

IN THE SUPRME COURT OF INDIA

CIVIL ORIGINAL JURSDICTION

WRIT PETITION (CIVIL) NO. 333 OF 2015

Association for Democratic Reforms & Anr.

..Petitioners

Versus

Union of India & Ors

..Respondents

COUNTER AFFIDAVIT ON BEHALF OF UNION OF
INDIA-RESPONDENT NO. 1 TO THE WRIT PETITION

I, R.K.Girdhar,S/o Sh. Ratan Lal, Aged about 55
years, Under Secretary, Department of Personnel & Training
New Delhi, do hereby solemnly affirm and state as under:

1. That I am Under Secretary, Department of
Personnel & Training, New Delhi and in my official capacity I
am fully conversant with the facts and circumstances of the
case. I have been authorised to swear this Affidavit on
behalf of Respondent No.1.

2. I have gone through the Synopsis, List of Dates and
Writ Petition filed by the Petitioners and have understood
the same.

3. That, save and except those, which are matter of
record, all the averments, statements and submissions
made by Petitioners in the abovementioned Synopsis, List



R. K. Girdhar
(अ.क. गिर्धार)
(R. K. GIRDHAR)
अ.क. गिर्धार/अ.क. गिर्धार
अ.क. गिर्धार/अ.क. गिर्धार
अ.क. गिर्धार/अ.क. गिर्धार
अ.क. गिर्धार/अ.क. गिर्धार
अ.क. गिर्धार/अ.क. गिर्धार
अ.क. गिर्धार/अ.क. गिर्धार

of Dates and Writ Petition, until and unless specifically admitted, are denied by the answering respondent.

4. I say that the present Writ Petition filed by the Association of Democratic Reforms and another -Petitioner under Article 32 of the Constitution of India relates inter alia to bring Political Parties under the purview of Right to Information Act, 2005. The Petitioners have prayed to:-

(a) Issue an appropriate writ declaring all national and regional political parties to be public authorities under the Right to Information Act, 2005 as per CIC orders dated 03.6.2013 and 16.03.2015 and thereby fulfill all obligations under the provisions of the said Act.

(b) Issue an appropriate writ directing the Election Commission of India and Union of India to collect all information concerning finances of political parties as mentioned in prayer (c) below and put the same in public domain.

(c) Issue an appropriate writ directing all national and regional political parties to mandatorily disclose the following for public scrutiny; complete details about their income as well as expenditure, entire details of donations and funding received by them, irrespective of the amount donated and full details of donors making donations to them and to electoral trusts.




(अ. क. गिर्धार)
(R. K. GIRDHAR)
अ. क. गिर्धार/Under Secretary
अ. क. गिर्धार/अ. क. गिर्धार & TIG.
अ. क. गिर्धार/अ. क. गिर्धार
Deputy of Personnel & TIG.
Deputy of Personnel & TIG.

(d) Issue any other appropriate writ that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

5. I further say that the Right to Information Act, 2005, (in short, 'RTI Act, 2005') was enacted by the Government of India 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. A public authority is defined in section 2 (h) of the Act of 2005 as under:

"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

Benjamin

(अ. के. निरधार) appropriate Government

(आ. क. गिरधर)
(R. K. GIRDHAR)
अवर सचिव/अंडर सेक्रेटरी
आवास एवं प्रशिक्षण, विभाग
Deptt. of Personnel & Trg.
सरकार/ Govt. of India
राष्ट्र

6. I submit that the Central Information Commission, New Delhi vide Judgment dated 03.06.2013 in a complaint filed by Shri Subhash Chandra Aggarwal and Shri Anil Bairwal, has held that the political parties namely AICC/INC, BJP, CPI (M), CPI, NCP and BSP are public authorities under Section 2(h) of the RTI Act. The Central Information Commission further directed the Presidents, General Secretaries of those political parties to designate CPIOs and the Appellate Authorities at the headquarters in 6 weeks time. Further, it directed the Presidents, General Secretaries of those political parties to comply with the provisions of Section 4(1)(b) of the RTI Act, 2005 by way of making voluntary disclosures on the subject mentioned in the said clause.

The true copy of the Judgment dated 03.06.2013 passed by the Central Information Commission, New Delhi in the complaint No. CIC/SM/C/2011/001386 filed by Shri Subhash Chandra Aggarwal and Complaint No. CIC/SM/C/2011/000838 Shri Anil Bairwal Versus Indian National Congress/All India Congress Committee & Ors is enclosed herewith as **ANNEXURE 'R-1/1' [Pgs 14 - 67]**.

7. I further submit that while deciding that the said political parties are public authorities under Section 2(h) of the RTI Act, the Central Information Commission, New Delhi had relied on the following grounds:-

relied on the following grounds:-


(आर. के. गिर्धार)
(R. K. GIRDHAR)
अवर सचिव/Under Secretary
कार्गिल एवं प्रशिक्षण/ Kargil & Training
कोर्पोरेशन ऑफ़ पर्सनल/Corporation of India
Deptt. सरकारी/ Govt. of India
सचिवालय/ Secy.



i. Political parties can be said to have been constituted by their registration by the Election Commission of India, a fact akin to the establishment or constitution of a body or institution by an appropriate government.

ii. Substantial (indirect) financing of political parties by the Central Governments. This includes allotment of land to them at hugely concessional rates, allotment of houses on rental basis on concessional rates, total exemption from payment of income tax from their incomes, free airtime on All India Radio, Doordarshan.

iii Performance of public duty by the political parties.

iv. Constitutional/Legal provisions vesting political parties with rights and liabilities.

8. I further submit that in the past, in a series of decisions, Hon'ble High Courts and Central Information Commission have held a number of non - Government Organisations as public authorities under the RTI Act. I further submit that the Hon'ble High Court of Delhi at New Delhi in their Judgment dated 07.01.2010 in Writ Petition (Civil) No. 876 of 2007, Indian Olympic Association Versus Veeresh Malik & Ors held that Indian Olympic Association is a public authority on the grounds that it is an Olympics

(By) [Signature]
के. गिरार
(आर. K. GIRHAR)
(R. K. UNDER SECRETARY
अवर सचिव / Under Secretary
प्रशासनिक एवं प्रशिक्षण विभाग
Deptt. Personnel & Training
सरकार, भारत

;



(Signature)

प्र
के. गिरधर)
(अ. क. GIRDHAR)
(R. K. GIRDHAR) Under Secretary Lia
अवर सचिव / Under Secretary Lia
कार्यक्रम एवं प्रशिक्षण / Training & Prog.
व्यक्तिगत सेवा / Personnel & India
Dep't. सरकार / Govt. of India
सचिवालय

10. I further submit that during the process of enactment of the RTI Act, it was never visualised or considered to bring the political parties within the ambit of the said Act. If the political parties are held to be public authorities under the RTI Act, it would hamper their smooth internal working. Further, it is apprehended that political rivals might file RTI applications with malicious intentions to the CPIOs of the political parties, thereby adversely affecting their political functioning.

11. I further submit that there are already provisions in the Representation of the People Act, 1951, as well as in the Income Tax Act, 1961, which lead to necessary transparency regarding the financial aspects of a political parties.



Section 29C of the Representation of the People Act, 1951 provides that:

" Declaration of donation received by the political parties.—(i) The treasurer of a political party or any other person authorised by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely:—


(अ. ग. गिर्धार)
(R. K. GIRDHAR)
अ. ग. गिर्धार / Under Secretary
अ. ग. गिर्धार / अ. ग. गिर्धार & अ. ग. गिर्धार
अ. ग. गिर्धार / अ. ग. गिर्धार / अ. ग. गिर्धार
अ. ग. गिर्धार / अ. ग. गिर्धार / अ. ग. गिर्धार

(a) the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year;

(b) the contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year.

(2) The report under sub-section (1) shall be in such form as may be prescribed.

(3) The report for a financial year under sub-section (1) shall be submitted by the treasurer of a political party or any other person authorised by the political party in this behalf before the due date for furnishing a return of its income of that financial year under section 139 of the Income-tax Act, 1961 (43 of 1961), to the Election Commission.

(4) Where the treasurer of any political party or any other person authorised by the political party in this behalf fails to submit a report under sub-section (3) then, notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), such political party shall not be entitled to any tax relief under that Act.

I further say that section 75A of the Representation of the People Act, 1951 provides for declaration of assets and liabilities by each elected candidate for a House of Parliament. Section 77 of the said Act of 1951 puts an obligation on every candidate at an election to keep a separate and correct account of all expenditure incurred or



Dr. Girish Chandra Girdhar
 (R. K. Under Secretary)
 Dr. Girish Chandra Girdhar
 (R. K. Under Secretary)

authorized by him in connection with the election and also puts a limit on the said expenditure. Section 78 thereof provides that each contesting candidate shall lodge an account of his election expenses with the District Election Officer. Section 125A of the said Act provides for penalty for filing false affidavit, etc.

Further, under section 13A of the Income Tax Act, 1961, a political party can claim exemption from tax, provided that

(a) such political party keeps and maintains such books of account and other documents as would enable the Assessing Officer to properly deduce its income therefrom;

(b) in respect of each such voluntary contribution in excess of twenty thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and

(c) the accounts of such political party are audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288:

Provided further that if the treasurer of such political party or any other person authorised by that political party in this behalf fails to submit a report under sub-section (3) of section 29C of the Representation of the People Act, 1951 (43 of 1951)



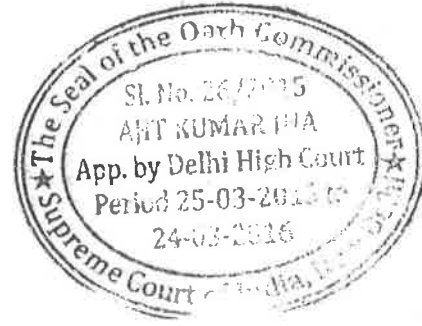
[Signature]
(अ. क. गिर्धार)
(R. K. GIRDHAR)
अ. क. गिर्धार / Under Secretary
अ. क. गिर्धार / अ. क. गिर्धार & टि. ग.
अ. क. गिर्धार / अ. क. गिर्धार & टि. ग.
अ. क. गिर्धार / अ. क. गिर्धार & टि. ग.
अ. क. गिर्धार / अ. क. गिर्धार & टि. ग.

for a financial year, no exemption under this section shall be available for that political party for such financial year.

The Relevant extract of the Representation of the People Act, 1951 is enclosed herewith as **ANNEXURE 'R-1/2' [Pgs 68-72]**.

12. I further say that the Election Commission, on its own, places the information provided by the political parties under section 29C of the Representation of the People Act, 1951 in public domain through its website. The above mentioned provisions ensure adequate transparency in respect of financial aspects of a political party. Declaring a political party as public authority under the RTI Act would hamper its smooth internal working, which is not the objective of the RTI Act and was not envisaged by the Parliament under the RTI Act. Further, the political rivals may maliciously file a large number of applications under RTI Act, 2005 with the CPIOs of political parties, thereby adversely affecting the political functioning of the political parties. Thus, it was felt necessary to annul the adverse effects of the erroneous conclusion by the Central Information Commission that political parties are public authorities under the RTI Act.

I say that accordingly, a Bill was introduced in the Lok Sabha to amend the Right to Information Act, 2005 so as to



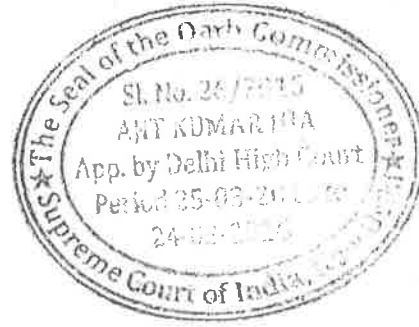

(अ. क. गिर्धार)
(R. K. GIRDHAR)
(R. K. GIRDHAR)
अ. क. गिर्धार/Under Secretary
अ. क. गिर्धार/अ. क. गिर्धार
अ. क. गिर्धार/अ. क. गिर्धार
अ. क. गिर्धार/अ. क. गिर्धार

exclude such Political Parties from the definition of 'Public Authority'. The Bill was referred to Parliamentary Standing Committee on 12.9.2013. The Standing Committee in its report recommended passing of the Bill by the Lok Sabha. The Bill could not be taken up for consideration by the Parliament and with the dissolution of the 15th Lok Sabha the Bill lapsed.

The true copy of the Right to Information (Amendment) Bill, 2013 is enclosed herewith as **ANNEXURE 'R-1/3' [Pgs73-76]**.

14. I further say that Central Information Commission, New Delhi vide its Judgment dated 16.3.2015 in a Complaint filed by Shri Subhash Chandra Agrawal and Prof. Jagdeep Chhokar, Shri Anil Verma and Ms Shivani Kapoor (authorized representative of Shri Anil Bairwal) against Indian National Congress (INC)/AICC has, decided inter alia that:

(a) the respondents (political parties) are not in compliance with the Commission's order dated 03.06.2013 and the RTI Act. The respondents therein, as public authorities, have not implemented the directions contained in the Commission's order and there is no evidence of any intention to do so;




(आर. के. गिरोहार)
(आर. के. गिरोहार)
अवर सचिव/अवर सचिव
कर्मियों, सहायक सचिवों & टी.टी.
विभाग, भारत सरकार/भारत सरकार

(b) the submission made by the complainants for the imposition of penalty and the award of compensation are not allowed in view of legal considerations;

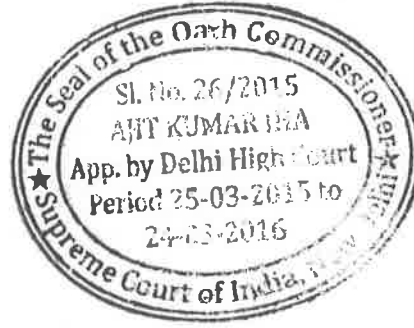
(c) the prayer for making recommendations to public authorities, reference para 68(6), above, not allowed;

(d) a copy of this order be sent to Department of Personnel and Training, Government of India, for taking action as deemed appropriate for addressing the legal gaps and issues that have come to light during the hearings, including those mentioned in para 68(7) above, with a view to ensuring compliance of this Commission's orders; and

(e) the complainants are at liberty, in view of the facts and circumstances of this case, to approach the higher courts for appropriate relief and redressal.

The true copy of the Judgment dated 16.03.2015 passed by the Central Information Commission, New Delhi in the complaint filed by Shri Subhash Chandra Aggarwal and Prof. Jagdeep Chhokar, Shri Anil Verma and Ms Shivani Kapoor (authorized representative of Shri Anil Bairwal) against Indian National Congress (INC)/AICC Ors. is enclosed herewith as **ANNEXURE 'R-1/4' [Pgs77-98]**.

(By) Mr.
अ. के. गिरधर
(MR. K. GIRDHAR)
अवर सचिव / Under Secretary
कार्मिक एवं प्रशिक्षण विभाग /
Deptt. of Personnel & Trg.
भारत सरकार / Govt. of India



15. I submit that in the facts and circumstances of the case, this Hon'ble Court may pass appropriate order.

(Signature)

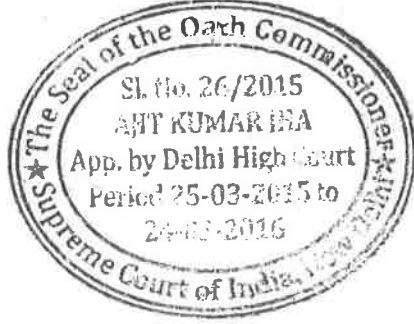
DEPONENT

VERIFICATION:

(आर. के. गिरधर)
(R. K. GIRDHAR)
अवर सचिव/Under Secretary
कार्मिक एवं प्रशिक्षण विभाग
Deptt. of Personnel & Trg.
भारत सरकार/Govt. of India

I, the abovenamed deponent, do hereby verify that the facts stated in paragraphs 1 to 3 of the Counter Affidavit are true to my personal knowledge and the facts stated in paragraphs 4 to 15 of the Counter Affidavit are true to record maintained in the office of the answering respondent and the submissions made therein are based on legal advice which I received and believe to be true.

Verified at New Delhi on this the 21st day of August, 2015.



7. C. S. I.
I identified the deponent who
has signed in my presence.

ATTESTED
As 21.8.2015
Oath Commissioner
Supreme Court of India
New Delhi

(Signature)

DEPONENT

(आर. के. गिरधर)
(R. K. GIRDHAR)
अवर सचिव/Under Secretary
कार्मिक एवं प्रशिक्षण विभाग
Deptt. of Personnel & Trg.
भारत सरकार/Govt. of India

(Signature)
(आर. के. गिरधर)
(R. K. GIRDHAR)
अवर सचिव/Under Secretary
कार्मिक एवं प्रशिक्षण विभाग
Deptt. of Personnel & Trg.
भारत सरकार/Govt. of India

CENTRAL INFORMATION COMMISSION
August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110066

File No. CIC/SM/C/2011/001386
 File No. CIC/SM/C/2011/000838

Complainants:

1. Shri Subhash Chandra Aggarwal
2. Shri Anil Bairwal

Respondents:

1. Indian National Congress/ All India Congress Committee (AICC);
2. Bhartiya Janata Party(BJP);
3. Communist Party of India (Marxist) (CPM);
4. Communist Party of India(CPI);
5. Nationalist Congress Party(NCP); and
6. Bahujan Samaj Party(BSP)

Dates of hearing: 26th September & 1st November, 2012.

Date of Decision: 3rd June 2013

Facts:

Complainant Subhash Chandra Agrawal (Shri S.C.Agrawal) has filed Complaint No. CIC/SM/C/2011/001386 and Complainant Shri Anil Bairwal, Complaint No. CIC/SM/C/2011/000838. In both the complaints, the common issue relating to the disclosure of the accounts and funding of Political Parties has been raised. Hence, it has been decided to dispose of these matters through a common order.

File No. CIC/SM/C/001386:

2. By his RTI application dated 16.5.2011, complainant S.C. Aggarwal has sought the following information from the Presidents/Secretaries of the Indian National Congress (INC/AICC) and the Bhartiya Janata Party (BJP):

- "1. Copies of Election Manifestoes by BJP for Lok Sabha elections in the years it formed NDA government with Shri Atal Bihari Vajpayee as Prime Minister.
2. Were all the promises made in these election manifestoes fulfilled after BJP having formed government at the Centre.

(आर. के. गिरधर)
 (R. K. GIRDHAR)
 और सचिव/उप सचिव, विभाग
 कर्मिक एवं सिलेक्शन & ट्रेनिंग
 Deptt. of Personnel & Training
 भारत सरकार/भारत का विभाग

3. If not, list of promises highlighted in BJP election manifestoes but remained unfulfilled after BJP came to power.
4. Outline of receipts (separately by cash/online/cheque etc) by BJP in last two years separately for each year for which updated account information may be there.
5. Outline of payments (separately by cash/online/cheque etc.) made by BJP in last three years separately for each year for which updated account information may be there.
6. Is it compulsory for every BJP legislature either at Centre or in States or in civic bodies etc to contribute towards party funds?
7. If yes, please provide complete and detailed information including also defaulters in making such contributions to party fund in last three years.
8. Is BJP aware of any of its legislatures (both at Centre and in States)/civic body member etc. involved in corrupt and other malpractices in last three years?
9. If yes, please provide complete details including action taken by party and others against such persons.
10. Has B.J.P. suggested any proposals to Union government /Election Commission towards electoral reforms?
11. If yes, please provide complete details including reply received from concerned ones if any.
12. Any other related information;
13. File notings on movement of this RTI petition and on all aspects mentioned in this RTI petition."

3. Shri Moti Lal Vora, Treasurer, AICC, in his letter dated 20th May, 2011, had informed the complainant that AICC did not come under the purview of the RTI Act.

4. Shri Shanti Prasad Aggarwal, Rashtriya Prabhari of BJP, in his letter dated 28th May, 2011, had informed the complainant that BJP was not a public authority and, therefore, the Party was not obliged to provide the requisite information.

File No. CIC/SM/C/2011/000838

(By) मजिस्ट्रेट
के. गिरधर
(आर. K. GIRDHAR)
आर. सी.ए./अवर सचिव
(R. K. Girardhar)
आर. सी.ए. प्रो. & टी.
आर. सी.ए. प्रो. & टी.
आर. सी.ए. प्रो. & टी.

5. Complainant Anil Bairwal, in his RTI application dated 29.10.2010 had sought the following information from the under mentioned Political Parties:

- INC/AICC
- BJP
- NCP
- CPI(M)
- CPI
- BSP

“1. a) Sources of the 10 maximum voluntary contributions received by your party from Financial Year 2004-05 to Financial Year 2009-10?

b) **The modes of these donations (Cheque, cash, DD etc.)?**

c) **The amounts of these donations?**

d) **The Financial Years in which these contributions were made?**

You may provide this information in the following format:

S.No.	Source/Name of Contributor	Mode of Contribution	Amount of Contribution	Financial year in which contributions was made
1				
2				
3				
4				
5				

2. Sources/Names of all Voluntary Contributors along with their addresses who have made single contributions of more than Rs. 1 lakh to your party from Financial Year 2004-05 to Financial Year 2009-10?

You may provide this information in the following format:

(1) सि.प्र.
 के. गिरधर
 (अ.प्र. GIRDHAR)
 (R. K. GIRDHAR)
 और सहा. अधिकारी, कानून
 और पर्सनल (Personnel & Training)
 का.प्र. सहा. अधिकारी, कानून
 Dep. Secy. to Govt. of India
 का.प्र.

