015, directing the respondent to furnish the above details along with last three years audited statement of accounts. On request of the appellant it was further adjourned to 16.09.2015.



RIGHT TO
INFORMATION

6. During the hearing on 16.09.2015, following were present:-

1. Sh. S.K. Goel, the appellant along with Sh. Jaivir Chandail, Advocate.
2. Lt. Col. A.K. Dogra (Retd.), the Manager, Golf Club, Panchkula.
3. Sh. Prem Singh, the Assistant, on behalf of the SPIO-cum-Deputy Superintendent O/o Estate Officer, HUDA, Panchkula.
4. Sh. Sandeep Vats, Clerk, on behalf of the Superintending Engineer, HUDA Circle, Panchkula.

The Ld. Counsel for the appellant reiterated his earlier averments and submitted that Panchkula Golf Club is a creation of the Government of Haryana which has been constructed and developed by HUDA on 131.67 acres of land provided free of cost. Panchkula Golf Club is also fully controlled and managed by officials of the Government of Haryana and HUDA. He further submitted that assets of the club have also been created by the funds provided by HUDA and hence the Panchkula Golf Club can be construed as substantially financed and controlled by the appropriate Government and thus falls under the purview of Section 2 (h) of the RTI Act. In support of his submission the learned counsel for the appellant relied on the judgment passed by the Hon'ble Supreme Court of India in Thalappalam Ser. Coop's case (Supra).

Lt. Col A.K. Dogra (Retd.), the General Manager, Panchkula Golf Club submitted that Panchkula Golf Club was formed in the year 2003 and is a



self financing institution neither funded by the appropriate Government nor by HUDA for their day to day functioning and is being managed with the revenue generated by the Club i.e. for maintenance, wages of security staff and workers etc. He also submitted that Panchkula Golf Club, Panchkula is situated within Sector-3, Panchkula, which is purely sports, institutional and commercial sector. He confirmed that loan of Rs. 2.00 crores taken from HUDA has been repaid from the revenue generated by the Club and ownership of the land of the Club is still with HUDA. He contends that Panchkula Golf Club, Panchkula, is neither substantially financed nor controlled by the appropriate Government and hence is not a public authority in terms of Section 2(h) of the RTI Act. He prayed that appeal being devoid of merit be dismissed.

DECISION WITH REASONS

7. Having heard arguments of the appellant, his counsel and the General Manager, Panchkula Golf Club, Panchkula put forth during the hearing, documents available on the case file and submitted by the respondent and representative of the appellant have been perused. The citations quoted in support of their submissions have also been considered to arrive at a conclusion. The moot question before the Commission is whether the Panchkula Golf Club, Panchkula is a public authority under section 2 (h) of the RTI Act, 2005 and is obliged to furnish the information sought by the appellant.



Therefore, it becomes imperative to discuss its scope and ambit in defining a public authority. For the sake of convenience, the provisions of clause (h) of Section 2 of the RTI Act, 2005 are reproduced below:-

(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;

8. In view of submissions of both the parties and available record, it emerges that Panchkula Golf Club, Panchkula is not constituted by or under the Constitution or by any other law made by the Parliament or by any other law made by the State Legislature. In this view of the matter, the Panchkula Golf Club cannot be said to be a public authority under sub clauses (a), (b) & (c) of clause (h) of section 2 of the RTI Act, 2005. The only question remains is



whether it can be said to be covered under sub clause (d) of the clause (h) i.e. whether it can be said to be a body owned, controlled or substantially financed directly or indirectly by the appropriate Government. In their submissions, the appellant and his counsel have submitted that Panchkula Golf Club, Panchkula is a creation of the Government of Haryana and HUDA. It has been constructed and developed by HUDA with its own funds on HUDA land and is controlled by officials of the Government of Haryana and HUDA. Hence, they pleaded that Panchkula Golf Club, Panchkula is a public authority. While on the other hand, Lt. Col. A.K.Dogra (Retd.), the General Manager, Panchkula Golf Club has submitted that Panchkula Golf Club Panchkula is an autonomous body and society registered under the Societies Act, 1860 which is neither controlled nor substantially financed or funded by the appropriate Government for their day to day functioning or maintenance. Hence, he contended that Panchkula Golf Club, Panchkula is not a not public authority.