S.No	Source/Name of Contributor	Address of Contributor
1		
2		
3		
4		

6. By his letter dated 15th November, 2010, Shri Moti Lal Vora, Treasurer, AICC, had informed the complainant that AICC did not come under the purview of the RTI Act.

7. Shri Chandan Bose, PRO, Nationalist Congress Party, in his letter dated 27th November, 2010, had informed the complainant as under:

“It is very important to mention here that NCP is a non-government organization. Hence, we do not have much more resources nor surplus staff to expedite unusual work, which is not in our routine job.

We generate funds from the membership drive and through other resources also, i.e. voluntary contributions from the well-wishers, and followers etc. State units of NCP have major role in membership drive from which we are getting funds in lakhs. State units of NCP at district level, block level and panchayat level organize membership camps frequently and every two years, we file the details regarding our membership and all necessary requisites in Election Commission and other government authorities.

However, I would like to inform you that ours is a National Party duly recognized by Election Commission of India and that from the day of inception of our party, we have been regularly filing our returns to the Income Tax authorities and also to the Election Commission of India along with whatever voluntary contributions received. It is pertinent to mention here that our all obligation towards authorities are up to date.

If you feel like, you may collect all the information you desired, from the above said authorities.

In case you want any clarification, please feel free to contact us.”


 (SITC. GIRDHAR)
 (R. K. Girdhar) Secretary
 Shri. Moti Lal Vora & T. V.
 Deputy of Personnel & T. V.
 Shri. Moti Lal Vora & T. V.

8. Shri K.C. Bansal of CPI, in his letter dated 6th November, 2010, had informed the complainant of the sources of ten maximum voluntary contributions received by the Party for the financial years 2004-05 to 2009-10.

9. Importantly, other Political Parties chose not to respond to the RTI application.

10. Shri Subhash Chandra Agrawal had filed a complaint dated 6th September, 2011, before this Commission in which he had mentioned that All India Congress Committee and Bhartiya Janata Party, being national parties, had got premium land in Delhi/New Delhi at zonal **variant institutional rate which was much less than** the prevailing market rate and, therefore, it was not correct on their part to plead that they did not fall under the purview of the RTI Act. It was his contention that both AICC/INC and BJP fell under the ambit of section 2(h) of the RTI Act.

11. Likewise, Shri Anil Bairwal had filed a complaint dated the 14th March, 2011, before the Commission against the responses received from INC/AICC, NCP & CPI, contending therein that the Political Parties, being beneficiaries of the Government, fell under the ambit of Section 2(h) of the RTI Act and, therefore, they were mandated to disclose full and complete information to him.

12. As the matters in hand raised complex issues of law, the Chief Information Commissioner in his Order dated 31st July, 2012 had constituted a Full Bench comprising of the following:-

- Shri Sayananda Mishra, Chief Information Commissioner;
- Smt. Annapurna Dixit, Information Commissioner; and
- Shri M.L. Sharma, Information Commissioner

13. The Full Bench held the first hearing on **26th September, 2012**. The following were present:

Complainants:-


(आर. के. गिर्धार)
(R. K. GIRDHAR)
आर. के. गिर्धार / Joint Secretary
अधीनस्थ सेवा विभाग, भारत
Deptt. of Personnel & Trg.
भारत सरकार / Govt. of India

1. Shri S.C. Agrawal, along with Shri Prashant Bhushan and Pranav Sachdeva,
2. Shri Anil Bairwal, along with Shri Jagdeep S. Chhokar, Shri Trilochan Sastry, Ms. Shivani Kapoor, Shri Manoj Kumar & A.K. Aneja.

Respondents:

1. Shri Chandan Bose, PRO, NCP.
2. Shri D. Raja, CPI

Election Commission:

1. Shri K.F. Wilfred, Principal Secretary, Election Commission.

14. The Full Bench held its second hearing on 1st November, 2012. The following were present:

Complainants:

1. Shri S.C. Agrawal.
2. Shri Anil Bairwal, along with Shri Jagdeep S. Chhokar, Ms. Shivani Kapoor, Shri Manoj Kumar & Shri A.K. Aneja.

Respondents:

1. Advocate Shubhashis R. Soren for BJP.
2. Shri S. Ramachandran Pillai of CPI(M).
3. Advocates Shail Kumar Dwivedi & G.V. Rao for BSP.
4. Shri Chandan Bose, PRO, NCP and Advocate Amit Anand Tiwari for NCP.


(श्री. के. गिर्धार)
(R. K. GIRDHAR)
अवर सचिव / Under Secretary
कार्मिक एवं नियुक्ति विभाग
Deptt. of Personnel & Trig.
राज्य सरकार / GOVT. of INDIA

15. Shri S.C. Agrawal has filed a written representation before the Commission in which he has vehemently pleaded for declaring Political Parties as public authorities under section 2(h) of the RTI Act. The salient points made in his representation are enumerated herein-below :-

- (i) The Political Parties hold constitutional status and wield constitutional powers under the Tenth Schedule of the Constitution in as much as they have the power to -
 - “a) disqualify legislators from Parliament and State Assemblies;
 - b) bind legislators in their speeches and voting inside the house;
 - c) decide what laws are made;
 - d) decide whether Government remains in power or which Government should come to power;
 - e) decide public policies that affect lives of millions of people.”
- (ii) As per Article 102 (2) of the Constitution, a person can be disqualified from being a member of either House of Parliament under the Tenth Schedule and that a similar provision exists for the State Legislators under Article 191(2) of the Constitution. Furthermore, as per Article 102(2), if a member of a House belonging to a Political Party votes or abstains from voting in the House contrary to the directions issued by the Political Party, he is liable to be disqualified from being a Member of the House.
- (iii) The Political Parties have been given statutory status under Section 29A of the Representation of the People Act, 1951.
- (iv) Under Section 29A (5) of the Representation of People Act, 1951, the Political Parties are required to bear true faith and allegiance to the Constitution of India as by law established.
- (v) The Political Parties give tickets to the candidates and the people vote on party symbols and, thus, the Political Parties are important instrumentalities of democratic governance.

(आ. के. गिरार)
 (R. K. GIRDHAR)
 अव. सहा. / Under Secretary
 of Personnel & Tre.
 Dep't. सरकार / Govt. of India

(vi) The Political Parties are substantially financed by the 'appropriate Government' in multiple ways and are exempt from Income Tax.

16. To canvass his case, Shri Agrawal has furnished a copy of letter dated 2.9.2011 of the CPIO of the Land and Development Office(L&DO), Ministry of Urban Development, addressed to him providing information regarding allotment of land by Land and Development Office to various Political Parties. The details of the land allotment to various Political Parties as furnished by the L&DO are extracted below :-

**“LIST OF POLITICAL PARTIES WHICH HAVE BEEN ALLOTTED LAND BY
LAND & DEVELOPMENT OFFICE FOR THEIR OFFICE BUILDINGS**

S.No.	Name of Party	Location, Area & Date of allotment
1.	All India Congress Committee of Indian National Congress	Plot at Dr. Rajinder Prasad Road, New Delhi (also known as Jawahar Bhawan), Area = 9518.42 sq.yds. allotted on 8.9.75. Pocket-9A, Kotla Road, Area = 8092 sq. m. Allotted on 19.11.2007.
2.	Rashtriya Janata Dal	Plot Nos. 34, 57, 58 & 59 at Kotla Road, New Delhi Area = 1904 sq. m. allotted on 3.7.2007.
3.	Communist Party of India (Marxist)	Plot Nos. 27, 28 & 29 at Market Road Institutional Area, New Delhi Area = 1197 sq. m. allotted on 24.11.1967 Plot Nos. 10, 11, 12 & 13 at Kotla Road Area = 2535 sq. m. allotted on 11.12.2008.
4.	Samajwadi Party	Plot No. 1, Vasant Kunj Institutional Area, New Delhi Area = 1 acre, Allotted on 21.1.2009.
5.	Communist Party of India	Plot No. 15, Kotla Marg, New Delhi Area = 0.3 acres. Allotted on 2.12.1967
6.	Bharatiya Janata Party (National Level)	Between Dr. Rajendra Prasad Road and Raisina Road, New Delhi. Area = 1.87 acres. Allotted on 8.3.2001.
7.	Janata Dal(United)	Plot No.4, Vasant Vihar Institutional Area, New Delhi Area = 2000 sq. m. allotted on 27.4.2010
8.	Bharatiya Janata Party (Delhi State)	Alternative allotment at Plot No.4 & 5, Kotla Road, New Delhi Area = 1060.80 sq. m. allotted on 12.5.2010
9.	All India Anna Dravida Munnetra Kazhakhham	Plot No. 13 & 25, Pushp Vihar, M.B. Road, Saket, New Delhi, Area = 1008 Sq. m. Allotted on 30.7.2010
10.	Delhi Pradesh Congress	Plot No. 2, Rouse Avenue Institutional Area



(आर. के. गिरधर)
(R. K. GIRDHAR)
आर. के. गिरधर / Under Secretary
कर्मचारी एवं सहायक विभाग
Deptt. of Personnel & Trg.
भारत सरकार / Govt. of India

	Committee	Area = 1127 sq. yds. Allotted on 15.5.1987
11.	All India Trinamool Congress	Plot Nos. 2 and 3, at DDU Marg, New Delhi Area = 1000 sq. m. allotted on 01.03.2011.

17. In addition to the above, Shri Agrawal has also furnished information regarding the allotment of accommodation to various Political Parties on rental basis and the outstanding dues against them, as received by him from the Directorate of Estates vide their letter dated 24.8.2011. The relevant information is extracted below:

S.No.	Name of the Party	Accommodation	Monthly rent charged
1.	Indian National Congress Committee (I)	26, Akbar Road	3015 +Furniture charges
2.	Indian National Congress	24, Akbar Road	42817 +Furniture charges
3.	Indian National Congress	5, Raisina Road	34189 +Furniture charges
4.	Indian National Congress	CII/109, Chanakyapuri	8078
5.	Bhartiya Janata Party	11, Ashoka Road	66896 + Furniture charges
6.	Bharatiya Janata Party	14, Pandit Pant Marg	15077 + Furniture charges
7.	C.P.I.	AB-4, Purana Quila Road	1550
8.	Nationalist Congress Party	10, Dr. B.D. Marg	1320
9.	President Bahujaan Samaj Party	4, G.R.G. Road	1320
10.	Samajwadi Party	18, Copernicus Road	12138
11.	Shri Prakash Karat, General Secretary, CPI(M)	8, Teen Murti Lane	1550

18. Shri Anil Bairwal has also filed a detailed representation before this Commission to contend that Political Parties fall in the ambit of section 2(h) of the RTI Act. In his representation, Shri Bairwal has made the following salient points :-

- (i) All the Political Parties have been claiming tax exemption under section 13A of the Income Tax Act. As per his representation, various Political Parties claimed Income Tax exemption as given in the following Table:

(Signature)
(आर. के. गिर्धार)
(R. K. GIRDHAR)
अध्यक्ष, लोकसभा/Under Secretary,
अध्यक्ष, लोकसभा/Secretary,
विभाग, लोकसभा/Ministry of Personnel & Trg.
Deptt. of Personnel/Govt. of India

S. No.	Name of the Party	Time allotted for telecast at the national network of DD during Lok Sabha '09 (Min)	Rate charged by national network of DD at non prime time every 10 seconds	Amount spent by state for the national network during LS'09 (Rs.crores)	Rate charged by regional network at non prime time every 10 seconds	Amount spent by State for the regional network during LS'09 (Rs.crores)	Total Amount spent by the state on political parties for both the national and regional network during LS'09(Rs.crores)
1	BJP	140	15,000	1.26	10,000	1.25	2.51
2	INC	160	15,000	1.44	10,000	1.44	2.88
3	BSP	70	15,000	0.63	10,000	0.60	1.23
4	CPI	50	15,000	0.45	10,000	0.45	0.90
5	CPI(M)	70	15,000	0.63	10,000	0.63	1.26
6	NCP	50	15,000	0.45	10,000	0.48	0.93
7	RJD	55	15,000	0.49	10,000	0.51	1.00
	Total	595		5.35		5.40	10.75

(Source : Compilation from Spot Buy Rates and Time Allocated to various Political Parties received from Doordarshan and Election Commission of India under the RTI Act).

(iv) The valuation of the properties allotted by the Government, as estimated by the complainant Shri Bairwal, as given in his representation, is as follows :-

Party	Office and address (with allotment dates)	Area	Area in Sq.Fts. (1 sq.m.=10.76 Sq. fts, 1 sq. yd.= 9 sq.ft., 1 Acre= 4840 sq.yds.)	Current Market Value of the Allotted Plots Land (based on Real Estate Consulting Reports @ Rs. 60,000 per sq. ft.(Rs.in Crores) (C=B*60,000)	Current Market Value of these allotted plots (Party-wise) (Rs. In crores)
INC	1. Plot at Dr. Rajinder Prasad Road, New Delhi(Allotted on 08.09.1975)	(A) 9518.42 sq. yds.	(B) 85665.78	513.99	1036.41
	2. Pocket 9A, Kotla Road, New Delhi(allotted on 19.11.2007	8092 sq. m.	87069.92	522.42	
BJP	1. Between Dr. Rajendra Prasad Road and Raisinha	1.87 acre	1457.20	488.74	557.23

(Signature)
(आर. के. गिर्धार)
(R. K. GIRDHAR)
अवर सचिव / Under Secretary
आयुक्त सचिव, प्रशासन
Deptt. of Personnel & TTS
भारत सरकार / Govt. of India

	Road(allotted on 08.03.2001)	1060.80 sq.m	11414.21	68.49	
	2. Plot No.4 & 5 Kotla Road New Delhi (allotted on 12.05.2010)				
CPI(M)	Plots No.27, 28 & 29 at Market Road Institutional Area, New Delhi(allotted on 11.04.1967)	1197 sq.m	12879.72	77.28	240.94
	Plot No.10, 11, 12 & 13 Kotla Road, New Delhi (allotted on 11.12.2008)	2535 sq.m	27276.60	163.66	
CPI	Plot No. 15 Kotla Marg, New Delhi(allotted on 2.12.1967)	.3 acres	13068.00	78.41	78.41
RJD	Plots No. 34,57,58 & 59 at Kotla Road, New Delhi(allotted on 03.07.2007)	1904 sq.m	20487.04	122.92	122.92
SP	Plot No.1, Vasant Kunj Institutional Area, New Delhi (Allotted on 21.01.2009)	1 Acre	43560.00	261.36	261.36
JD	Plot No.4, Vasant Vihar Institutional Area, New Delhi(allotted on 24.10.2010)	2000 sq.m	21520.00	129.12	129.12
AIADMK	Plot Nos.2 and 3 at DDU Marg, New Delhi(Allotted on 01.03.2011)	1008 sq.m	846.08	65.08	65.08
AITC	Plot Nos.2 and 3 at DDU Marg, New Delhi (Allotted on 01.03.2011)	1000 sq. m.	10760.00	64.56	64.56
Total of current Market Values of the plots of land allotted to the Political Parties(Rs. In Crores)					2556.02

(v) Under Rules 11 and 12 of the Registration of Electors Rules, 1960, two copies of the Electoral Rolls are supplied to the recognized Political Parties, free of cost. This is another instance of indirect financing of the Political Parties by the State.

(vi) The Central Govt. and the State Governments have allotted various houses/buildings/other types of accommodation to various Political Parties either free of cost or at concessional rates. This also amounts to indirect financing of Political Parties by the respective Governments.


(श्री. के. गिर्धार)
(R. K. GIRDHAR)
अवर सचिव/जनरल सचिव
कार्मिक एवं जनसम्पर्क विभाग
Deputy of Personnel & PR
श्री. के. गिर्धार/Genl. Secy.

25

(vii) The Political Parties are continuously engaged in the performance of public duty and it is, therefore, important that they become accountable to the public. Transparency in the working and financial operations of the Political Parties is essential in the larger public interest.

19. Senior Advocate, Shri Prashant Bhushan addressed the Commission on 26th September, 2012 on behalf of complainant Shri S.C. Agrawal. He vehemently contended that the entire political system in India revolved around the Political Parties. They perform a public function and, therefore, warrant to be declared 'public authority' under section 2(h) of the RTI Act. In amplification of his above broad submission, he has advanced the following arguments:-

(i) Tenth Schedule to the Constitution vests tremendous powers with the Political Parties in as much as they can oust an elected member – whether MP or MLA - from out of the Party if he steps out of the party line. The vast power of the Political Parties has been recognised in this Schedule and, therefore, if purposive interpretation of the Tenth Schedule is made, then the Political Parties can be deemed to be covered under Section 2(h) of the RTI Act.

(ii) As per Section 29C of the Representation of People Act, 1951, all donations of and above Rs. 20,000/- made to Political Parties are required to be reported to the Income Tax Department. This obligation cast on the Political Parties points towards their public character.

(iii) By virtue of powers conferred on it under Article 324 of the Constitution read with section 29A of the Representation of People Act, 1951, and Rules 5 and 10 of the Conduct of Election Rules, 1961, and other powers vested in it, the Election Commission of India made and promulgated the Election Symbols (Reservation and Allotment) Order, 1968. Under this Order, Election Commission allots symbols to various Political Parties. The Election Commission is an instrumentality of the State. Allotment of election symbols by the Election Commission to various Political Parties is suggestive of the public character of the Political Parties.

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(Rajendra)
आर. के. गिरदार
(R. K. GIRDHAR)
अवर सचिव / Under Secretary
कार्गिल स्टाफिंग & ट्रेडिंग
Deptt. of Personnel & Trg.
विभागाध्यक्ष / Secy. of India

26

(iv) The Political Parties get huge tax exemptions under section 13 A of the Income Tax Act, 1961, which amounts to indirect financing of the Political Parties in terms of Section 2(h)(d)(i) of the RTI Act.

(v) The Central Government and the State Governments have allotted huge plots of land/buildings/other accommodation in prime locations to all Political Parties all over the country either, free of cost, or on hugely concessional rates. This also amounts to indirect financing of the Political Parties.

(vi) Doordarshan of India allots free air time to the Political Parties during the elections. This is another instance of indirect financing of the Political Parties.

(vii) As the Political Parties are the life blood of the entire constitutional scheme in a democratic polity and as they are indirectly financed by the Central Government and the State Governments in various ways, as discussed hereinabove, the Political Parties need to be declared public authority under section 2(h) of the RTI Act.

20. Shri A.K. Aneja, appearing on behalf of the complainants, in his brief submission has drawn the Commission's attention to section 80 GGB of the Income Tax Act which provides that contribution made by an individual or Company to a Political Party is deductible from the total income of the assessee. This provision is exclusively applicable to the Political Parties and is suggestive of indirect financing of the Political Parties by the State.

21. Complainant Shri Anil Bairwal has also filed detailed extra submissions before the Commission arguing that the Political Parties need to be declared Public Authority under section 2(h) of the RTI Act. His first and foremost submission is that Political Parties have a 'binding nexus with the populace'. He goes on to say that "As the Central Institution of democracy, they embody the will of the people and carry all their expectations that democracy will be truly responsive to their needs and help solve the most pressing problems that confront them in the daily lives".

22. His second submission is that there is need for accountability and transparency in the functioning of the Political Parties. It is his contention that transparency in the functioning of

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(R.K. GIRDHAR)
(आर. के. गिरधर)
(R. K. GIRDHAR)
अवर सचिव / Under Secretary
कार्मिक एवं प्रशिक्षण विभाग
Deptt. of Personnel & Trg.
भारत सरकार / Govt. of India

Political Parties was recommended by the Law Commission of India in their 170th Report on "Reform of Electoral Laws (1999)". The relevant para of the Law Commission's report as extracted by him is given below :-

"On the parity of the above reasoning, it must be said that if democracy and accountability constitute the core of our constitutional system, the same concepts must also apply to and bind the Political Parties which are integral to parliamentary democracy. It is the Political Parties that form the Government, man the Parliament and run the governance of the country. It is therefore, necessary to introduce internal democracy, financial transparency and accountability in the working of the Political Parties. A political party which does not respect democratic principles in its internal working cannot be expected to respect those principles in the governance of the country. It cannot be dictatorship internally and democratic in its functioning outside" (emphasis added by the complainant)

23. Shri Bairwal has also relied on this Commissions decision dated 29.04.2008 in File No. CIC/AT/A/2007/01029 & 01263-01270 wherein transparency in the functioning of Political Parties has been underlined. He particularly draws our attention to para 28 of the decision extracted below :-

"28. Political Parties are a unique institution of the modern constitutional State. These are essentially civil society institutions and are, therefore, non governmental. Their uniqueness lies in the fact that in spite of being non governmental, Political Parties come to wield or directly or indirectly influence, exercise of governmental power. It is this link between State power and Political Parties that has assumed critical significance in the context of the Right of Information – an Act which has brought into focus the imperatives of transparency in the functioning of State institutions. *It would be facetious to argue that transparency is good for all State organs, but not so good for the Political Parties which control the most important of those organs.* For example, it will be a fallacy to hold that transparency is good for the bureaucracy but not good enough for the Political Parties which control those bureaucracies through political executives".


(आर. के. गिरहार)
(R. K. GIRDHAR)
अवर सचिव / Under Secretary
कांग्रेस पार्टी / Congress Party
Deputy of Parliament & Trig
भारत सरकार / Government of India

24. The Commission has further observed :

“38. The laws of the land do not make it mandatory for Political Parties to disclose the sources of their funding, and even less so the manner of expending those funds. In the absence of such laws, the only way a citizen can gain access to the details of funding of Political Parties is through their Income Tax Returns filed annually with Income Tax authorities. This is about the closest the Political Parties get to accounting for the sources and the extent of their funding and their expenditure. There is unmistakable public interest in knowing these funding details which would enable the citizen to make an informed choice about the Political Parties to vote for. The RTI Act emphasizes that “democracy requires an informed citizenry”, and that transparency of information is vital to flawless functioning of constitutional democracy. It is nobody’s case that while all organs of the State must exhibit maximum transparency, no such obligation attaches to Political Parties. Given that *Political Parties influence the exercise of political power, transparency in their organization, functions and, more particularly, their means of funding is a democratic imperative, and, therefore, is in public interest*”.

25. Another strand of his submissions is that the Public Authority, as defined under section 2(h) of the RTI Act, is a broader term than the ‘State’ as defined under Article 12 of the Constitution. In other words, it is possible that an entity may fall short of being ‘State’ and yet may be a ‘Public Authority’ under the RTI Act. In fact, ‘Public Authority’ and the ‘State’ are different and distinct from each other. Shri Bairwal has relied on para 25 of the judgment of Punjab and Haryana High Court in WP(C) No. 19224/2006 along with 23 other cases as extracted below :-

“25. Above-all, the deep and pervasive control as required under Article 12, is not required and essential ingredient for invoking the provisions of RTI Act. The primary purpose of instrumentality of the State is in relation to enforcement of the fundamental rights through Courts, whereas the RTI Act is intended to achieve, access to information and to provide an effective framework for effecting the right to information recognized under Article 19 of the Constitution. The complainants are not claiming any kind of monetary benefits or property from the empire of the


(अ.क. गिरोहकार)
(R. K. GIROHKAR)
अ.क. गिरोहकार / Under Secretary
भारतीय रक्षा मंत्रालय, दिल्ली
Deptt. of Personnel & Trg.
Ministry of Defence, India

petitioner-institutions. To my mind, the enforcement of fundamental rights through Courts and the question of applicability of writ jurisdiction on an instrumentality of the State for the purpose of determination of substantive rights and liabilities of the parties are *altogether (entirely) different than that of the field of RTI Act, only meant to impart the information*. Hence, in my view, the ambit and scope of phrase of instrumentality of the State under Article 12 of the Constitution is entirely different and distinct than that of the regime of RTI Act. *If the intention of the Legislature was to so restrict the meaning to the expression of public authority, straightjacketing the same within the four corners of the State, as defined under Article 12, then there was no need/opportunity to assign a specific broader definition of public authority under section 2(h) of RTI Act in this relevant connection*".

26. The complainant has also argued that while determining whether a particular entity is a Public Authority or not, narrow interpretation of the words used in the statute would frustrate the object of the Act. The purpose of this Act is transparency and accountability in the functioning of entities which impact citizens' daily lives. The Political Parties are such entities. He has relied on para 41 of the Delhi High Court judgment delivered by Justice Ravindra Bhat in Indian Olympic Association –Vs- Veerish Malik and others(WP)(C) No. 876/2007 as extracted below :-

"The Act marks a legislative milestone in the post independence era to further democracy. It empowers citizens and information applicants to demand and be supplied with information about public records. *Parliamentary endeavor is to extend it also to public authorities which impact citizens daily lives*. The Act mandates disclosure of all manner of information and abolishes the concept of locus standi of the information applicant; no justification for applying (for information) is necessary; decisions and decision making processes, which affect lives of individuals and groups of citizens are now open to examination. *Parliamentary intention apparently was to empower people with the means to scrutinize government and public processes, and ensure transparency*. At the same time, the need of society at large, and Governments as well as individuals in particular, to ensure that sensitive information is kept out of bounds have also been accommodated under the Act."


(अ.क. गिर्धार)
(R. K. GIRDHAR)
अ.क. गिर्धार / जूनियर सचिव
अ.क. गिर्धार / जूनियर सचिव
Deptt. of Personnel & Trg.
Govt. of India

27. Yet another submission of the complainant is that the Political Parties are being indirectly financed by the State in various ways viz. allotment of land, free of cost, or at nominal rates and exemptions from the Income Tax etc. Paras 3.1 to 3.7 of his representation are extracted below :-

“3.1 All Political Parties claim to work for the people and in the national interest. Income tax returns of Political Parties obtained by ADR using the RTI Act reveal that on an average only about 20 per cent of the income of Political Parties comes from donations that they disclose to the Election Commission under section 29C of the Representation of People Act. The sources of the remaining 80 per cent of the income are shrouded in mystery. This is what gives rise to all kinds of speculation about the pernicious influence of illegal money.

3.2 After various RTI applications filed to the central agencies, it was discovered that Political Parties enjoy a number of “facilities” provided to them by the government. This is a clear instance of being “financed indirectly by funds provided by the appropriate government” which puts Political Parties squarely under the definition of ‘public authority’ as provided for in section 2(h)(d)(ii) of the RTI Act.

3.3 In addition to the 100% exemption on income under section 13A of the Income Tax Act, all the major Political Parties have been provided "facilities" for residential and official use by Directorate of Estates (DOE), Government of India, in New Delhi. They have been given offices and residential accommodations at prime locations in New Delhi (Lutyen's Delhi) such as Akbar Road, Raisina Road, Chanakyapuri. The rentals charged are a fraction of the market rent. These facilities are not just provided to them at nominal rates but their maintenance, upgradation, modernization, renovation, etc. are also done at State expense. Similar "facilities" are also provided at various State capitals, details of which are extremely difficult to obtain.

obtain.

(Signature)
(आर. के. गिर्धार)
(R. K. GIRDHAR)
अवर सचिव / Under Secretary
जनसंपर्क विभाग / Deptt. of Public Relations
मंत्रालय / Ministry

3.4 Money is also spent by Election Commission of India on Political Parties for providing "facilities" to Political Parties such as free electoral rolls, Doordarshan and All India Radio also provide free broadcast facilities to the Political Parties at election time which results in loss of revenue in terms of *air time which has a market value.*

3.5 If closely monitored and totalled, the total of public funds spent on Political Parties would possibly amount to hundreds of crores.

3.6 There have been several Judicial pronouncements and also decisions by the Central Information Commission that have held that allotment of real estate, rental on subsidized rated, exemption from tax of various types including income tax amount to "indirect financing" in terms of section 2(h)(d)(ii) of the RTI Act. A few of the more useful citations are given below.

3.6.1 Land : The case that is relevant here is Civil Writ Petition No. 16750 of 2010, The Sutlej Club vs. State Information Commission and another decided on 09.05.2011, commonly referred to as CWP No. 19224 of 2006 alongwith 23 connected cases. The Punjab and Haryana High Court held as follows :

"72. Now adverting to the financial help of petitioner-Sutlej Club, Ludhiana(at Sr. No.15) is concerned, the SIC mentioned that as per revenue record, the land owned by the Provincial Government is given to the Club which amounts to substantial financial assistance by the State Government. The fact that the valuable land upon which the Club was constructed, belongs to the Government and no rent/lease is paid by it to the Government shows that there is a substantial financial assistance by the State to the Club. The cost of prime land provided to the club would be much more than its normal revenue expenditure. Apart from land provided for construction of the club building, the Government has also incurred a part of expenditure on its construction.... In my view, the SIC has recorded the correct finding


(अ.क. गिर्धार)
(R. K. GIRDHAR)
अ.क. सचिव/अ.क. सचिव
अ.क. सचिव/अ.क. सचिव
अ.क. सचिव/अ.क. सचिव
Dep't. of Personnel & Trg.
अ.क. सचिव/Govt. of India

of fact based on the material on record, by virtue of impugned order dated 8.7.2010.

3.6.2 Land and Income Tax concessions : A directly relevant case here, dealing with both, land and income tax, was decided by the Central Information Commission on 11.01.2012. It was Mr. Tilak Raj Tanwar vs Government of NCT of Delhi, File No. : CIC/AD/A/2011/001699. After considering all aspects of the issue, the Commission decided as follows :

“12. The Commission while relying upon the various decisions given hereinabove is convinced that the Mount St. Mary’s School may be considered as being “substantially financed” by the appropriate Government, in view of the 5 acres of prime land granted to it at subsidized rates and income tax concessions being enjoyed by the school and that, therefore, it can be declared as a Public authority”.

3.6.3 Exemption from Tax : The case that is relevant here is Civil Writ Petition No. 16086 of 2008, Punjab Cricket Association, SAS Nagar(Mohali) vs State Information Commission, Punjab and another, decided on 09.05.2011, commonly referred to as CWP No. 19224 of 2006 alongwith 23 connected cases. The Punjab and Haryana High Court held as follows :

“68. Now adverting to the case of petitioner –PCA (at Sr. No.12), it is admitted position that it is enjoying tax exemption from entertainment tax which is an direct financial aid by the State to it. Although the SIC has negated the plea of the complainant-information seeker, but to my mind, the SIC has slipped into deep legal error in this regard because the PCA is saving heavy amount from exemption of entertainment tax which naturally is an incidence of financial aid by the Government.

3.6.4 Tax exemption and nominal rent : Another case relevant here is Board of Control for Cricket India and another vs Netaji Cricket Club and others [2005 AIR (SC) 5921]. The Supreme Court observed as follows :


(अति. के. गिर्धार)
(R. K. GIRDHAR)
अति. सचिव / Joint Secretary
कर्मियों की मजदूरी व भर्ती
Deptt. of Personnel & Trg.
भारत सरकार / Govt. of India

"80. The Board is a society registered under the Tamil Nadu Societies Registration Act. It enjoys a monopoly status as regard regulation of the sport of cricket in terms of its Memorandum of Association and Articles of Association. It controls the sport of cricket and lays down the law therefor. It, *inter alia*, enjoys benefits by way of tax exemption and right to use stadia at nominal annual rent.

3.7 While it may well be argued that the above quoted decisions refer to institutions such as schools, clubs which, in some characteristics, are different from Political Parties but *these decisions do recognize, accept and establish the principle that exemption from tax and allotment or permission to use land and other real estate is an accepted form of "financing", though it may be considered "indirect" as it is not in the physical form of money. And this principle is one of the factors that makes Political Parties come under the definition of "public authority" as given in section 2(h) of the RTI Act.*"

28. More importantly, the complainant has contended that Political Parties have constitutional and statutory status. It is his contention that incorporation of Articles 102(2) and 191(2) through the 42nd Amendment and the 10th Schedule to the Constitution has given constitutional status to the Political Parties. According to him, it is a fallacy to say that any individual can form a political party. A body or entity does not become a political party in the legal sense until it is registered by the Election Commission of India under section 29A of the Representation of the People Act, 1951, and this registration **lends it the colour of Public Authority.**

29. Lastly, the complainant has also contended that in exercise of its powers, the Election Commission of India under Elections Symbols (Reservation and Allotment) Order, 1968, promulgated under article 324 of the Constitution and Rules 5 & 10 of the Conduct of Election Rules, 1961, grants symbols to various Political Parties for election purposes for the recognition of Political Parties and can suspend or withdraw recognition of recognized Political Parties on


(आर. के. गिरधारी)
(R. K. GIRDHARI)
आर. सचिव / Under Secretary
कार्मिक स. अ. विभाग
Deptt. of Personnel & Trg.
भारत सरकार / Govt. of India

their failure to observe model code of conduct or not following the lawful directions and instructions of the Commission. It is indicative of the public character of the Political Parties.

30. It may be further mentioned that Shri S. Sudhakar Reddy, General Secretary, Communist Party of India, sent a letter dated 24.9.2012 to the Commission stating therein that the Political Parties do not come under the ambit of section 2(h) of the RTI Act. The relevant paragraphs of his letter are extracted below:-

“Com. A.B. Bardhan, the then General Secretary has written a letter expressing willingness to keep the accounts of our Party transparent. In our view, Political Parties do not come under Section 2(h)(d)(ii) of the RTI Act. Notwithstanding this, we have always been prepared to be transparent in our accounts.

We submit our accounts to Election Commission of India every year and every year we submit our accounts to the Income Tax Department also. The accounts of our Party are audited by internal audit committee and also by the Chartered Accountant. It is then submitted to our Party National Council for obtaining their approval. We are prepared to make all the income and expenditure of our Party transparent.”

31. On the other hand, Shri A.B. Bardhan, General Secretary, CPI, in letter dated 21.3.2011 addressed to Shri Anil Bairwal has stated that CPI is a Public Authority under section 2(h) of the RTI Act. The relevant portion of his letter is extracted below :-

“(a) Yes, we are Public Authority under section 2(h)(d)(ii) “nongovernment organizations” substantially financed, directly or indirectly, by funds provided by the appropriate Government.

(b) We have our internal Appellate Authority “Central Control Commission”.

32. It would, thus, appear that CPI has a contradictory stand in the matter, even while vouching for transparency in their accounts.


(आर. के. गिर्धार)
(R. K. GIRDHAR)
अधीनस्थ सचिव / Under Secretary
व्यक्तिगत एवं प्रशासनिक विभाग
Deptt. of Personnel & Trg.
भारत सरकार / Govt. of India

33. Shri Ambeth Rajan has filed a counter affidavit dated 31.10.2012 on behalf of Bahujan Samaj Party (BSP) in which he has taken the plea that the Political Parties are not public authorities under section 2(h) of the RTI Act. Taking his argument further, he would submit that BSP is a political party that has not been notified as public authority by means of any Notification of the appropriate government to the effect that BSP is under control of or substantially financed by the appropriate government. He has also contended that State funding on the electoral rolls during elections is done merely to meet statutory obligations under the Registration of Electoral Rules, 1960. Similarly, tax exemption under section 13A of the IT Act is subject to the compliance of the provisions of Income Tax Act. Further more, allotment of government/public land to the Political Parties on concessional rates does not cloth the party into a public authority within the meaning of section 2(h) of the RTI Act. Paras 04, 08 & 10 of his representation are extracted below:-

“4. That at the outset, I submit that the complainant has had no legal right to file application under Section 6(1) of the Right to Information Act, 2005, against the answering respondent for the reason that the Political Parties are not the public authorities under Section 2(h) of the Right to Information Act, 2005. The Bahujan Samaj Party being one of the six national Political Parties duly recognized by the Election Commission of India is, therefore, not a ‘Public Authority’ within the meaning of Section 2(h) of Right to Information Act, 2005. Therefore, the present complaint petition is liable to be dismissed.

That I hereby submit that the BSP is a political party. It has not been notified as a public authority by means of any notification of appropriate government to the effect that BSP is owned, controlled or substantially financed by the appropriate government. Merely because some concessions, rebate and subsidy has been granted like it has been granted to any other political party, the BSP does not automatically become a body owned, controlled or substantially financed by the appropriate government.

(Signature)

के. गिरधर)
(आए. के. GIRDHAR)
(R. K. GIRDHAR) Secretary
अवर सचिव आर्थिक समिति
प्रधानमंत्री कार्यालय,
नई दिल्ली-110 002

10. That in view of the above, the present complaint petition against the answering respondent is legally not maintainable only on the ground that there is a State funding on free air time during elections on Doordarshan and All India Radio. The State funding on the electoral roll during elections is done to meet statutory obligations under Registration of Electoral Rules, 1960, which mandates that two copies of the electoral roll, one printed copy and another in CD is supplied to recognized Political Parties, free of cost. Further Tax exemption u/s 13A of the Income Tax Act is again subject to the compliance of the provisions of the Income Tax Act. The allotment of Government/public offices of Political Parties on concessional rent does not clothe the political party into a public authority within the meaning of Section 2(h) of Right to Information Act, 2005."

34. Shri Amit Anand Tiwari, counsel for Nationalist Congress Party(NCP), has argued at length to canvass that NCP is not a public authority. He has also filed a detailed representation in this regard. It is his contention that the NCP does not fall within the ambit of section 2(h) of the RTI Act. He has refuted the arguments advanced by the complainants that the Political Parties are substantially financed by the Government. His contention is that free airtime granted to NCP during the election time on national television and national radio is not suggestive of government financing in as much as during elections, it is a popular practice in most of the democracies. He has referred to the case of Canada in this context. Further, according to him, supply of free electoral rolls during elections to NCP, again, is not indicative of financing by the Government. It is his contention that under rule 11(C) of the Registration of Electoral Rolls, 1960, the Registration Officer is mandated to provide two copies of Electoral Rolls, free of cost, to Political Parties registered under section 29A of the Representation of People Act. This is a statutory requirement and cannot be construed as substantially financing. Similarly, allotment of party office to NCP at economical rates cannot be construed as substantial financing in as-much-as the Government makes this facility available not only to Political Parties recognized by the Election Commission but also to other segments of population such as journalists etc. Further more, it is Shri Tiwari's contention that exemption from Income Tax granted under section 13A of the Income Tax Act also does not mean that the NCP is substantially financed by the Government. He has given the example of Income Tax exemption to the farmers but by virtue of this, the farmers cannot be designated as public authority under section 2(h) of the RTI Act.


(अ. क. गिरिधर)
(A. K. GIRIDHAR)
(R. Secy / Under Secretary)
आर. सी. एस. / अंडर सेक्रेटरी
विभाग का निदेशक / Secy.
विभाग का निदेशक / Secy.
विभाग का निदेशक / Secy.

35. Without prejudice to the above arguments, Adv. Tiwari has argued that even if it is admitted that the Government is funding the Political Parties in the manner mentioned herein above, it cannot be said to be 'substantial financing'. It is his contention that the NCP receives less than 1.55% of its total funding from the Government and, therefore, cannot be construed as public authority. Paragraphs 13.1 and 13.2 of his representation are extracted below:-

“13.1 In *Mohd. Safdar Iman v Indian Institute of Welfare* (dated 5.1.2008), this Hon’ble Commission held that the respondent institute was not a public authority mainly because it received not more than 20% of grant-in-aid from the government, which cannot be deemed to be substantial financing. In *Sh. Shanmuga Patro v Rajiv Gandhi Foundation* (Decision No. 6010/IC(A)/2010), THIS Hon’ble Commission has considered DAV College case and its own decision in *Mohd. Safdar Iman*” and held that since the respondent body received a very nominal amount of grants from the Government amounting to barely 4%, it cannot be said to be a public authority on account of being substantially financed by the Government. In *DAV College & Trust and Management Society v. Director of Public Institutions & Ors.* (AIR 2008 P&H 117), the Punjab & Haryana High Court held that where the appellant society was receiving 45% of grant-in-aid from Government, it was being substantially financed by the Government, thus a ‘public authority’ under section 2(h) of the RTI Act.

13.2 From the above stated judicial precedents and definitions, it becomes clear that every financing would not bring a person within the purview of section 2(h). Such financing must be apparently considerable and done through subscribing of shares or advancing of loans etc. In cases where financing has been less than 20% of the total finance of the authority or body or organization, same was held not to be substantial financing within the meaning of Section 2(h).”

36. Adv. Tiwari has filed additional submissions dated 1.11.2012 for NCP in which he has made the following salient points :-

(i) The power exercised by the Political Parties under the 10th Schedule of the Constitution cannot be construed to mean that the Political Parties are public authorities under

(R. K. GIRDHAR)
 (R. K. GIRDHAR)
 Joint Secretary
 Ministry of Personal & Social
 Development, Govt. of India
 New Delhi

section 2(h) in as much as these powers can be exercised only when an elected Member has voted or abstained from voting against the whip of the political party or he has voluntarily given up the membership of such political party. Even in such cases, the political party cannot disqualify a Member of Legislature. All that it can do is to move an application seeking disqualification of such elected Member before the Chairman/Speaker of the House who has exclusive authority to declare such elected Member to be disqualified or otherwise.

(ii) No doubt, Political Parties have played a significant role in public life but public interest is not the criterion for declaring a body or institution as public authority under section 2(h) of the RTI Act.

(iii) If Political Parties are declared to be public authorities,, then they will be flooded with applications by pseudo information seekers to maliciously engage the party workers only in responding to the RTI applications thereby causing detriment to their political functioning. The law laid down by the High Court in the Indian Olympic Association case, Commonwealth Games Committee case and Sanskriti School case is not applicable to the Political Parties in as much as there was evidence of huge direct financing by the Government to these bodies/entities which is not true in case of Political Parties.

(iv) Public interest argument is not valid in case of Political Parties under section 11 of the RTI Act. If this argument is accepted, then the identities of the contributors would have to be disclosed and the contributors may not like this to happen. Such disclosure may expose them to harassment and threats by other Political Parties.

(v) In decision dated 8.7.2009 of a Single Bench of this Commission in Complaint No. CIC/MISC/2009/0001 & CIC/MISC/2009/0002, it was held that Political Parties are not covered under section 2(h) of the RTI Act.

(vi) In the decision dated 5.2.2010 of Goa State Information Commission (Shri Pandu Ram -Vs- the President, Maharashtrabadi Gomantak Party), it was held that MGP was not established or constituted under any enactment of State Legislature or by any Notification or order by the Government. Nor was it owned or substantially financed by the State Government and, therefore, was not a public authority.


(अ. क. गिर्धार)
(R. K. GIRDHAR)
अ. स. स. स. / Under Secretary
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कर्मचारी विभाग & वि. वि.
Personnel & Training
Department / Govt. of India

37. Shri Shanti Prasad Aggarwal of the BJP, in his letter dated 28.5.2011, addressed to the complainant S.C. Agrawal has taken the stand that the BJP is not a public authority under the RTI Act.