9. A perusal of the record reveals that land for the Panchkula Golf Club, Panchkula has been given by HUDA, free of cost and building of the club has also been constructed by HUDA with their own funds. It has also been observed that Panchkula Golf Club, Panchkula is managed and controlled by officials of the Government of Haryana and HUDA. It needs to be emphasised that the Commission can declare an entity to be a public authority under section 2 (h) of the RTI Act, 2005 if it is satisfied that it is owned, controlled and directly or



RIGHT TO
INFORMATION

indirectly financed by the Central or the State Government. Before we apply this test to the Panchkula Golf Club, Panchkula, it would expedient to refer to the judgment 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 decision of the judgments upon which the respondent has relied. The observations of the Hon'ble Apex Court in para 38 of the judgment 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 terms 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 to aid from the appropriate government may answer the definition of public authority under section 2(h) (d) (i)."



Perusal of the balance sheets for the years 2011-2012, 2012-2013 & 2013-1014 have revealed that an amount of Rs. 94245000/- to Rs. 127189000/- which have been taken as a loan from HUDA is still lying outstanding against the Club. Although, the Club is making payment of salary to its staff and purchases of machineries and equipments from its own resources, but it is evident from the balance sheets that the Club cannot survive without the financial support of the appropriate Government.

10. The Haryana Urban Development Authority, Panchkula has issued a Memorandum of Association of the Panchkula Golf Club, Panchkula. Perusal of contents of the memorandum reveals that President, General Secretary, Joint Secretary, Treasurer and four members of the Governing Body are all Government Officials, signifying the exercise of control of the Government officials in terms of sub clause (d) (i) of clause (h) of section (2) of the RTI Act, 2005.

11. In view of the above discussion, it clearly emerges that huge piece of land upon which the Panchkula Golf Club, Panchkula is situated belongs to the State Government. Apart from providing the land, free of cost, the Government has also incurred expenditure on construction of the club. This militates strongly against the Panchkula Golf Club, Panchkula being purely private body. In addition, the respondent Club is found to be registered body established, controlled and managed by officers of the state Government in their ex-officio



RIGHT TO
INFORMATION

capacity. It is also found to have been substantially financed indirectly by HUDA, an authority set up by the State Government by providing infrastructure to it. The RTI Act does not define 'substantial financing'. The expression 'substantial financing' has to be interpreted in the context of a specific case. This has been so held by the Punjab and Haryana High Court in Civil Writ Petition No. 19224/2006 (The Hindu Urban Cooperative Bank Ltd Vs State Information Commission, Punjab). Considering the fact that huge chunk of land has been allotted to the Panchkula Golf Club, Panchkula in the heart of the city, free of cost and also huge amount of money has been spent by the Government of Haryana in constructing this Club and providing the infrastructure, in our opinion, amounts to indirect substantial financing by the State Government.

12. In view of the foregoing, the Bench is of the considered view that the Panchkula Golf Club, Panchkula is a Public Authority within the meaning of section 2 (h) of the RTI Act, 2005. Accordingly, the requisite information shall be provided to the appellant/complainant.

13. In view of the above stated facts, Chief Administrator, HUDA, Panchkula is hereby directed to appoint the State Public Information Officer and the First Appellate Authority for the Panchkula Golf Club, Panchkula within four weeks of receipt of this order. After such appointment, the SPIO shall decide the impugned RTI application as per provisions of the RTI Act, 2005. The appellant



shall have the liberty to file first and second appeals as per section 19 of the RTI Act, if he is dissatisfied with decisions of the SPIO or the FAA, as the case may be.

Order reserved and pronounced on the 19th day of July, 2016. To be communicated to the parties.

(Hemant Atri)
State Information Commissioner.
Haryana.

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