38. Similarly, Shri Moti Lal Vora, Treasurer, AICC, in letter dated 20.5.2011 addressed to complainant S.C. Agrawal has taken the stand that the INC/AICC does not come under the purview of public office and, hence, is not liable to provide information under the RTI Act.

39. After hearing the arguments, the Commission decided to address a letter dated 8.11.2012 to the following Political Parties:-

- o Nationalist Congress Party
- o Bahujan Samaj Party
- o Bhartiya Janata Party
- o Communist Party of India
- o Communist Party of India(Marxist)
- o INC/ All India Congress Committee

seeking from them the following information :-

“(A) Details of lands/buildings allotted by Govt. and its instrumentalities to your Party:

- (a) in Delhi
- (b) in State Capital(s)
- (c) at Distr; HQrs;

In the following format, category wise :-

- (i) Year of allotment
- (ii) Postal address of plots/buildings.
- (iii) Size of plots/buildings.
- (iv) Whether any consideration paid to Central or State Govt. If yes, amount thereof.
- (v) Whether the lands/buildings were allotted at market rate or at concessional rate.

27


(आर. के. गिर्धार)
(R. K. GIRDHAR)
अवर सचिव / Under Secretary
कमिशन ऑफ़ इन्फॉर्मेशन & ट्रान्स्पैरेंसी
भारत सरकार / Govt. of India

40

(vi) The estimated value of plots/buildings at present(property-wise).

(B) Amount of contributions received by your Party during the last five financial years i.e. 2007-08 to 2011-12, year-wise.

(C) Incomes received by your Party from any other sources during the last five financial years i.e. 2007-08 to 2011-12.”

40. Only two parties viz. NCP and CPI(M) chose to respond to the Commission's notice. The other Political Parties simply ignored it.

41. Shri S.R. Kohli, Parliamentary Secretary, NCP, in letter dated 22.11.2012 informed the Commission that his party was not covered under section 2(h) of the RTI Act and, therefore, it was not bound to supply any information.

42. However, Shri Prakash Karat, General Secretary, CPI(M) wrote a detailed letter dated 21.11.2012 to the Commission in which he gave details of the two buildings allotted to CPI(M) viz : A.K. Gopalan Bhawan – Plot Nos. 27, 28 & 29 at Market Road, measuring 1197.33 Sq Mts. allotted on 22.11.1983 and Kotla Road Plot Nos. 10, 11, 12 & 13, measuring 2534.46 sq. mts., allotted on 11.12.2008. As regards A.K. Gopalan Bhawan plot, he informed the Commission that the Party had deposited security amount of Rs. 31.42 lacs with licence fee of Rs. 78,574/- As regards Kotla Road plot, the Party had paid premium of Rs.53.80 lacs with ground rent of Rs. 1,34,512/- per annum. Shri Karat has also clarified that the Party has only lease-hold rights on the plots under reference. Shri Karat has also given details of the income of the party from 2007-08 to 2011-12. But as regards the question of the quantum of tax exemption availed by the Party, he took the following stand

“Parliament took the decision to exempt the income of the Political Parties from Income Tax liabilities with the aim to strengthen the democratic polity in the country as Political Parties and their activities are its important components.”

He also added that it is not a fact that all persons making contributions enjoy full tax exemption on the amounts contributed to Political Parties.

[illegible]

43. It needs to be underlined that it has been the tenor of the arguments advanced by the complainants herein that the Political Parties are substantially financed, albeit indirectly, by the appropriate Government(Central Government in this case) by way of :-

- Allotment of large tracts of land in prime areas of Delhi either free of cost or at concessional rates;
- Allotment of houses on rental basis on concessional rates.
- Exemption from Income Tax u/s 13-A of the I.T. Act
- Free air time on All India Radio;
- Free air time on Door Darshan, and
- Provisioning of free electoral rolls etc.

44. The Commission had written to the Secretary, Ministry of Urban Development, Government of India, New Delhi, to confirm the position regarding the allotment of plots to various Political Parties, as claimed by the complainants. The Deputy Land & Development Officer, in his letter dated 21.5.2013, has written to the Secretary of the Commission regarding the allotment of land to various Political Parties. The operative portion of his letter is reproduced below:-

“I am directed to refer to your letter No. Secy/CIC/2013/Misc./02 dated 7th March, 2013 and 16th April, 2013 on the above mentioned subject and to provide information available in this office in respect of Table-1 as under :-

S.No.	Name of party	Location	Area
1.	All India Committee of Indian National Congress	Dr. Rajender Prasad Road (also known as Jawahar Bhawan Trust), Kotla Road, Pkt.9A.	4736.1 sq. yds. 4583.32 sq.yds. 8093 sq. mts.
2.	Rashtriya Janata Dal	Kotla Road Plot Nos. 34, 57, 58 & 59	1904 sq.mts.
3.	Communist Party of India(Marxist)	Market Road, Plot Nos. 27, 28 & 29	1197.33 sq. mts.
4.	Samajwadi Party	Vasant Kunj, Plot No.1	1 acre
5.	Communist Party of India	Kotla Road, Plot No.15	0.3 acre
6.	Bhartiya Janata Party	Between Dr. Rajinder	1.87 acre

23

(प्र. क. गिरधर)
(आर. क. गिरधर)
(R. K. GIRDHAR)
आर. क. गिरधर / Under Secretary
आर. क. गिरधर / Under Secretary
आर. क. गिरधर / Under Secretary
Deputy of Personnel & Trd.
आर. क. गिरधर / Govt. of India

	(National Level)	Prasad Road-Raisina Road	
7.	Janata Dal(United)	Vasant Vihar, Plot No.4	2000 sq. mts.
8.	Bhartiya Janata Party (Delhi State)	Kotla Road, Plot No.4 & 5, alternative Pushp Vihar, M.B. Road, Saket Plot No. 15 & 22	1060.80 sq. mts.
9.	All India Anna Dravida Munnetra Kazhakhham	Rouse Avenue, Plot No.2	1008 sq.mts.
10.	Delhi Pradesh Congress Committee	DDU Marg, Plot No.2 & 3	1127.78 sq.mts.
11.	All India Trinamool Congress		1000 sq. mts.

It is informed that the information provided in the Table-I is factually correct and the allotments were made to these Political Parties on **institutional land rates of this office**. Copies of allotment letters in respect of above mentioned Political Parties are enclosed herewith."

45. The terms and conditions of allotment to AICC/INC are contained in the DL&DO's letter dated 19.7.2007. Para 2(i) of the said letter is reproduced below :-

"(i) The allottee will pay the premium of land @ **Rs. 88 Lakh per acre provisionally** plus 2.5% thereof as **annual ground rent**. This rate was valid up to 31.3.2000. The allottee shall have to pay difference of premium in case the land rates are revised retrospectively by the Government. w.e.f. 1.4.2000. The allottee shall submit an undertaking to this effect on a non-judicial stamp paper worth Rs. 10/-."

46. The land has been allotted to other Political Parties also more or less on the same terms and conditions. However the earlier allotments made to various Political parties were at lower rates.

47 The Commission has received another letter dated 15.5.2013 from the Director of Estates enclosing therewith allotment of government accommodation to various Political Parties on monthly rental as extracted below:-

Sl. No.	Name of parties	Address of Govt. Accommo	Allotment Letter	License deed	Current monthly rent charged from parties
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 (अ.क. गिर्धार)
 (A. K. GIRDHAR)
 अ.क. गिर्धार/जनता पार्टी
 अ.क. गिर्धार, एन.ए. रोड,
 सैफुल्लाह, दिल्ली
 Director of Personnel & Trg.
 Delhi. भारत/Govt. of India

	Indian National Congress Committee	Location	Enclosed		Rs.8,632/- + Furniture charges
1.	Indian National Congress Committee	26, Akbar Road	Enclosed	-----	
2.	Indian National Congress	24, Akbar Road	Enclosed	Enclosed	Rs.68,571/- Furniture charges
3.	Indian National Congress	5, Raisina Road	Enclosed	-----	Rs.47,665/- Furniture charges
4.	Indian National Congress	C-II/109, Chanakya-puri	Enclosed	-----	Rs.15,137/- + Furniture charges
5.	Bhartiya Janata Party	11, Ashoka Road	-----	-----	Rs.86,832/- + Furniture charges
6.	Bhartiya Janata Party	14, Pandit Marg	Enclosed	Enclosed	Rs.24,788/- + Furniture charges
7.	C.P.I.	AB-4, Purana Quila Road	-----	-----	Rs.1,550/-
8.	Nationalist Congress Party	10, Dr.B. D. Marg	-----	-----	Rs.1,320/-
9.	President Bahujan Samaj Party	4, G.R.G. Road	Enclosed	Enclosed	Rs.1,320/-
10.	Samajwadi Party	18, Cooper-Nicus Road	Enclosed	Enclosed	Rs.20,352/-
11.	Shri Prakash Karat, General Secretary, CPI(M)	8, Teen Murti Lane	-----	-----	Rs.1,550/-

48 Before proceeding further in this matter, it would be pertinent to have a look at the registration, recognition and functioning of Political Parties as per the existing law/rules. The following salient points need to be underlined :-

- The Political Parties are registered with the Election Commission of India(ECI) under section 29A of the Representation of People Act, 1951.
- For the purposes of R.P. Act and elections, an association/body gets the status of political party only on its registration with the ECI under section 29A.
- Para 16A of the Election Symbols (Reservation & Allotment) Order, 1968, empowers ECI to suspend or withdraw the recognition of a political party if it refuses to

(Signature)
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follow the lawful directions and instructions of the Commission or if it refuses to observe the provisions of the Model Code of Conduct.

- As per Supreme Court judgment in Common Cause -Vs- Union of India (AIR 1996 SC-3081), ECI is empowered under Article 324 of the Constitution to require the Political Parties to submit details of expenditure incurred by them in connection with elections.
- ECI has directed the Political Parties to submit their accounts within 90 days after general elections in case of Lok Sabha and within 75 days in the case of Assembly elections.
- Under Section 29C of the R.P. Act, a Political Party is required to report to the ECI in respect of contributions received by it in excess of Rs. 20,000/- from any person or Company.
- The contributions made to the Political Parties are exempt from the Income Tax, both for the donor and the donee.
- Recognition of Political Parties is governed by the provisions of Election Symbols (Reservation and Allotment), 1968, which is an order issued by ECI under Article 324 of the Constitution read with Rules 5 & 10 of the Conduct of Election Rules, 1961, to provide for specification, reservation & allotment of symbols and recognition of Political Parties and matters related thereto.

DECISION NOTICE AND REASONS

49. The Political Parties constitute one of the most important institutions in a constitutional democracy. Prof. Harold J Laski in his classic text "Grammar of Politics" has termed them 'natural', though not 'perfect'. According to him, the life of a democratic State is built upon the party system. Without Political Parties, there would be no means available of enlisting the popular decisions in a politically satisfactory manner. To quote him

"The life of the democratic State is built upon the party-system and it is important at the outset to discuss the part played by party in the arrangement of affairs. Briefly, that part may be best described by saying that parties arrange the issues upon which people are to vote. It is obvious that in the confused welter of the modern State, there must be some selection of problems as more urgent than others. It is necessary to select them as urgent and to present solutions of them which may be acceptable to the citizen-body. It is that task of selection, the party undertakes.


(आर. के. गिर्धार)
(R. K. GIRDHAR)
भारत सचिव / Under Secretary
काबिनात एवं प्रशासनिक विभाग
Deptt. of Personnel & Trg.
भारत सरकार / Govt. of India

It acts, in Mr. Lowell's phrase, as the broker of ideas. From the mass of opinions, sentiments, beliefs, by which the electorate moves, it chooses out those it judges most likely to meet with general acceptance. It organizes persons to advocate its own view of their meaning. It states that view as the issue upon which the voter has to make up his mind. Its power enables it to put forward for election candidates who are willing to identify themselves with its view. Since its opponents will do the same, the electorate, thereby, is enabled to vote as a mass and decision that would otherwise be chaotic, assumes some coherency and direction.

What, at least, is certain, is that without parties there would be no means available to us of enlisting the popular decision in such a way as to secure solutions capable of being interpreted as politically satisfactory."

50. All modern democracies operate on a party system, some with two as in the USA and some others with multiple Political Parties like in India. The Political Parties mobilize public opinion around their ideologies and beliefs and contest elections to form government. No democracy can exist today without Political Parties. An ordinary citizen does not have direct access to the government except through his elected representative and cannot hope to be part of the government without being a member of a Political Party. His membership of a legislature depends on his membership of a Political Party to begin with. It is, thus, through the Political Parties that the citizens of a democracy operationalise the democratic state. This is precisely what Prof Laski has meant when he says that the existence of Political Parties gives the citizens of a country a viable means to give shape to their political aspirations and beliefs by forming a government of their choice. It will, therefore, not be an exaggeration to say that no Political Party, no democracy. In view of this central importance that they enjoy that the Political Parties have been given in our country such enormous powers and benefits, through both constitutional and statutory arrangements so that they can fulfill their just roles in representing their constituents.

51. The Political Parties, for example, play a critical role in the disqualification of legislators on ground of defection. As per paragraph 02 of the Tenth Schedule, a Member of a House belonging to any Political Party can be disqualified in certain circumstances. Paragraphs 01, 02 & 03 of Article 02 are extracted below:-

"2. Disqualification on ground of defection. - (1) Subject to the provisions of paragraphs 3, 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House—


(अति. स. गिर्धार)
(R. K. GIRDHAR)
अति. स. गिर्धार / Under Secretary
आरक्षण एवं संश्लेषण विभाग
Deptt. of Personnel & Trg.
सर्वोच्च न्यायालय / Govt. of India

- (a) if he has voluntarily given up his membership of such political party;
or
- (b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

Explanation – For the purposes of this sub-paragraph, --

- (a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member;
- (b) a nominated member of a House shall, --
- (i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party;
- (ii) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes, a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.
- (2) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party, shall be disqualified for being a member of the House if he joins any political party after such election.
- (3) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.”

52. We may also take notice of certain statutory provisions in this regard. Section 29A of the Representation of People (RP) Act, 1951, empowers the Election Commission of India (ECI) to register Political Parties for the purposes of this Act. In other words, without such registration, a Political Party cannot participate in the electoral process. Sub section (1) of 29-A is extracted below :-

“(1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act.”


(आर. के. गिर्धार)
(R. K. GIRDHAR)
अवर सचिव / Under Secretary
कार्गिल का सुरक्षा विभाग
Department of Personnel & Trg.
भारत सरकार / Govt. of India

53. Further, in exercise of its powers under Article 324 of the Constitution read with section 29A of the RP Act, 1951, and rules 05 and 10 of the Conduct of Election Rules, 1961, the Election Commission has issued the Election Symbols (Reservation & Allotment) Order, 1968. This Order has been issued for the purity of the elections in the Lok Sabha and the Legislative Assemblies of States and in the interest of conduct of such elections in a fair and efficient manner and for "the specification, reservation, choice and allotment of symbols for the recognition of Political Parties". This order lays down conditions for recognition of the National Parties and the State Parties. The Election Commission allots symbols to National and State Political Parties under para 08 of the Order. This order also provides for allotment of symbols to unrecognized Political Parties. Para 16-A of the order empowers the Commission to suspend or withdraw permission of a recognized political party for its failure to observe the model code of conduct or follow lawful directions and instructions of the Commission. Importantly, as per para 07 of the order, the Election Commission can issue Notifications in the Gazette of India publishing therein the list specifying the National Parties/State parties and the symbols respectively reserved for them. It can also issue Gazette Notifications in respect of unrecognized Political Parties and addresses of their Headquarters etc.

54. At this stage, it would be useful to crystalise the outcome of discussion held herein-before. In our view, the following facts clearly emerge:-

(A) Legal/General

- (a) that the Political Parties are the building blocks of a constitutional democracy;
- (b) that under Tenth Schedule of the Constitution, a Political Party can have a Member of the House disqualified in certain circumstances;
- (c) that a Political Party is required to be registered by the Election Commission of India under section 29A of the Representation of People Act, 1951;
- (d) that under section 29C of the RP Act, 1951, a Political Party is required to submit a report for each Financial Year to the Election Commission of India in respect of contributions received by it in excess of 20,000/- rupees from any person as also contributions in excess of 20,000/- rupees received from non-Government companies;


 (अ.क. गिर्धार)
 (R. K. GIRDHAR)
 अ.क. गिर्धार / UNDER SECRETARY
 कर्मचारी सूची विभाग, पंजाब
 Section of Personnel & Ttg.
 अ.क. गिर्धार / Govt. of India

- (e) that in exercise of its powers under Article 324 read with section 29A of the RP Act, 1951, and rules 5 & 10 of the Conduct of Election Rules, 1961, the Election Commission has issued Election Symbols (Reservation & Allotment) Order, 1968, under which election symbols are allotted to various National/State Political Parties;
- (f) that Election Commission can suspend or withdraw recognition of a recognized political party in the event of violation of provisions of Election Symbol (Reservation & Allotment) Order, 1968;
- (g) that Central Information Commission's order dated 29.4.2008 directing the Political Parties to disclose their Income Tax Returns holds the field and is being complied with.

(B) Financial

- (a) that the Land & Development Office of the Ministry of Urban Development has allotted large tracts of land in Delhi to various Political Parties either free of cost or at concessional rates;
- (b) that the Directorate of Estates, Ministry of Urban Development, has allotted accommodation in Delhi to various Political Parties on rental basis at concessional rates;
- (c) that Political Parties have been claiming and granted total tax exemption under section 13A of the Income Tax Act for all their income;
- (d) that the State has been indirectly financing Political Parties by way of free air time on All India Radio and Doordarshan of India during the elections; &
- (e) that recognized Political Parties are issued copies of electoral rolls by the Election Commission, free of cost, at the time of elections.

55. Section 2(h) of the RTI Act defines 'public authority' as follows :-

- (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;


 (अ. क. गिर्धार)
 (R. K. GIRDHAR)
 अवर सचिव/Under Secretary
 संविधान सचिवालय एवं
 Deputy of Personnel & Insp.
 मंत्रालय, नई दिल्ली
 Ministry of Home Affairs, New Delhi

- (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;"

56. The issue to be determined is whether these six political parties have the ingredients which would qualify them to be public authorities within the meaning of section 2(h) of the Right to Information (RTI) Act.

57. It is quite obvious that out of the many ways a public authority can be established or constituted, those provided in (a), (b), (c) and (d) above would not apply to these political parties. They have not been established or constituted by and under the Constitution; nor by any other law made by Parliament or the State Legislature; nor are these bodies owned or controlled by any appropriate government. We have to examine if these political parties would qualify under the remaining provisions. It is also true that these political parties have not been established or constituted by any specific notification issued or order made by an appropriate government as provided in (d) of this particular section. However, it is pertinent to remember that they have been brought into existence first as political parties and then as national level political parties by the Election Commission of India thereby entitling them to a host of benefits, the principal among them being the right to accept contribution from both individual citizens and private companies and also to get complete income tax exemption on all their incomes. The other important benefit that accrues to these political parties on account of their recognition by the Election Commission of India as national level political parties is the common symbol on which their candidates can contest elections. Thus, if not strictly within the letter of this particular provision (d), but at least, in spirit, these political parties can be said to have been constituted by their registration by the Election Commission of India, a fact akin to the establishment or constitution of a body or institution by an appropriate government.

58. Having said this, the next classification under which these political parties can be placed is what is provided in section 2(h)(ii). According to this provision, any non-governmental organisation which is substantially financed, directly or indirectly, by funds provided by the appropriate government would become a public authority for the purpose of the Right to Information Act. Now, the question is whether these political parties are being substantially financed, directly or indirectly, by funds provided by the appropriate


(अ. क. गिर्धार)
(R. K. GIRDHAR)
अ. स. स. स. / Under Secretary
कर्मचारी विभाग, भारत
Deptt. of Personnel & Trg.
भारत सरकार / Govt. of India

61. It may now be pertinent to allude to certain decisions of the High Courts and this Commission in this regard:-

- (i) In Indian Olympic Association and others –Vs- Veeresh Malik & others (WP)(C) No. 876/2007 the Delhi High Court in its decision dated 7th January 2010, held that Indian Olympic Association is a public authority under section 2(h). The relevant paragraph is extracted below:-

“Having regard to the pre-eminent position enjoyed by the IOA, as the sole representative of the IOC, as the regulator for affiliating national bodies in respect of all Olympic sports, armed with the power to impose sanctions against institutions – even individuals, the circumstance that it is funded for the limited purpose of air fare, and other such activities of sports persons, who travel for events, is not a material factor. The IOA is the national representative of the country in the IOC; it has the right to give its nod for inclusion of an affiliating body, who, in turn, select and coach sportsmen, emphasizes that it is an Olympic sports regulator in this country, in respect of all international and national level sports. The annual reports placed by it on the record also reveal that though the IOA is autonomous from the Central Government, in its affairs and management, it is not discharging any public functions. On the contrary, the funding by the government consistently is part of its balance sheet, and IOA depends on such amounts to aid and assist travel, transportation of sportsmen and sports managers alike, serves to underline its public, or predominant position. Without such funding, the IOA would perhaps not be able to work effectively. Taking into consideration all these factors, it is held that the IOA is “public authority” under the meaning of that expression under the Act.”

- (ii) In the same judgment, the Delhi High Court also held the Sanskriti School to be public authority. The relevant paragraph is extracted below:-

“As discussed earlier, grants by the Government retain their character as public funds, even if given to private organizations, unless it is proven to be part of general public policy of some sort. Here, by all accounts, the grants – to the tune of Rs. 24 crores were given to the school, without any obligation to return it. A truly private school would have been under an obligation to return the amount, with some interest. The conditionality of having to admit children of employees of the Central Government can hardly be characterized as a legitimate public end; it certainly would not muster any permissible classification test under article 14 of the Constitution. The benefit to the school is recurring; even if a return of 10% (which is far less than a commercial bank's lending rate) is assumed for 6 years, the benefit to the school is to the tune of Rs. 14.88 crores. This is apart from the aggregate grant of Rs. 24.8 crores, and the nominal concessional rate at which the school was allotted land for construction.

On a consideration of all the above factors, this court holds that the school fulfils the essential elements of being a non-government organization, under Section 2(h) of the Act, which is substantially financed by the Central Government, through


(अ.क. गिरिधर)
(R. K. GIRIDHAR)
अवर सचिव / Under Secretary
कनिष्ठ शिक्षा विभाग, शिक्षा
Deptt. of Personnel & Trg.
सरकार / Govt. of India
नई दिल्ली

various departments, and agencies. It is therefore, covered by the regime of the Act.”

(iv) In decision dated 22.4.2010 in Amardeep Walia –vs- Chandigarh Lawn Tennis Association (File No. CIC/LS/C/2009/900377), the Central Information Commission held Chandigarh Lawn Tennis Association to be public authority. Para 19 of the order is extracted below:-

“19. The gravamen of the above judgments is that for a private entity to qualify to be a public authority, substantive financing does not mean ‘majority’ financing. What is important is that the funding by the appropriate Government is achieving a “felt need of a section of the public or to secure larger societal goals.” The ratio of the above judgments, particularly of Delhi High Court, applies to the present case on all the fours. A huge property has been placed at the disposal of CLTA by the Chandigarh Administration at a notional rental of Rs.100/- per annum. Besides, grant of one lakh rupees was also given to CLTA in FY 2008-09. Concededly, CLTA fulfills the felt need of a section of the society by way of imparting training to the budding tennis players. It is, therefore, held that CLTA is a Public Authority.”

(v) In another decision dated 21.1.2011 in Pradeep Bhanot –Vs- Chandigarh Club, Chandigarh (File No. CIC/LS/A/2010/001184), the Central Information Commission held that the Chandigarh Club was a public authority. The broad facts in this case were that a plot of land measuring 3.85 lacs sq.ft. was leased out to the Club at the rent of Rs. 1,08,208/- per month w.e.f. 20.7.2005 to 19.7.2010 with annual increase of 5%. The Finance Department of Chandigarh Administration had submitted before the Commission that the aforesaid rent was not at par with the market rent. Considering the totality of circumstances, the Commission had concluded that Chandigarh Club was public authority under section 2(h). Paras 03 & 04 of the order are extracted below :-

“3. We have now received a response from the Finance Department of the Chandigarh Administration under the signatures of the Joint Secretary, Finance. Paras 02 & 03 thereof are extracted below :-

“2. In this regard it is informed that the bodies like Chandigarh Club etc are providing the public service and while fixing the rate of rent in such bodies, this aspect is taken into consideration. In view of the public services being provided by these bodies, the said bodies can not be termed as commercial sites. Due to this reason, the rent of Chandigarh Club was fixed as Rs 1,08,208/- per month with effect from 20.7.2000 with annual increase of 5%. It is not out of place to mention here that other similarly situated bodies like Chandigarh Golf Club and Chandigarh Golf Association which are also providing the public services have been kept at par with Chandigarh Club while determining the rate of rent. In case we consider the Chandigarh Club as commercial site, then the rent comes


(अ. क. गिर्धार)
(R. K. GIRDHAR)
अवर सचिव/अवर सचिव, संपत्ति
विकास, जनसंख्या, परिवार
विकास, श्रम, कर्मचारी & प्रशिक्षण
विभाग, भारत सरकार
Minister of Personnel & Training
Govt. of India

53

out to be rupees to 315/400 per month. Keeping in view the urban character of the city, rent being charged from the Chandigarh Club is not at par with the market rent. Further, by charging the rent at a lower rate, it will make amply clear that the Chandigarh Administration is indirectly financing the promotion of services being rendered by the Chandigarh Club.

3. In view of the aforesaid circumstances and in view of the fact that said club is being indirectly financed for promotion of public services by the Chandigarh Administration the same is squarely covered under the definition of 'public authority' as defined under section 2 (h) (ii) of the RTI Act, 2005."

4. In view of the categorical position taken by the Chandigarh Administration extracted above and the fact that there is vast differential between the monthly rental being paid by the Chandigarh Club and the commercial rent that the premises could fetch in the open market (as estimated by the Finance Deptt), we are of the opinion that the Chandigarh Club is being indirectly financed by the Chandigarh Administration. In this view of the matter, we hold that the Chandigarh Club is 'public authority' u/s 2 (h) (ii) of the RTI Act. Hence, the club management is hereby directed to put in place a mechanism for servicing the RTI Act."

(vii) Further-more, in Amrit Mehta –Vs– India International Centre (File No. CIC/WB/A/2009/000965/L.S) decided on 1.2.2011, the Commission held that India International Centre is a public authority under section 2(h). The broad facts in this case were that 4.69 acres of prime land was given on perpetual lease to IIC against deposition of Rs. 1,68,840/- as per agreement signed on 22.4.1960 between the President of India and IIC. The yearly rent payable by IIC to the Central Government was Rs. 8,442/- which has remained unchanged during the last five decades. In the facts of the case, the Commission had held as follows :-

“XVIII. In view of the above discussion, it clearly emerges that a huge chunk of land measuring 4.69 acres was allotted to IIC in 1968 at a premium of Rs. 1,68,840/- only, obviously, at a concessional rate. The agreement between the parties expressly speaks of concessional allotment of land. Further, IIC was required to pay rent of Rs. 8,442/- per year to the Central Government and this amount has remained unchanged during the last 52 years. This is also clearly indicative of the rent being nominal/concessional in nature. These facts clearly establish that the Central Government has indirectly financed IIC. 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) extracted above. Considering the fact that a huge chunk of land was allotted to IIC in 1960 in the very heart of the capital city of Delhi at a premium of Rs.1,68,840/- only and also considering the fact that IIC is paying rent of only Rs. 8,442/- per year to the Central Government over all these years,


 (अ. के. गिरधर)
 (R. K. GIRDHAR)
 जय संघ / Under Secretary
 कनिष्ठ वृद्धि विभाग, संघीय
 Deptt. of Personnel & Ttg.
 सरकारी संस्कार / Govt. of India

45

in our opinion, amounts to indirect substantial financing of IIC by the Central Government. In this view of the matter, we hold that IIC is a Public Authority under section 2(h) of the RTI Act.”

(vii) Yet another decision of this Commission needs to be adverted to in this connection. 6,000 Sq. Mts. of land was allotted to Delhi Public School, Rohini, by DDA at a highly subsidised rate of Rs. 65 lacs per acre in February, 1997. Another plot of land measuring 10,000 sq. mtrs. was also allotted to DPS, Rohini, for a play ground on temporary basis on payment of nominal ground rent of only Rs. 10/- per annum. The question before the Commission was whether DPS, Rohini, can be deemed to be a Public Authority in terms of section 2(h) of the RTI Act. Vide decision dated 23.8.2011 in File No. CIC/SG/C/2010/001036/AD, this Commission held that in the facts and circumstances of the case, DPS, Rohini, is a Public Authority under section 2(h). The reasoning given by the Commission is encapsulated in the para extracted hereinafter.

“Considering the above factual matrix of the case at hand, one can sum up that 6000 sq. mts of land has been given to the school at a concessional rate of Rs. 65 lacs per acre and 1-0,000 sq. mts of land at a highly subsidised nominal ground rent of Rs. 10/- per Annum by DDA. The School is under the governance, control and regulation of the Delhi Schools Education Act 1973, Rule 50 whereof mandates disclosure of information in the form of reports etc. to the Director of the Directorate of Education, the Administrator and concerned authority from the Central Government, as already discussed above. The Directorate of Education has appointed two nominees in the key Managing Committee of the School thereby ensuring position of power of managing affairs of the School and having control over the Respondent School.”

62. The question before the Commission is whether INC/AICC, BJP, CPI(M), CPI, NCP and BSP can be held to be Public Authorities under section 2(h) of the RTI Act. The complainants have adduced the following three principal grounds to persuade the Commission to hold that the aforesaid Political Parties are Public Authorities viz:-

- (i) Indirect substantial financing by the Central Government;
- (ii) Performance of public duty by the Political Parties; and
- (iii) Constitutional/legal provisions vesting Political Parties with rights and liabilities.


(आ. क. गिरधर)
(R. K. GIRDHAR)
आ. क. सचिव / Joint Secretary
आ. क. विभाग, एन. टी. ए.
Deptt. of Personnel & Trg.
भारत सरकार / Govt. of India

63. Now we will take these facets one by one.

Substantial financing of Political Parties by the Central Govt.

64. The complainant has vehemently pleaded that Political Parties are substantially financed by the Central Government in multiple ways. The first and foremost method of indirect financing is allotment of large tracts of land in prime areas of Delhi either, free of cost, or at concessional rates. Information supplied by complainant Shri. Anil Bairwal is depicted in a tabular form at para 18(iv) of this order. This information has been confirmed to the Commission by L&DO as per details given in para 43 of this order.

65. Even allowing for the margin of error in the estimation of the value of land allotted to various political parties by complainant Shri Bairwal, we have reasons to believe that this land has been allotted at hugely concessional rates. The lease value of these properties in the open market has not been placed before us. Even so, we strongly believe that the premium and the lease rent being charged from the Political Parties does not reflect the true value of these properties. This, in our considered opinion, amounts to indirect financing and when added to the income tax exemption enjoyed by these political parties, it would amount to substantial financing.

66. We may also like to add that the complainants have proffered information before the Commission in regard to the lands allotted at Delhi by the Central Government. We are informed that such allotments have also been made at the State capitals by the State Governments. If so, this only reinforces the complainants' contention that the appropriate Governments have indirectly financed Political Parties in a big way.

67. Another method of financing of Political Parties by the Central Government is allotment of houses on rental basis on concessional rates. Information given by the complainant, Shri Bairwal in this regard is mentioned at para 17 of this order which need not be repeated. The Directorate of the Estates, Ministry of Urban Development has also corroborated allotment of various properties to these political parties on rental basis. The rent being charged from the Political Parties is shown in the last column of the said table. The rental value of these properties


(आर. के. गिर्धार)
(R. K. GIRDHAR)
आर. के. गिर्धार, सचिव, प्रधान
मंत्रालय, कर्मचारी & प्र.
विभाग, भारत सरकार, नई दिल्ली
Director, Personnel & Pro.
Deptt. of India

in the open market has not been placed before us. Even so, we strongly believe that the rent being charged from the Political Parties does not reflect the true rental value of these properties. This arrangement also contributes to the indirect financing of Political Parties.

68. Of the various benefits that the central government extends to these political parties, the total exemption from payment of income tax on their incomes, very obviously, constitutes the most important benefit. Section 13 A of the Income Tax Act reads as follows:

“Any income of a political party which is chargeable under the head income from house property or income from other sources or capital gains or any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party:

Provided that -

(a) such political party keeps and maintains such books of account and other documents as would enable the assessing officer to properly deduce its income therefrom;

(b) in respect of each such voluntary contribution in excess of Rs. 20,000, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and

(c) the accounts of such a political party are audited by an accountant as defined in the explanation below subsection 2 of section 288:

Provided further that if the treasurer of such political party or any other person authorised by that political party in this behalf fails to submit a report under subsection 3 of section 29C of the Representation of the People Act 1951 for the financial year, no exemption under this section shall be available for that political party for such financial year.”

69. Since these political parties have not paid any income tax, the exact quantum of money that the Central Government has forgone in the process has not been worked out specifically. However, since the level of income of all these political parties would place them in the highest slab of income tax, at least 30% of their total income would have been collected as income tax but for the total exemption given to them by law. By a simple calculation, this would show that the Central Government has bestowed financial benefits on the six political parties to the extent of the amount shown against each as per the following table:

Party	Tax Payable exempted in FY 2006-07(Rs)	Tax payable exempted in FY 2007-08 (Rs)	Tax payable exempted in FY 2008-09 (Rs)	Tax payable exempted in 3 years (Rs)
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(श्री. क. गिर्धार)
(R. K. GIRDHAR)
वरिष्ठ सचिव / Union Secretary
अंतरिम वरिष्ठ सचिव / Interim Secretary
कर्मचारी विभाग / Personnel & P.W.
प्रधान मंत्री कार्यालय / Govt. of India

	crores)	crores)	crores)	crores)
BJP	26.86	40.68	73.71	141.25
INC	57.00	75.05	168.87	300.92
BSP	15.44	23.60	0.80	39.84
CPI(M)	6.98	4.62	6.53	18.13
CPI	0.01	0.21	0.02	0.24
NCP	0.90	0.68	8.06	9.64

70. Thirty per cent of their income which these political parties would have otherwise paid by way of income tax has been given up in their favour by the Central Government. No one can dispute that this is substantial financing, though indirectly. Added to this the concessional allotment of land and buildings in prime locations in the national capital and, probably, in several state headquarters, if not at district level also, the total amount of direct and indirect financing/funding of these political parties is considerable. On behalf of the political parties, it has been argued that the income tax exemption cannot be said to be a form of financing. In support of this argument, they have submitted that such concessions and exemptions are routinely extended to many charitable and non-profit non-governmental organisations across the country. Therefore, according to them, if those numerous non-governmental organisations are not considered to be public authorities, there is no reason why the political parties should be considered so. We cannot accept this argument. There is a great difference between the tax exemption given to charitable and non-profit non-governmental organisations and that given to the political parties. The exemption given to the former is strictly conditional: full or part exemption is given to these organisations only if they pursue the objectives outlined in their respective charters, be it the memorandum of association and bye-laws in case they are societies or the trust deeds, in case they are private trusts. There are other strict conditions laid down in the Income Tax Act which the assessee must comply with. In other words, if any of these non-governmental organisations are found not to be pursuing their objectives or spending the tax exempt amount on activities other than what is enshrined in their respective charters or not comply with the conditions, their entire income becomes subject to taxation, sometimes with penalty. On the other hand, the tax exemption given to the political parties is complete, the only condition being that they must report to the Election Commission of India, every year, the details of all the contributors who contribute Rs. 20,000 or more to the political party concerned. Thus, the political parties enjoy an almost unfettered exemption from payment of income tax, a benefit not enjoyed by any other charitable or non-profit non-governmental organisations.


(अ. क. गिर्धार)
(R. K. GIRDHAR)
अ. क. गिर्धार / Under Secretary
अ. क. गिर्धार / Assistant Secretary
अ. क. गिर्धार / Assistant Secretary
अ. क. गिर्धार / Assistant Secretary
अ. क. गिर्धार / Assistant Secretary

71. It has been also argued before us that Political Parties are beneficiaries of free air time on All India Radio. The amounts spent by the State in this regard on AIR for Lok Sabha Elections – 2009 in respect of various Political Parties is depicted in para 18(ii) of this order. Similarly, the amounts spent by the State on free air time on Doordarshan on various Political Parties is depicted in para 18(iii). These amounts may be small but they contribute to the kitty of Political Parties at the Government cost.

72. In view of the above, we are of the considered opinion that Central Government has contributed significantly to the indirect financing of Political Parties in-question.

73. However, the question remains whether the aforesaid financing can be held to be 'substantial financing' in terms of section 2(h)(d)(i) of the RTI Act. Justice Ravindra Bhat of Delhi High Court in judgment dated 7.1.2010 in Indian Olympic Association –vs- Veeresh Malik and Ors. (WP)(C) No. 876/2007 has observed that the expression 'Public Authority' has to be interpreted liberally and not restrictively. Paras 45 & 46 of his order are extracted below :-

“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 coloured 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 irrespective of the


(अति. क. गिरधर)
(R. K. GIRDHAR)
अति. सहा. / Under Secretary
सं. स. विभाग, पर्सनल & टि. ग.
Ministry of Personnel & Tg.
Deptt. of Personnel & Tg.
Govt. of India
पर्सनल विभाग

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.

46. The term "non-government organization" has not been used in the Act. It is a commonly accepted expression. Apparently, the expression was used the first time, in the definition of "international NGO" (INGO) in Resolution 288(X) of ECOSOC on February 27, 1950 as "any international organization that is not founded by an international treaty". According to Wikipedia "...Non-governmental organization (NGO) is a term that has become widely accepted as referring to a legally constituted, non-governmental organization created by natural or legal persons with no participation or representation of any government. In the cases in which NGOs are funded totally or partially by governments, the NGO maintains its non-governmental status and excludes government representatives from membership in the organization. Unlike the term intergovernmental organization, "non-governmental organization" is term in general use but is not a legal definition. In many jurisdictions these types of organization are defined as "civil society organizations" or referred to by other names..." Therefore, inherent in the context of a "non-government" Organization is that it is independent of government control in its affairs, and is not connected with it. Naturally, its existence being as a non-state actor, the question of its establishment or constitution through a government or official notification would not arise. The only issue in its case would be whether it fulfills the "substantial financing" criteria, spelt out in Section 2(h). Non-government organizations could be of any kind; registered societies, co-operative societies, trusts, companies limited by guarantee or other juristic or legal entities, but not established or controlled in their management, or administration by state or public agencies."

74. As to the question of 'substantial financing', the Delhi High Court in the said judgment has held that 'majority' test is not appropriate to decide whether or not an Organisation is substantially financed, directly or indirectly, by the appropriate Government. It has been observed that financing in percentage terms in relation to the total budget of the body is not important. To quote:-

"60. 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 nongovernment organization means that it is independent of any manner of government control in its establishment, or management. That the


(अ.क. गि. धार)
(R. K. GIRDHAR)
अ.क. गि. धार / Under Secretary
अ.क. गि. धार / अ.क. गि. धार
अ.क. गि. धार / अ.क. गि. धार
अ.क. गि. धार / अ.क. गि. धार

organization does not perform – or pre-dominantly performs – “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. This view, about coverage of the enactment, without any limitation, so long as there is public financing.”

75. A similar view has been taken by the Karnataka High Court in Bangalore International Airport Limited – Vs – Karnataka Information Commission (WP 12076/2008) The operative para of the order dated 9.2.2010 is extracted below :-

“It is to be noticed that as observed earlier, wording, “non-government organisation substantially financed, directly or indirectly” is required to be split into two. Whether the non-government organisation is substantially financed directly that is the cash flow would come from the Government agency or indirectly which would necessarily mean that the exemptions are granted to the non-government organisation. In the case on hand, it is to be noticed that a perusal of the agreements would conclusively go to show that the petitioner-BIAL is a beneficiary of innumerable exemptions which, if one were to translate into cash flow would certainly cascade into a substantial amount. Another factor which is required to be taken note of is large chunk of land to the extent of 4000 acres of prime agricultural land is acquired by paying enormous amounts as compensation to the farmers who owned the lands. It is estimated that this amount would run into hundred of crores.”

The Learned Judge further held that :-

“Let us now consider what are the implications of the words ‘substantially financed’. It is obvious that as per Section 2(h)(i) “body substantially financed” would be a body where the ownership may not lie with the Government, nor the control. Hence clearly the wording ‘substantially financed’ would have to be given meaning at less than 50% holding. The company law gives significant rights to those who own 26% of the shares in a company. Perhaps this could be taken to define the criterion of ‘substantial finance’. *The finance could be as equity or subsidies in land or concession in taxation*”.

76. The gravamen of the above judgments is that for a private entity to qualify to be a public authority, substantial financing does not mean majority financing. What is important is that the funding by the appropriate Government is achieving a “felt need of a section of the public or to secure larger societal goals”. The ratio of the above judgments, particularly of Delhi High Court, applies to the present case. Large tracts of land in prime areas of Delhi have been placed at the disposal of the Political Parties in-question at exceptionally low rates. Besides, huge Government accommodations have been placed at the disposal of Political Parties at hugely


(अ.क. गिर्धार)
(R. K. GIRDHAR)
(R. K. Girdhar / Under Secretary)
आर.के. गिर्धार, सचिव
कानून, आ.क. गिर्धार & ए.ए.
देवर, सचिव / Govt. of India
नया दिल्ली

cheap rates thereby bestowing financial benefits on them. The Income Tax exemptions granted and the free air time at AIR and Doordarshan at the time of elections also has substantially contributed to the financing of the Political Parties by the Central Government. We have, therefore, no hesitation in concluding that INC/AICC, BJP, CPI, CPI(M), NCP and BSP have been substantially financed by the Central Government and, therefore, they are held to be public authorities under section 2(h) of the RTI Act.

Performance of Public Duty

77. The Political Parties are the life blood of our polity. As observed by Laski "The life of the democratic state is built upon the party system". Elections are contested on party basis. The Political Parties select some problems as more urgent than others and present solutions to them which may be acceptable to the citizens. The ruling party draws its development programs on the basis of its political agenda. It is responsible for the growth and development of the society and the nation. Political Parties affect the lives of citizens, directly or indirectly, in every conceivable way and are continuously engaged in performing public duty. It is, therefore, important that they become accountable to the public.

78. Political Parties are the unique institution of the modern constitutional State. These are essentially political institutions and are non-governmental. Their uniqueness lies in the fact that in spite of being non-governmental, they come to wield or directly or indirectly influence exercise of governmental power. It would be odd to argue that transparency is good for all State organs but not so good for Political Parties, which, in reality, control all the vital organs of the State.

79. In the W.P. No.12076 of 2008 dated 9.2.2010 in the case of Bangalore International Airport Limited vs Karnataka Information Commission, the Karnataka High Court has held that:-

“A public authority may be described as a person or administrative body entrusted with functions to perform for the benefit of the public and not for private profit. Not every such person or body is expressly defined as a public authority or body, and the meaning of a public authority or body may vary according to the statutory context; one of the distinguishing features of an authority not being a public authority, is profit making. It is not incumbent that a body in order to be a public body must always be constituted by a statute; for an authority to be a ‘public authority’ it must be an authority exercised or capable of being exercised for the benefit of the public.”

[illegible]

80. The purity of elections assumes critical significance in this context. In *Union of India vs. Association of Democratic Reforms & Anr* (AIR 2002 SC 2112), the Supreme Court has laid emphasis on the purity of elections in the following words:-

“To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the Political Parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basis elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.”

81. The National Commission to Review the Working of the Constitution in its report submitted in March 2002 has recommended that Political Parties as well as individual candidates be made subject to a proper statutory audit of the amounts they spend. In Common Cause (A Registered Society vs. Union of India) (AIR 1996 SC 3081), the Supreme Court has dealt with the income and expenditure incurred by the Political Parties and has laid emphasis on transparency on election funding.

82. The people of India must know the source of expenditure incurred by Political Parties and by the candidates in the process of election. These judicial pronouncements unmistakably commend progressively higher level of transparency in the functioning of Political Parties in general and their funding in particular.

83. We may also add that the Preamble to the Constitution of India aims at securing to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; and, EQUALITY of status and of opportunity. Coincidentally, the preamble of RTI Act also aims to promote these principles in the form of transparency and accountability in the working of the every public authority. It also aims to create an 'informed citizenry' and to contain corruption and to hold government and their instrumentalities accountable to the governed. Needless to say, Political Parties are important political institutions and can play a critical role in heralding transparency in public life. Political Parties continuously perform public functions which define parameters of governance and socio-economic development in the country.


 (आ. के. गिरार)
 (R. K. GIRHAR)
 अवर सचिव / Under Secretary
 रक्षा प्रशिक्षण & तालिम
 स्टाफकॉरps of Personnel & Training
 डीआरजी, दिल्ली

84. In view of the nature of public functions performed by Political Parties and the dicta of the High Court extracted above, we conclude that Political Parties in question are Public Authorities under section 2(h) of the RTI Act.

Constitutional/legal provisions vesting Political Parties with rights and liabilities

85. The appellants have also contended that Political Parties have constitutional and legal rights and liabilities and, therefore, need to be held to be Public Authorities. The argument runs thus. Political Parties are required to be registered with the ECI under section 29A of the R.P. Act, 1951 – a Central Legislation. An association or body gets the status of a political party on its registration. ECI awards symbols to Political Parties under the Election Symbols (Reservation and Allotment) Order, 1968, only after registration. The ECI calls for details of expenses made by the Political Parties in the elections. Contributions of the value of Rs. 20,000/- and above received from any person or a Company by a Political Party are required to be intimated to ECI under section 29C of the R.P. Act. ECI is vested with the superintendence, direction and control of elections under Article 324 of the Constitution. ECI is also vested with the authority to suspend or withdraw recognition of a political party in certain contingencies. More importantly, Political Parties can recommend disqualification of Members of the House in certain contingencies under the Tenth Schedule. The contention is that the aforesaid constitutional/statutory powers of Political Parties bring them in the ambit of section 2(h).

86. We find the above submissions quite compelling and unerringly pointing towards their character as public authority.

Stand of Political Parties

87. It may be recalled that the INC/AICC and the BJP have made a bland assertion that they are not Public Authorities under the RTI Act. CPI(M) has disclosed some information to the Commission regarding allotment of land to it by the Central Government on certain terms and conditions but has not conceded that it is Public Authority under section 2(h) of the RTI Act. The contentions of the above parties have to be rejected in the light of findings recorded herein above.


(अ. क. गिर्धार)
(R. K. GIRDHAR)
अ. स. स. / Under Secretary
कर्मचारी एवं शिक्षण विभाग
Deptt. of Personnel & Trg.
भारत सरकार / Govt. of India

88. Interestingly, the CPI office bearers have taken a contradictory stand. While Shri A.B. Bardhan in his letter dated 21.3.2011 addressed to Shri Anil Bairwal has stated that CPI is a Public Authority under section 2(h), on the other hand Shri Sudhakar Reddy, vide letter dated 24.9.2012 sent to the Commission, has taken the stand that Political Parties do not fall in the ambit of section 2(h). As the stand of CPI is confusing, it does not call for any comments.

89. However, the submissions made by Shri A.A. Tiwari, counsel for Nationalist Congress Party need to be dealt with at some length. It is his contention that free air time granted to the NCP during the elections on National Television and National Radio does not amount to government financing of NCP as it is a popular practice in other democracies of the world. According to him, free provisioning of electoral rolls of Political Parties is a statutory requirement and cannot be construed as substantial financing. Similarly, allotment of plots of land/Government accommodation to Political Parties at economical rates cannot be construed as substantial financing. Similarly, tax exemption under section 13A given to Political Parties under the provisions of the statute also cannot be construed as financing of Political Parties by the Central Government.

90. The arguments of Shri Tiwari cannot be accepted by us in the light of statutory provisions and the case law referred to hereinabove and they have to be rejected. We may further add that his contention that NCP has received less than 1.55% of its total funding from the Government also cannot be accepted by us as he has not produced any figures before us to substantiate this claim. Further, assuming that these figures are true, this contention is liable to be rejected on the ground that NCP, being a Political Party, performs public functions, which along with other reasons mentioned above, qualifies it to be Public Authority under section 2(h).

91. Yet another contention of Shri Tiwari is that if Political Parties are held to be Public Authorities, then the political rivals would maliciously flood their CPIOs with numerous RTI applications at the time of elections thereby wasting their time and energy and, thus, causing detriment to their political functioning. In our view, the validity of a statute cannot be questioned only on the basis of presumption of its possible misuse. On the contrary, we are of the opinion that bringing the Political Parties in the ambit of RTI Act is likely to usher an era of transparency in their functioning. Besides it would result in strengthening of democracy and



(आर. के. गिर्धार)
(R. K. GIRDHAR)
अवर सचिव/Under Secretary
कार्गिल का संचालन विभाग
Deptt. of Personnel & Trg.
संयुक्त सचिव/Genl. of India

democratic institutions in the country. In view of the above discussion, we do not find any merit in the submissions of Adv. Tiwari and reject the same.

92. In view of the above discussion, we hold that INC, BJP, CPI(M), CPIO, NCP and BSP have been substantially financed by the Central Government under section 2(h)(ii) of the RTI Act. The criticality of the role being played by these Political Parties in our democratic set up and the nature of duties performed by them also point towards their public character, bringing them in the ambit of section 2(h). The constitutional and legal provisions discussed herein above also point towards their character as public authorities. The order of the Single Bench of this Commission in Complaint No. CIC/MISC/2009/0001 and CIC/MISC/2009/0002 is hereby set aside and it is held that AICC/INC, BJP, CPI(M), CPI, NCP and BSP are public authorities under section 2(h) of the RTI Act.

93. The Presidents, General/Secretaries of these Political Parties are hereby directed to designate CPIOs and the Appellate Authorities at their headquarters in 06 weeks time. The CPIOs so appointed will respond to the RTI applications extracted in this order in 04 weeks time. Besides, the Presidents/General Secretaries of the above mentioned Political Parties are also directed to comply with the provisions of section 4(1) (b) of the RTI Act by way of making voluntary disclosures on the subjects mentioned in the said clause.

94. The complaints are disposed off as per the above directions.

(Mrs. Annapurna Dixit)
Information Commissioner

(M. L. Sharma)
Information Commissioner

(Satyananda Mishra)
Chief Information Commissioner

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the Additional Registrar of this Commission.


(अ. क. गिर्धार)
(R. K. GIRDHAR)
अ. स. स. स. / Under Secretary
अ. स. स. स. / Asst. Secy.
अ. स. स. स. / Asst. Secy.
Deptt. of Personnel & Trg.
स. स. स. / Govt. of India

(आ. के. गिरधर)
 (R. K. GIRDHAR)
 अवर सचिव, Under Secretary
 कोर्टों के प्रशासनिक विभाग
 Deptt. of Personnel & Insp.
 भारत सरकार, भारत, India

76

AN EXTRACT OF REPRESENTATION OF THE PEOPLE ACT, 1951

29A. Registration with the Election Commission of associations and bodies as political parties. — (1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act.

(2) Every such application shall be made, —

(a) if the association or body is in existence at the commencement of the Representation of the People (Amendment) Act, 1988 (1 of 1989), within sixty days next following such commencement;

(b) if the association or body is formed after such commencement, within thirty days next following the date of its formation.

(3) Every application under sub-section (1) shall be signed by the chief executive officer of the association or body (whether such chief executive officer is known as Secretary or by any other designation) and presented to the Secretary to the Commission or sent to such Secretary by registered post.

(4) Every such application shall contain the following particulars, namely:—

(a) the name of the association or body;

(b) the State in which its head office is situate;

(c) the address to which letters and other communications meant for it should be sent;

(d) the names of its president, secretary, treasurer and other office-bearers;

(e) the numerical strength of its members, and if there are categories of its members, the numerical strength in each category;

(f) whether it has any local units; if so, at what levels;

(g) whether it is represented by any member or members in either House of Parliament or of any State Legislature; if so, the number of such member or members.

(5) The application under sub-section (1) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.

(6) The Commission may call for such other particulars as it may deem fit from the association or body.

(7) After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being heard, the Commission shall decide either to register the association or body as a political party for the purposes

(Signature)
 (Sd/-) **GIRDHAR**
 (R. K. GIRDHAR)
 Secy. to the Election Commission
 and Secy. to the Government of India
 Ministry of P. & I.
 Delhi

of this Part, or not so to register it; and the Commission shall communicate its decision to the association or body:

Provided that no association or body shall be registered as a political party under this sub-section unless the memorandum or rules and regulations of such association or body conform to the provisions of sub-section (5).

(8) The decision of the Commission shall be final.

(9) After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or in any other material matters shall be communicated to the Commission without delay.

29B. Political parties entitled to accept contribution.—Subject to the provisions of the Companies Act, 1956 (1 of 1956), every political party may accept any amount of contribution voluntarily offered to it by any person or company other than a Government company:

Provided that no political party shall be eligible to accept any contribution from any foreign source defined under clause (e) of section 2 of the Foreign Contribution (Regulation) Act, 1976 (49 of 1976).

Explanation.—For the purposes of this section and section 29C,—

(a) "company" means a company as defined in section 3;

(b) "Government company" means a company within the meaning of section 617; and

(c) "contribution" has the meaning assigned to it under section 293A, of the Companies Act, 1956 (1 of 1956) and includes any donation or subscription offered by any person to a political party; and

(d) "person" has the meaning assigned to it under clause (31) of section 2 of the Income-tax Act, 1961 (43 of 1961), but does not include Government company, local authority and every artificial juridical person wholly or partially funded by the Government.

29C. Declaration of donation received by the political parties.—(1) The treasurer of a political party or any other person authorised by the political party in this behalf shall, in each financial year, prepare a report in respect of the following, namely:—

(a) the contribution in excess of twenty thousand rupees received by such political party from any person in that financial year;

(b) the contribution in excess of twenty thousand rupees received by such political party from companies other than Government companies in that financial year.

(2) The report under sub-section (1) shall be in such form as may be prescribed.

(3) The report for a financial year under sub-section (1) shall be submitted by the treasurer of a political party or any other person authorised by the political party in this behalf before the due date for furnishing a return of its income of that financial year under section 139 of the Income-tax Act, 1961 (43 of 1961), to the Election Commission.


(SITC. GIRDHAR)
(R. K. GIRDHAR) Secretary
State Election Commission
Ministry of Panchayati Raj
Government of India
New Delhi
69

(4) Where the treasurer of any political party or any other person authorised by the political party in this behalf fails to submit a report under sub-section (3) then, notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), such political party shall not be entitled to any tax relief under that Act.

75A. Declaration of assets and liabilities.—(1) Every elected candidate for a House of Parliament shall, within ninety days from the date on which he makes and subscribes an oath or affirmation, according to the form set out for the purpose in the Third Schedule to the Constitution, for taking his seat in either House of Parliament, furnish the information, relating to—

- (i) the movable and immovable property of which he, his spouse and his dependant children are jointly or severally owners or beneficiaries;
- (ii) his liabilities to any public financial institution; and
- (iii) his liabilities to the Central Government or the State Government,

to the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.

(2) The information under sub-section (1) shall be furnished in such form and in such manner as may be prescribed in the rules made under sub-section (3).

(3) The Chairman of the Council of States or the Speaker of the House of the People, as the case may be, may make rules for the purposes of sub-section (2).

(4) The rules made by the Chairman of the Council of States or the Speaker of the House of the People, under sub-section (3) shall be laid, as soon as may be after they are made, before the Council of States or the House of the People, as the case may be, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and shall take effect upon the expiry of the said period of thirty days unless they are sooner approved with or without modifications or disapproved by the Council of States or the House of the People and where they are so approved, they shall take effect on such approval in the form in which they were laid or in such modified form, as the case may be, and where they are so disapproved, they shall be of no effect.

(5) The Chairman of the Council of States or the Speaker of the House of the People, as the case may be, may direct that any wilful contravention of the rules made under sub-section (3) by an elected candidate for a House of Parliament referred to in sub-section (1) may be dealt with in the same manner as a breach of privilege of the Council of States or the House of the People, as the case may be.

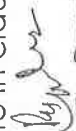
Explanation.—For the purposes of this section,—

(i) "immovable property" means the land and includes any building or other structure attached to the land or permanently fastened to anything which is attached to the land;

(ii) "movable property" means any other property which is not the immovable property and includes corporeal and incorporeal property of every description;

(iii) "public financial institution" means a public financial institution within the meaning of section 4A of the Companies Act, 1956 (1 of 1956), and includes bank;

(iv) "bank" referred to in clause (iii) means—


(आर. के. गिर्धार)
(R. K. GIRDHAR)
अवर सचिव/Under Secretary
कर्मचारी एवं अधिकार, कानून
Officer of Personnel & Trg.
आर. के. गिर्धार/Officer of Insp.

Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (ii) dies or ceases to be a member of such political party, by further communication to the Election Commission and the Chief Electoral Officers of the States, substitute new name, during the period ending immediately before forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election, for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place.

(2) The account shall contain such particulars, as may be prescribed.

(3) The total of the said expenditure shall not exceed such amount as may be prescribed.

78. Lodging of account with the district election officer.—(1) Every contesting candidate at an election shall, within thirty days from the date of election of the returned candidate or, if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates, lodge with the district election officer an account of his election expenses which shall be a true copy of the account kept by him or by his election agent under section 77.

125A. Penalty for filing false affidavit, etc.—A candidate who himself or through his proposer, with intent to be elected in an election,—

(i) fails to furnish information relating to sub-section (1) of section 33A; or

(ii) give false information which he knows or has reason to believe to be false; or

(iii) conceals any information,

in his nomination paper delivered under sub-section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

(Signature)
Sd/- (R. K. GIRDHAR)
(R. K. GIRDHAR)
(R. K. GIRDHAR)
Joint Secy. / Joint Secy. & Trg.
Ministry of Personnel & Public
Affairs

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1)

Information (Amendment) Act, 2013, shall have effect and shall be deemed always to have effect, in the case of any association or body of individuals registered or recognised as political party under the Representation of the People Act, 1951 or any other law for the time being in force and the rules made or notifications issued thereunder.”.

(By) Dr. P. K. Ghosh
 (Signature)
 Dr. P. K. Ghosh
 (Name)
 (Address)
 Dr. P. K. Ghosh
 (Address)
 Dr. P. K. Ghosh
 (Address)

STATEMENT OF OBJECTS AND REASONS

The Right to Information Act, 2005 was enacted by the Government for setting out a framework for effectuating the right to information for citizens and 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.

2. The Central Information Commission in one of its decision dated 03.06.2013 has held that the political parties namely AICC/INC, BJP, CPI (M), CPI, NCP and BSP are public authorities under section 2(h) of the said Act. The Government considers that the CIC has made a liberal interpretation of section 2(h) of the said Act in its decision. The political parties are neither established nor constituted by or under the Constitution or by any other law made by Parliament. Rather, they are registered or recognised under the Representation of the People Act, 1951 and the rules/orders made or issued thereunder.

3. It has also been observed that there are already provisions in the Representation of the People Act, 1951 as well as in the Income-tax Act, 1961 which deals with the transparency in the financial aspects of political parties and their candidates.

4. Declaring a political party as public authority under the RTI Act would hamper its smooth internal working, which is not the objective of the said Act and was not envisaged by Parliament under the RTI Act. Further, the political rivals may misuse the provisions of RTI Act, thereby adversely affecting the functioning of the political parties.

5. In view of above, the Government has decided to amend the RTI Act to keep the political parties out of the purview of the RTI Act, with a view to remove the adverse effects of the said decision of the CIC. It is also necessary to give retrospective effect to the proposed amendment with effect from the date of the said decision of CIC, that is, 3rd day of June, 2013.

6. The Bill seeks to achieve the above objects.

NEW DELHI;

The 5th August, 2013.

V. NARAYANASAMY

(Sd/-)
श्री. गिर्धार
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to amend the Right to Information Act, 2005.

(Shri V. Narayanasamy, Minister of State in the Ministry of Personnel,
Public Grievances and Pensions)

GMGIPMRND—1750 L(S4)—07-08-2013.

(Signature)
श्री. गिरीधर
(श्री. गिरीधर)
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Central Information Commission
August Kranti Bhawan
Bhikaji Cama Place, New Delhi-110066

F.No.CIC/CC/C/2015/000182

Present:

Complainant : 1. Shri Subhash Chandra Agrawal

: 2. Prof. Jagdeep Chhokar, Shri Anil Verma and Ms Shivani Kapoor, (authorized representatives of Shri Anil Bairwal)

Intervener : Shri R.K. Jain

Respondents : 1. Indian National Congress (INC)/ All India Congress Committee (AICC);
2. Bharatiya Janata Party (BJP);
3. Communist Party of India (Marxist) (CPM);
4. Communist Party of India (CPI);
5. Nationalist Congress Party (NCP);
6. Bahujan Samaj Party (BSP)
(all the respondents were absent)

Dates of Hearing : 21.11.2014 and 07.01. 2015

Date of Decision : 16.03. 2015

Order

1. The case was heard on 21.11.2014 and 07.01.2015 after a notice of enquiry issued on 03.11.2014 (F.No.CIC/SM/C/2011/001386 and 000838) under section 18(2) of the Right to Information Act, 2005 (RTI Act). The complaint was that the Commission's order of 03.06.2013 had not been implemented. Submissions were made by the complainants, Shri Subhash Chandra Agrawal and Prof. Jagdeep Chhokar (authorized representative of

(अति. के. गिरधर)
(R. K. GIRDHAR)
अति. सचिव / Under Secretary
अति. सचिव / सहायक सचिव
कर्मचारी सेवा विभाग & TPO.
Deptt. of Personnel & TPO.
भारत सरकार / Govt. of India
भारत

Shri Anil Bairwal). The intervener, Shri R.K. Jain, also made submissions. The respondents did not attend the hearings.

Background

2. It may be recalled that Shri Agrawal in application dated 16.05.2011 had asked the Presidents/ General Secretaries of the INC/AICC and the BJP to supply information, *inter alia*, relating to election manifestos, fulfilment of promises, receipts and payments, proposals to Government and Election Commission about electoral reforms, etc. The Treasurer, AICC, by letter dated 20.05.2011 informed Shri Agrawal that INC/AICC did not come under the RTI Act. The BJP by letter dated 28.05.2011 informed Shri Agrawal that the BJP, not being a public authority, was not obliged to provide the information sought.
3. Shri Bairwal, in his application dated 29.10.2010, had asked the six national political parties, i.e., INC/AICC, BJP, CPI(M), CPI, NCP and BSP, to provide information about the sources, for a certain period, of the ten largest voluntary contributions. The Treasurer, AICC, by a letter dated 15.11.2010 informed Shri Bairwal that AICC did not come under the RTI Act. The NCP on 27.11.2010 informed that NCP was an NGO without resources for this work, while stating that the information be collected from the Election Commission and the Income Tax authorities with whom they were regularly filing returns. The CPI on 06.11.2010 informed the applicant about the sources of the ten maximum voluntary contributions as requested. The other political parties did not respond to Shri Bairwal.
4. Shri Agrawal and Shri Bairwal filed complaints in this Commission contending that the said national political parties came under the definition of "public authorities" in section 2(h) of the RTI Act. The complaints were heard by this Commission on 26.09.2012 and 01.11.2012. An order dated 03.06.2013 was passed.
5. The order held that the aforementioned national political parties were public authorities. The Presidents/ General Secretaries of these parties were directed to designate Central Public Information Officers (CPIOs) and appellate authorities at headquarters in six weeks. It was directed that the CPIOs respond to the RTI applications in four weeks time. The Presidents/ General Secretaries of these parties were also directed to comply with the provisions of section 4(1)(b) of the RTI Act.

Notice dated 03.11.2014 for enquiry

6. Shri Agrawal informed the Commission by representations dated 27.08.2013, 10.12.2013 and 23.12.2013 that none of the political parties had complied with the directions in the order of 03.06.2013. Accordingly, a

(आर. के. गिरवार)
(R. K. GIRDHAR)
अवर सचिव/Under Secretary
आर. के. गिरवार, पंजीयन
अधिकारी, जनसंपर्क व प्रशिक्षण
विभाग, लोकसभा, नई दिल्ली
Deputy Secy. of Personnel & Trg.
Shri Agrawal / Govt. of India

(3) the need to identify the steps requisite for ensuring implementation of this Commission's order of 03.06.2013.

11. The Commission decided to provide another opportunity to the respondents to present their case. This would also be a chance for the complainants and intervenor to make further submissions. The interim order of 28.11.2014 fixed 07.01.2015 as the date for hearing.

Hearing on 07.01.2015

12. The respondents were absent during the hearing on 07.01.2015.

13. The complainants, Shri Agrawal and Prof. Jagdeep Chhokar, and the intervener, Shri R.K. Jain, made submissions. The points on which they appeared more or less to be in agreement are:

(1) there is collusion between the respondent national political parties for not appearing before the Commission; this persistent ignoring of notices by the respondents and their keeping distance from the proceedings has affected the Commission's effectiveness;

(2) the Commission's order of 03.06.2013 is valid, final and binding on the respondent national political parties under the RTI Act;

(3) none of the respondents have approached the higher courts in appeal or writ petition, and that this was in accordance with the Attorney-General's advice, which recognized the legal strength and normativeness of the Commission's order of 03.06.2013;

(4) no parliamentary amendment Bill is under consideration currently for keeping political parties out of the RTI Act's purview; an earlier Bill had lapsed as the respondents did not pursue any legislative action to insulate the parties from information-disclosure to avoid giving the impression of being opposed to transparency;

(5) the willful non-compliance by the political parties comes from blatant defiance, intended to irretrievably weaken the Commission;

(6) the need for imposition of penalty and award of compensation;
(7) the enquiry initiated under section 18(2) of the RTI Act by the Commission's notice of 03.11.2014 should now be concluded.

Submissions by Shri Agrawal on 21.11.2014 and 07.01.2015

14. Shri Agrawal said that the political parties who legislated the right to information are themselves not respecting the law made by them, which has impacted adversely on the image of India's democracy. Shri Agrawal said that the absence of the respondents from the hearings was an "unprecedented situation", which was "...deeply motivated and hued in the colours of blatant defiance of the Commission's authority..." and that this

के. निरधर)
(आर. K. GIRDHAR)
(R. K. GIRDHAR)
अवर सचिव / Under Secretary
आर. के. गिर्धार के पी. ए. सी.
कीर्तिक डेंटल
संस्कृत / Dept. of India
आर. के. गिर्धार के पी. ए. सी.

“...was an advertent disrespect of the Commission, to impede the ability of the Commission to perform its statutory function...”

15. Shri Agrawal further said that:

- * non-compliance and the denial of information has hurt the proper exercise of voting rights; there is difficulty in making choice of the right candidate in the absence of information; many voters will not press the NOTA (none-of-the-above) button if they had access to information;
- * Commission should take the “most stringent view”, and impose “maximum penalty” along with “exemplary compensation” on the President/Secretary of the defaulting political parties; though, as the hearing progressed it was indicated by the complainant that he could consider compensation for the actual loss, and would also be ready to accept a token compensation;
- * Commission should make recommendations under section 25(5) of the RTI Act to the pertinent departments and agencies for withdrawal of government funded privileges such as accommodation on prime land, free media time, income tax exemptions, etc.; the need was mentioned for reviewing the criteria for registering political parties for availing facilities, e.g., copies of voter lists, etc.; with a view to screening out the “non-serious” parties, i.e., such as those not complying with the Commission’s order of 03.06.2013;
- * the Election Commission can provide substantial help to this Commission for getting the order of 03.06.2013 implemented;
- * the order of 03.06.2013 has not been challenged in a higher court, and that it is binding on the parties;
- * the intention of the then Government had been, as per advice of its Attorney-General, not to appeal against the Commission’s order in the courts and to also desist from pursuing any amendment to the RTI Act for keeping political parties out of the definition of “public authority”;
- * show-cause notice for penalty be sent to the President/ General Secretaries of the political parties, taking into account that CPIOs/ appellate authorities had not been appointed;
- * that the political parties may defy orders to pay penalty on the pretext that no CPIO has been appointed.

Submissions by Prof. Chhokar on 21.11.2014 and 07.01.2015

16. Prof. Chhokar said that he generally agreed with Shri Agrawal, but was not in concurrence on certain points. Prof. Chhokar further submitted that he strongly objected to the absence from the process of the respondent national political parties despite the several opportunities given by this Commission. He said that this has not only caused detriment to the complainant, but has also impacted adversely on the reputation of the state

(आर. के. गिरहार)
(R. K. GIRDHAR)
आर. के. गिरहार / Under Secretary
आर. के. गिरहार / सचिव
कार्यालय सचिव
Deptt. of Personnel & Training
Ministry of Home Affairs, Govt. of India

instruments. Prof. Chhokar said that the situation is unforeseen, created by the arrogance of the respondents and their unseemly defiance of the Commission. Prof. Chhokar said that a notice for imposition of penalty and award of compensation be issued to the President/ General Secretary of the national political parties.

17. Prof. Chhokar further elaborated that:

- * sections 18, 19 and 20, all part of the RTI Act's chapter V, must be read together as an integrated whole and be "interpreted and effectuated in conjunction with the statute in its entirety";
- * there was the need to recognize adequately the growing public cynicism on account of non-compliance by the national political parties and their sidelining of the Commission's directives; and the detrimental effect of such an attitude on the state of democracy;
- * there is a public expectation that the Commission would take effective steps to restore the rule of law and respect for institutions that has received a serious setback on account of non-compliance of the order of 03.06.2013, which "stands frustrated";
- * the statute has vested sufficient powers in the Commission for ensuring compliance with the law laid out in the RTI Act;
- * in the absence of CPIO, penalty be imposed on the President/ Secretary of the political parties; and that accordingly a notice be issued; and similar commensurate action be taken for award of compensation;
- * in context of awarding compensation, the detriment suffered does not necessarily have to be specifically linked with an individual complainant, the detriment could be on the "state of democracy", which in the present case is "serious and potentially catastrophic", and that this was a case where exemplary punishment be awarded;
- * the compensation should be equal to five percent of the average of the annual income as declared by the six political parties in their income tax returns;
- * that the complainant has the legal standing to claim compensation on behalf of the democracy of the country;
- * that the Commission can ensure attendance of the respondents as per section 18(3) of the RTI Act, which equips the Commission with the powers of a civil court under the Civil Procedure Code; but it is doubtful if any useful purpose would be served in prolonging the enquiry;
- * notices be issued to the respondents for penalty and compensation, even if past behaviour indicates that they will ignore the process.

Submissions by Shri Jain on 21.11.2014 and 07.01.2015

18. Shri R. K. Jain, stated the following:

(अ.क. गिरोह)
(R. K. GIROHAR)
अवर सचिव / Under Secretary
आंतरिक मामलों, आंध्र प्रदेश सरकार
भारत सरकार / Govt. of India

- * the order of 03.06.2013 passed by this Commission is valid, binding and final;
- * that the order of 03.06.2013 was a "composite order in which a complete system was directed to be set up along with creation of an operational mechanism", including a CPIO at the headquarters of the six national political parties with appellate authorities, which respond to information-seeking applications in accordance with the stipulated timelines, along with taking action on the voluntary disclosure provisions;
- * that the order is not ex-parte but passed after giving the respondents opportunity to be heard; and that the manner of violation of the directions in this order is a deliberate denigration of this Commission's authority;
- * none of the political parties has challenged the order before the High Court or Supreme Court, therefore, the same has become final and binding under section 19(7) of the RTI Act;
- * the jurisdiction of the Commission to pass the said order of 03.06.2013 cannot be questioned at this stage before this Commission;
- * the statement by the INC/ AICC (see para 22 below) about the continuing pendency of an amendment Bill to keep political parties outside the RTI Act's purview is not borne out by facts;
- * an order, such as that of 03.06.2013, cannot just be passed and left in a vacuum and that, despite the lack of directness in the RTI Act, the Commission has the requisite powers, even if incidental and ancillary, to get its orders enforced;
- * action on non-compliance of the orders passed by this Commission can be validly undertaken under section 18 of the RTI Act, which defines the powers and functions of the Commission.

19. Reference Shri Agrawal's proposal to make recommendations under section 25(5) of the RTI Act, i.e., to cease grant of concessions and subsidies to the political parties, Shri Jain submitted that this Commission should not go beyond the directions given in its order of 03.06.2013. As regards the suggestion of Prof. Chhokar on compensation, Shri Jain said that a complainant cannot ask for compensation on behalf of all the citizens of the country, and that the compensation has to be confined to the "sufferings" of the information seeker, taking into account also that the order of 03.06.2013 is time bound and not an open ended order.

Approach of the Respondents

- 20. The respondents did not attend the hearing on 21.11.2014. Another date, 07.01.2015, was fixed, but the respondents, again, did not appear.
- 21. Letters from the respondents, received in the Commission prior to the notice of 03.11.2014, have been referred to in paras 6 and 7, above.

(अ. क. गिर्धार)
(R. K. GIRDHAR)
अ. क. गिर्धार / Under Secretary
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अ. क. गिर्धार / अ. क. गिर्धार
Deptt. of Personnel & HR
Ministry of Home Affairs / Govt. of India

Subsequent to the notice a letter dated 06.01.2015 was received from INC/AICC. The complainants/ interveners present on 07.01.2015 for the hearing were given copies of the letter.

22. The aforementioned letter from INC/AICC states that: "...Nothing in the RTI Act suggests that a political party is a "public authority" ... The CIC has expanded its own jurisdiction beyond the letter and spirit of the RTI Act, which is *ex facie* illegal...that the order dated 03.06.2013 is in excess of the powers of the CIC contemplated under Section 18 of the RTI Act...if the CIC so chooses, it may...find out the status of the Right to Information (Amendment) Bill, 2013...it is requested that these proceedings may either be closed or adjourned *sine die* till the final outcome of the proceedings before Parliament."

23. Prof. Chhokar objected to the suggestion of the INC/ AICC in their letter that records be summoned from the Government or the Rajya Sabha/ Lok Sabha Secretariat to find out the status of the Right to Information (Amendment) Bill, 2013 along with requisitioning a copy of the Parliamentary Standing Committee's pertinent report. Prof. Chhokar said that the said Bill had lapsed with the dissolution of the Lok Sabha in 2014.

24. The various responses received from the respondents, generally speaking, are along similar lines. They question the Commission's competence to pass the order of 03.06.2013. The respondents have said that the order is not acceptable to them as it was contrary to law and given without jurisdiction. It was also stated by the respondents that the Parliament is considering a Bill to amend the RTI Act to keep the respondents outside the purview of the Act.

25. The no-jurisdiction argument by the respondents was described as an afterthought by the complainants. The respondents did not challenge the Commission's order of 03.06.2013 in court. To question the Commission's competence or jurisdiction now would be at odds with the substantive weight that has already come to be associated with the order, taking into account the Statement of Objects and Reasons of the RTI (Amendment) Bill, 2013. The Statement recognizes upfront the order's implications and the *raison d'être* of the proposed amendment to the RTI Act. The reason for the amendment is: "... the CIC has made a liberal interpretation of section 2(h) of the said Act..." and that "...Declaring a political party as public authority under the RTI Act would hamper its smooth internal working..." The Commission's jurisdiction is not under question.

26. The plea that the Commission is without jurisdiction is not credible. This cannot be sustained in the light of para 25 above. If, at all, there is a

कै. गिरधर)
(आर. के. गिरधर)
(R. K. GIRDHAR)
अवर सचिव / Under Secretary
अवर सचिव, सचिवालय, विभाग
कायदा, सचिवालय, विभाग
Dept. of Personnel & Prg.
Govt. of India

question, it is not connected with jurisdiction. The Commission has addressed a number of cases in which like matters have been addressed and decided, including, whether an entity is a public authority. It is mentionable that there is a specific provision (section 19(8)(a)(ii)) enabling the Commission to require the public authority to appoint a CPIO. The respondent national political parties were declared to be public authorities, and consequently, the Commission directed appointment of a CPIO in the order of 03.06.2013.

Order of 03.06.2013 – binding and final

27. The Commission's order is binding as per section 19(7) of the RTI Act. The Supreme Court in the case of *Namit Sharma vs Union of India* in WP(Civil) No. 210 of 2012, held "....An order passed by the Commission is final and binding and can only be questioned before the High Court or the Supreme Court in exercise of the Court's jurisdiction under Article 226 and/or 32 of the Constitution, respectively." The respondent national political parties chose not to approach any court.

28. The respondents have not questioned the order of 03.06.2013 before any court. Not only is the order legally correct, it is convincing from the standpoint of the aims and objectives espoused by the RTI Act with reference to transparency, accountability and access to information. It was a full bench of the Commission, which had held in the order that "...It would be odd to argue that transparency is good for all State organs but not so good for Political Parties, which, in reality, control all the vital organs of the State...The criticality of the role being played by these Political Parties in our democratic set up and the nature of duties performed by them also point towards their public character, bringing them in the ambit of section 2(h)... also point towards their character as public authorities. "

29. No competent court has intervened in the matter. The complainants said that none of the respondents went to the courts as the order was legal. It was said that needlessly opposing the order would impair the profile of openness and transparency that political parties and other bodies in public life seek to promote for themselves. The political parties did not wish to be seen as barriers to accountability, hence did not question the Commission's order in any higher court. The RTI (Amendment) Bill, 2013 seeking to keep political parties outside the purview of the RTI Act, was also allowed to lapse. There is no judicial or legislative intervention impacting on the order. The crux is that the order of 03.06.2013 is valid, binding and final.

के. गिरधर)
(आर. K. GIRDHAR)
(R. K. GIRDHAR)
अवर सचिव / Under Secretary
विभाग, विज्ञान, विमान
कमिशन ऑफ पार्लामेंट & टी.
देप्ट. सरकारी / Govt. of India

Closure of Enquiry

30. The complainants and intervenor said that the respondents have deliberately kept away from the hearings, and that even if they would have come, it was unlikely that any contribution would have emanated. It was said that it is reasonable to assume that the respondents will not implement the Commission's order, and that nothing would be achieved in continuing to fix date after date for hearings in the enquiry. Hence, it is pointless to prolong the enquiry taking into account the persistent lack of engagement of the respondents with the process. The indication emerging was that the enquiry should now be concluded.

Assessment of the Hearings

31. The Commission, at the apex of the RTI Act's working mechanism, seeks to ensure access to information held by public authorities, mindful of statutory safeguards, operational norms and timelines. The objective is to promote transparency and accountability for enhancing governance and containing corruption. The provisions help achieve openness along with protection of confidentiality where required. Efficiency and effectiveness are important considerations. Public interest is the guiding light.

32. The Commission attends to: (a) complaints about implementation and institutional shortcomings under section 18; and (b) appeals under section 19 against the decisions taken in public authorities on applications seeking information. In the present case, the hearings on 21.11.2014 and 07.01.2015, following a notice under section 18(2), enquired into complaints that the respondents had not implemented the Commission's order of 03.06.2013.

33. The Commission's powers and functions are defined in chapter V of the RTI Act. There could be many situations requiring the Commission to step in, e.g., grievances against the CPIO for being evasive or delaying information. The working mechanism may be malfunctioning or may not have been set up at all as in the present instance. There can be differences on how to interpret the exemption from disclosure clauses in the RTI Act, the rights and obligations entailed, and the scope of definitions such as "information", "public authority", "record", "right to information", "third party" (section 2(f)(h)(i)(j)(n)).

34. What has happened in the present case is that the respondents have taken no action on the directions given by the Commission on 03.06.2013. Shri Jain described this to be a "complete, comprehensive and composite order", directing the setting up of a "full working apparatus" with timelines

(आर. के. गिरधर)
(R. K. GIRDHAR)
अवर सचिव / Under Secretary
कानून सेवा विभाग, भारत
Dept. of Personnel & Prg.
Ministry of Home Affairs / Govt. of India

for execution. Shri Jain said that the order had the following components: (a) AICC/INC, BJP, CPI(M), CPI, NCP and BSP declared public authorities under section 2(h) of the RTI Act; (b) Presidents/ General Secretaries of the above political parties directed to designate CPIOs and appellate authorities at their headquarters; (c) appointments to be done in six weeks; (d) CPIOs to respond to the RTI applications extracted in the order of 03.06.2013; (e) response to go in four weeks; and (f) Presidents/ General Secretaries of above political parties to comply with section 4(1)(b) of the RTI Act by way of voluntary disclosures.

35. The six national political parties, as public authorities, were directed to comply with the obligations stipulated in the RTI Act. According to chapter II of the RTI Act, the public authorities have to maintain all records duly catalogued and indexed as prescribed, publish information about their working with details about budget, organizational structure, decision making processes, category of documents held, etc. CPIOs and appellate authorities have to be appointed, and systems put in place for disposal of requests and providing information. However, the political parties have not taken any action.

36. In effect, if a citizen under the RTI Act wants to know the ten largest donors to any political party, or whether a party has sent any proposals for electoral reforms to the Election Commission, or about the promises made in an election manifesto, the information-seeker would not know where to file the application. There is no address to send an information-seeking application as the CPIOs and appellate authorities have not been appointed. The complainants, during the hearings, said that non-compliance by the respondents calls for consequences, including imposition of penalty (sections 19(8)(c); 20), the award of compensation (section 19(8)(b)) and recommendations (section 25(5)) about the withdrawal of facilities and concessions granted to the political parties.

37. How to proceed further would have to be discerned from chapter V of the RTI Act, listing the powers and functions of the Commission. The three sections, 18, 19 and 20, in this chapter, at first glance appear to be well juxtaposed and amenable for being grouped together. Prof. Chhokar said that all these sections "must be read together as an integrated whole...." However, in recent times, the case for distinguishing between the nature and scope of the two sections, 18 and 19, has assumed significance, underlined by some court orders. It appears that the contrast between complaints and appeals has become more marked. Section 19 is about responding to appeals arising from the decisions of the CPIO and first appellate authorities, whereas section 18 is about complaints on institutional and operational issues.

(आर. के. गिर्धार)
(R. K. GIRDHAR)
अवर सचिव / Under Secretary
व्यक्तिगत एवं प्रशासन, परामर्श
Deptt. of Personnel & Trg.
भारत सरकार / Govt. of India

38. The present case subscribes to section 18, under which the notice for hearings was issued. Complaints, reference section 18(1)(a)(b)(c)(d)(e)(f), refer to situations of no CPIO having been appointed, denial of information, breach of timelines, unreasonable fees, incomplete or misleading information, restrictions on accessing records, etc., i.e., a range of issues, quite often on the systems side of the Commission's functioning. Section 18, arguably, has a wider canvas than section 19, the latter functioning in a singularly focused way with reference to applications for information, generally speaking, for resolving day-to-day individual issues. Section 18 is supervisory in nature, under which directions can be given also to appoint CPIO, as was done in the present instance.

39. The contrast between the role of the two sections is brought out by the Supreme Court's judgment, dated 12.12.2011 in Chief Information Commissioner vs. State of Manipur (Civil) Appeal Nos. 10787-10788 of 2011: " ... It has been contended before us ... that under Section 18 of the Act the...Commission...has no power to provide access to the information which has been requested for by any person but which has been denied to him. The only order which can be passed by the... Commission...under Section 18 is an order of penalty provided under Section 20... We uphold the said contention and do not find any error in the impugned judgment of the High Court whereby it has been held that the Commissioner while entertaining a complaint under Section 18 of the said Act has no jurisdiction to pass an order providing for access to the information..." In other words, while section 18 can be the route for addressing complaints, it cannot be the pathway to get information.

40. Distinct from section 18, the Commission's role under section 19 is that of the second or final appellate authority to decide appeals against the orders of the first appellate authority, the level higher than the CPIO. Appeals are also heard if no orders are passed by the first appellate authority within the stipulated timeframe. In the present instance, the respondents did not act on the order of 03.06.2013 that directed the appointment of CPIOs and first appellate authorities, hence no mechanism is in existence to enable any action on information-seeking applications.

41. Section 19(8) gives guidance about the directions that the Commission can contemplate in situations such as this where information is not being provided in accordance with the norms or where the mechanism has not been put in place. However, this case is of pre-CPIO stage. Without a CPIO or first appellate authority there is no context for an appeal to the Commission. Despite the Commission's order of 03.06.2013, the CPIO has not been appointed. This is not a case of the CPIO being at

(आर. के. गिर्दहार)
(R. K. GIRDHAR)
आर. के. गिर्दहार / जूनियर सचिव
आर. के. गिर्दहार / जूनियर सचिव
आर. के. गिर्दहार / जूनियर सचिव
Dep. Secy. of Personnel & Train.
Ministry of Home Affairs, Govt. of India

fault. It is the head of the public authority who has omitted to appoint the CPIO. Can the Commission's curative and penal powers be made applicable to the head of the public authority for compelling compliance with the order of 03.06.2013 and the provisions of the RTI Act?

42. The complainants, seeking information, have faced loss and detriment keeping in view that their effort, time and money has not borne fruit on account of non-compliance by respondents. Hence, this should have been a fit case for penalizing the respondents and compensating the complainants. According to section 19(8)(b), the Commission has the power to require the public authority to compensate the complainant for any loss or other detriment suffered. Section 19(8)(c) states that the Commission has the power to impose any of the penalties provided under the RTI Act. But, according to section 20(1), penalty can be imposed only on the CPIO. In this light, questions arise about the outlook for the imposition of penalty and award of compensation.

Penalty

43. The complainants have prayed for imposition of penalty. Section 20(1) of the RTI Act provides that if the Commission is of the opinion that the CPIO has, without reasonable cause, refused to receive any application for information or has not furnished information within the stipulated time or has malafidely denied the information sought or knowingly given incorrect, incomplete or misleading information, a penalty of upto Rs. 25,000 can be imposed by the Commission.

44. Shri Chhokar, the complainant, said that penalty be imposed on the President/ General Secretary of the political parties who had the responsibility to appoint the CPIO. But, the RTI Act is clear: the penalty can be imposed only on the CPIO. Section 20 is invoked when the CPIO is at fault. There is no mention of imposition of penalty on the first appellate authority who very often flout the provisions of the RTI Act by not passing order on the appeals or do so in breach of the prescribed time limits. The intention of the legislature is clear, that the penalty can be imposed only on the CPIO. The RTI Act has made the CPIO the centerpiece on matters of penalty. The provisions specify that the CPIO is entitled to being heard before any penalty is imposed. The onus is on the CPIO to prove that he acted reasonably and diligently.

45. In the instant case, the parties declared as public authorities have failed to appoint CPIOs. So, what to do if the CPIO has not been appointed, i.e, on whom to impose the penalty. The law is silent on this. Imposition of penalty on the political parties or their Presidents/ General Secretaries

(आर. के. गिरधर)
(R. K. GIRDHAR)
अवर सचिव / Under Secretary
काबिनेट एवं प्रशासन विभाग
Deptt. of Personnel & Trg.
भारत सरकार / Govt. of India

would not be correct taking into account that section 20 of the RTI Act speaks of imposition of penalty on the CPIO only. Section 20 also allows the Commission to recommend disciplinary action against a CPIO who has persistently failed to fulfil his responsibilities under the RTI Act. The Commission is unable to resort to this section because there is no CPIO.

Compensation

46. Compensation is awarded under section 19(8)(b) of the RTI Act, which empowers the Commission to order a public authority to compensate the complainant for any loss or any other detriment suffered. How to approach the issue of compensation, keeping in view the variance in the submissions of the two complainants, Shri Agrawal and Prof. Chhokar: They differ on the nature and scope of compensation under the RTI Act and the quantum to be paid.

47. Prof. Chhokar stated that non compliance by the political parties has had a detrimental effect of serious proportions on the state of democracy in the country, generating cynicism and pessimism, while giving credibility to the premise that the respondents, bestowed by the people with political power and authority, are above the law. Prof. Chhokar said that such non-compliance will make citizens lose faith in the legal institutions and democratic values. In this light, Shri Chhokar sought compensation on behalf of "Indian democracy" and "society as a whole". Prof. Chhokar has prayed for award of compensation, equal to five percent of the average annual income as declared by the six parties in their income tax returns, to be paid into the Prime Minister's Relief Fund.

48. Shri Agrawal, on the other hand, seeks compensation for the loss or detriment suffered by him individually as a complainant. Shri Agrawal, in the initial stages of the hearing, pressed for "exemplary compensation". He indicated, later, the need for making good the loss and detriment actually suffered by him, but towards the closure of the hearing stated that he would be satisfied with a token compensation of one rupee per political party. In this connection, Shri Agrawal stated that this case had an adverse effect on his health on account of mental pressure and aggravated tension due to having to prepare for the case time and again.

49. Reference Prof. Chhokar's views on compensation, Shri Jain submitted that a complainant cannot ask for compensation on behalf of all the citizens of the country; the compensation has to be confined to the sufferings of the information seeker. Shri Jain said that the meaning of the word 'compensation' has to be understood in a manner which is compatible with the letter and spirit of the RTI Act. Under the scheme of the statute, it should be granted only when the compensation-seeker justifies the loss,

(अ. क. गिरधर)
(R. K. GIRDHAR)
अ. क. गिरधर / Under Secretary
अ. क. गिरधर / अ. क. गिरधर
Secretary of Personnel & Training
Deptt. of Personnel & Training
Ministry of Home Affairs

injury or any other detriment suffered by him on account of any act or omission on the part of the CPIO or any other officer or the public authority concerned.

50. A question is whether compensation under the RTI Act can be claimed on behalf of a citizen for any loss or other detriment to democracy or society as a whole resulting from non-compliance of the Commission's order of 03.06.2013. Each instance of non-compliance by a public authority is detrimental to democracy; however, from a reading of section 19(8)(b), it is apparent that it is the complainant who has to be compensated. The RTI Act states that the public authority will "compensate the complainant for any loss or other detriment suffered".

51. Section 18 is unclear about the action that the Commission can take on the findings emanating from an enquiry. Section 18 does not mention recourse to section 19(8)(b) consequent to enquiry findings. On the issue of the room available to the Commission for handling complaints, relevant is an order of the High Court of Delhi in Union of India vs. PK Srivastava, LPA 195/2011, of 09.04.2013. It was stated here that: "...compensation to the complainant for any loss or other detriment suffered by him can be awarded by the Commission only while deciding an appeal filed before it ... The aforesaid Section does not provide for grant of compensation merely on the basis of a complaint made to the Commission, without an appeal having been preferred to it."

Discussion on the points raised in interim order of 28.11.2014

52. The questions raised in the interim order of 28.11.2014 are mentioned above, in para 10. These need to be commented upon due to their relevance for a perspective on the working of chapter V of the RTI Act with a view to framing an outlook on what to do next taking into account the fact that the respondents have not complied with the Commission's order of 03.06.2013.

53. In respect of the point in para 10(1), above, i.e., following up on compliance, it is the Commission's responsibility to ensure implementation of its orders. Matters relating to non-compliance of the Commission's orders may be considered under section 18. In an order of 11.06.2009 in Radhika Arora vs CIC, complaint nos. CIC/WB/C/2008/00859, etc., the Commission said: "We have already decided...to follow up on compliance of decisions of the Commission... that Secretary of the Commission...will now assume responsibility for ensuring compliance with all decisions made by the Commission. For this purpose, a Register of Non-Compliance will be opened, which will be

(आर.के. गिरधर)
(R. K. GIRDHAR)
उप निदेशक/अधीन निदेशक
आरक्षण एवं निगरानी विभाग
राज्य सरकार/भारत
Delhi, भारत/India

processed by the Office of Secretary, CIC and on conclusion of the complaint, the complaint will either be closed or registered as a complaint for hearing under...section 18(1) and proceeded upon by the Bench of the Information Commissioner concerned.”

54. The Commission is expected to get its orders complied with. The High Court of Andhra Pradesh in order dated 05.03.2012 in W.P. No.1380/2012 – Kadiyam Shekhar Babu vs Chairman, A.P. Public Service Commission, in the context of an order by the State Information Commission, observed “...In case the respondents did not comply with the...order passed by the APIC, then remedy of the petitioner is under Section 20...before the said information commission.” The Court said that “...The Right to Information Act, 2005 is a self-contained enactment and it provides for stringent measures for enforcement of the orders of the authorities...for providing information. If the required information is not furnished...the petitioner instead of approaching the authorities under...the said Act, approached this Court under Article 226 of the Constitution. This Court is not the executing Court for implementation of the orders passed by various authorities under the Right to Information Act, 2005.”

55. The High Court of Karnataka order dated 27.01.2009 in the matter of C.C.C. No.525/2008 (Civil) - Sri G. Basavaraju vs Smt. Arundathi, President, Ananda Cooperative Bank Ltd., has held that “...S.20 of RTI Act provides for penalties. It confers powers on the Commission on the basis of which it can enforce its order...It is cardinal principle of interpretation of Statute, well-settled by...decisions of the Apex Court, that, Courts or tribunals, must be held to possess power to execute its own order. Further, the RTI Act, which is a self-contained Code, even if it has not been specifically spelt out, must be deemed to have been conferred... the power...to make its order effective, by having recourse to S.20.” It has also been held that “...provisions of S.20 can be exercised by the Commission also to enforce its order...”

56. The point in para 10(2), above, refers to a situation where the respondents do not engage in the process, and keep away from the hearings. The RTI legislation had come to fruition because of across-the-board support. It was not expected that the respondents would avoid the proceedings. The assumption is that holders of information will engage in the proceedings as the Act balances competing considerations and conflicting interests. Parties do not shy away from encountering each other’s stand to arrive at optimal outcomes. The definitions in the RTI Act, the exemption from disclosure clauses and other provisions ensure that workable solutions are reached. A situation, where the respondents, ignoring the Commission’s notice, distance themselves from the statutory

(अ.क. गिरोहार)
(R. K. GIRDHAR)
अ.क. गिरोहार/अ.क. गिरोहार
अ.क. गिरोहार/अ.क. गिरोहार
अ.क. गिरोहार/अ.क. गिरोहार
अ.क. गिरोहार/अ.क. गिरोहार

proceedings in a matter of such wide public interest, has come about, perhaps, for the first time.

57. The point in para 10(3), above, refers to the need to identify ways and means for implementing the Commission's order. In this connection, various actions came to be proposed during the hearings on 21.11.2014 and 07.01.2015, which were: (a) action under section 18(3), i.e., exercising powers as a civil court with a view to getting the respondent national political parties to participate in the hearings and the concomitant process; (b) action under section 25(5) giving recommendations to the pertinent public authorities for withdrawing facilities to the political parties; (c) imposition of penalty under sections 19(8)(c) and 20; and (d) award of compensation under section 19(8)(b).

58. Section 18(3) equips the Commission with the powers of a civil court for the purpose of ensuring attendance and evidence in an enquiry. In this connection, the complainants said that no real purpose will be served even if the presence of the defaulting parties is ensured in the enquiry as they are unlikely to submit any material other than what has already been given by them. The matter under discussion is not limited to a one-time disposal of specific complaints and a decision on penalty and compensation. The matter goes beyond the complaints in this particular instance as there would be various applications in the pipeline and demands for information under the RTI Act. Hence, the need is for the respondents to set up an operational mechanism as per the Commission's order of 03.06.2013.

59. Section 25(5) was cited by Shri Agrawal, when he referred to his letters to the Commission, dated 21.11.2014, 02.12.2014 and 05.12.2014, proposing that recommendations be made to institutions such as the Ministry of Urban Development, Election Commission of India, Prasar Bharti, Central Board of Direct Taxes, etc., for terminating certain government funded concessions to the respondents. The privileges included prime accommodation, free media time, income tax exemptions, etc. Shri Agrawal said that it was not only about applying pressure for implementing the Commission's order, but was also about recognizing that defaulters were not deserving of any State-funded benefit. Shri Agrawal sought a separate order on the subject. Shri Jain, the intervener, said that this proposal is extraneous to the order of 03.06.2013, and that the Commission should not go beyond the directions contained therein.

60. Section 25(5) does not apply here. According to section 25(5), the Commission can recommend to a public authority the steps that ought to be taken for promoting conformity with the RTI Act if it appears to the Commission that the practice of a public authority in relation to the

(आर. के. गिरधर)
(R. K. GIRDHAR)
अवर सचिव / Under Secretary
कर्मचारी सेवा विभाग, पारितोषिक
Deptt. of Personnel & Trg.
Ministry of Govt. of India

exercise of its functions under the RTI Act does not conform with the provisions or spirit of the RTI Act. This Commission has taken a similar view in case No. CIC/SM/C/2011/901285 (on 14.08.2014) – C.J.Karira vs PIO, High Court of Madras. We are of the view that any recommendations made to authorities that are not parties before the Commission would not stand judicial scrutiny.

61. Reference penalties, this can be imposed only on the CPIO; and not on the first appellate authority or the public authority. Section 20 of the RTI Act provides that if the CPIO has refused to receive an application for information or has failed to furnish information within the stipulated time or has acted malafidely to deny information or has given incorrect information, a penalty can be imposed on the CPIO. It seems that the legislative intent has been to impose monetary penalty on the defaulting CPIO and nobody else. If penalty is imposed on a public authority, it will contravene the RTI Act.

62. Reference compensation, the expressions ‘to compensate’, ‘any loss’ or ‘other detriment suffered’ have not been defined in the RTI Act or its rules. The word ‘compensation’ means anything given to make amends for loss, damage, injury or suffering. It is to be paid by a person whose act or omission has caused loss or injury to another. The idea is to see that the person suffering receives equal value for his loss. In other words, compensation cannot be awarded for any remote possibility of a loss or suffering.

63. Prof. Chhokar’s view (para 47, above) had been that compensation be awarded, equal to five per cent of the average of the annual income of the political parties. Prof. Chhokar also said that the detriment did not have to be connected with an individual complainant, and that the detriment could be to democracy implying that all citizens were affected, calling for exemplary compensation. This was not agreed to by Shri Agrawal who said that compensation under the RTI Act may be granted only when the complainant praying for award of compensation is able to demonstrate that the loss, injury or other detriment suffered by him is on account of an act or omission on the part of the public authority.

64. Shri Jain agreed with Shri Agrawal, that the compensation has to be equated with the loss or detriment actually suffered by the complainant, and that this had to be viewed in tangible terms and not philosophically in the context of loss to the citizens as a whole in a democracy. Shri Jain said that a complainant cannot ask for compensation on behalf of all the citizens of the country, and that the compensation has to be confined to the “sufferings” of the information seeker, taking into account that the order of

(अ. क. गिरधर)
(R. K. GIRDHAR)
अ. क. गिरधर / Under Secretary
कार्मिक सेवा विभाग, भारत
Deptt. of Personnel & Train
Govt. of India

03.06.2013 was time bound and not open ended. It will be appropriate to conclude that it is unlikely that such a general prayer, as made by Prof. Chhokar, would be permissible under the scheme of the RTI Act.

65. In the course of the hearing Shri Agrawal, after making a case for "exemplary compensation", claimed actuals in this regard and subsequently said that he would be satisfied with a token compensation of one rupee per party. Shri Agrawal said that the reason why he was scaling down his earlier claim was because it would take considerable time and effort to assign a money value to the loss and detriment suffered by him. Shri Agrawal said that it was a complex exercise to calculate the actual loss to him on account of the costs incurred in time spent, transportation, opportunity costs, mental agony, toll on health, book royalties lost and that his priority now was for the matter to conclude.

66. The respondents have left unimplemented the Commission's directions of 03.06.2013, causing loss or detriment to the claimants. There appeared to be a case for awarding some compensation. In this context, relevant is the order dated 09.02.2013 of the High Court of Delhi in the matter of L.P.A. No.195/2011 – Union of India vs P.K. Srivastava; it was held that "...while deciding a complaint received from the respondent, the Commission could only have imposed penalty prescribed in sub section (1) of Section 20 of the Act, but could not have awarded any compensation to him in exercise of the powers conferred upon it by Section 19(8)(b) of the Act." Hence, the prayer for grant of compensation to the complainants in the matter of this complaint under section 18 cannot be allowed.

Conclusions

67. Consideration of this case was premised on the understanding that the Commission has the responsibility to get its orders and directions implemented by the parties, and that matters relating to non-compliance should be considered under section 18 of the RTI Act taking into account the other relevant provisions. The discussion has included the penalty and compensation clauses in chapter V of the RTI Act where the Commission's powers and functions are described in respect of both complaints and appeal cases. The possibility of making recommendations under section 25(5) was also assessed.

68. What emerges from the discussions in the hearings is as follows:

- (1) The enquiry under section 18 can be brought to a close. The respondents were absent *en bloc* from the hearings on 21.11.2014 and 07.01.2015, and no useful purpose will be served by fixing another date.

(अ.क. के. गिर्धार)
(R. K. GIRDHAR)
अ.क. के. गिर्धार / Under Secretary
अ.क. के. गिर्धार, विभागीय
अ.क. के. गिर्धार, विभागीय
Deptt. of Personnel & TRG.
भारत सरकार / Govt. of India

- (2) The Commission's order of 03.06.2013 is binding and final. It has not been affected by any judicial or legislative intervention. The respondents have been declared public authorities, but they have not taken the steps prescribed for implementation. The impediment has come because the respondents have not appointed the CPIOs as directed, hence the RTI applications referred to in the order of 03.06.2013 are still pending.
- (3) The Commission is not geared to handling situations such as the present instance where the respondents have disengaged from the process. The Commission, having declared the respondents to be public authorities, is unable to get them to function so. This unusual case of willful non-compliance highlights the need to identify the legal gaps and lacunae in the implementation mechanism. An obvious conclusion is that in cases such as this, the Commission is bereft of the tools to get its orders complied with.
- (4) The penalty provisions have been made infructuous as there are no CPIOs. Penalty can be imposed only on the CPIO, and on no one else, not even the first appellate authority in the event of a default. The prayer made in this case for penalizing the non-complying public authorities cannot be considered.
- (5) There is a trend towards compartmentalization of the two sections, 18 and 19, by distinguishing between complaints and appeals. There is recognition that the two sections provide different procedures and distinctive remedies. One is supervisory, and the other is appellate. There have been shifts in the way the RTI Act's schema and scope of functioning is coming to be perceived, while acknowledging that the two provisions cannot substitute each other. However, petitioners invoke the complaints and appeal dimensions together. The nature of the RTI Act's implementation is such that legally distinguishable concepts get blurred and bunched with RTI applications that can be read under both sections.
- (6) Reference the proposal for withdrawing the facilities and concessions given by government to political parties, the position is that section 25(5) is not applicable in the present case. The provision applies to those instances where "...the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act..." It is for the concerned government departments or agencies to examine the matter from the standpoint of their institutional system and arrive at their own findings as to how non-compliance with the Commission's order of 03.06.2013 has impacted on the rules and norms under which the facilities and concessions have been provided.

(आर. के. गिरधर)
(R. K. GIRDHAR)
अवर सचिव / Under Secretary
कर्मचारी सेवा विभाग, पञ्जाब
Deptt. of Personnel & Ttg.
भारत सरकार / Govt. of India

(7) There are, in the law, gaps needing to be addressed, e.g., in the context of action against the public authority for non-compliance with the Commission's directions under section 19(8) to appoint a CPIO; the silence in section 18 on what to do with the enquiry results; the apparent ambivalence in the linkages between sections 18 and 19(8). Other questions are: how does the penalty provision work in the absence of a CPIO; how can the Commission get the respondents to function as public authorities after designating them so; how to provide relief to a complainant unable to file a second appeal in cases where the public authority has not appointed a first appellate authority; the steps required for getting an order implemented; a clearer demarcation of duty with implications for liability, compensation and penalty. It is reasonable to argue that if there is persistent non-compliance, apart from the CPIO, there must be some assignment of responsibility at the level of the public authority.

Decision

69. We have arrived at the conclusions above taking into account that the Commission's order of 03.06.2013 was not challenged in any court. As per the Commission's order, which is final and binding, the respondent national political parties are public authorities under the RTI Act.

70. It is clear that the respondents have not implemented, as public authorities, the directions contained in the Commission's order. In this light, the provisions for penalty and compensation were examined. It is felt that though the respondents have not taken any step towards compliance, the legal position is such that in this case imposition of penalty and award of compensation cannot be considered.

71. The following is decided:

(a) the respondents are not in compliance with the Commission's order of 03.06.2013 and the RTI Act. The respondents, as public authorities, have not implemented the directions contained in the Commission's order and there is no evidence of any intention to do so;

(b) the submissions made by the complainants for the imposition of penalty and the award of compensation are not allowed in view of legal considerations;

(c) the prayer for making recommendations to public authorities, reference para 68(6), above, is not allowed;

(d) a copy of this order be sent to the Department of Personnel and Training, Government of India, for taking action as deemed appropriate for addressing the legal gaps and issues that have come to light during the hearings, including those mentioned in para 68(7) above, with a view to ensuring compliance of this Commission's orders; and

(अ.क. गिर्धार)
(R. K. GIRDHAR)
अ.क. गिर्धार / Under Secretary
अ.क. गिर्धार / Deputy Secretary
अ.क. गिर्धार / Deputy Secretary
Deptt. of Personnel & Trng.
Govt. of India

(e) the complainants are at liberty, in view of the facts and circumstances of this case, to approach the higher courts for appropriate relief and redressal.

72. It is ordered that an authenticated copy of this order be sent to the parties through registered post.

73. With this order of the Commission, the case is closed.

(Manjula Prasher)
Information Commissioner

(Sharat Sabharwal)
Information Commissioner

(Vijai Shama)
Information Commissioner

Authenticated true copy

(Dr. M.K. Sharma)
Registrar

(आ. के. गिर्धार)
(R. K. GIRDHAR)
अवर सचिव/Under Secretary
कर्मियों का विभाग & प्रशिक्षण
Deptt. of Personnel & Training, Govt. of India