

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No. 8219 of 2009

INDIAN RAILWAY WELFARE ORGANISATION Petitioner
Through: Mr. A.K. Tewari, Advocate.

versus

D.M. GAUTAM & ANR. Respondents
Through: Mr.A.N. Singh and
Mr. A.K. Mishra, Advocates for R-1.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the order? No
2. To be referred to the Reporter or not? Yes
3. Whether the order should be reported in Digest? Yes

ORDER
03.05.2010

W.P.(C) No. 8219 of 2009 & CM No. 4976 of 2009 (for stay)

1. Is the Indian Railway Welfare Organisation ('IRWO') a public authority within the meaning of Section 2(1)(h) of the Right to Information Act, 2005 ('RTI Act')? The Central Information Commission ('CIC') has in the impugned order answered the said question in the affirmative. The CIC's order is under challenge in the present writ petition by the IRWO.

2. The IRWO states that it is a society registered under the Societies Registration Act of 1860. Its principal object is to promote and provide dwelling units all over India to serving and retired railway personnel and their widows on a no profit no loss basis. The dwelling units provided by the IRWO are on self-financing basis. It is stated that the IRWO's memorandum specifies that the sources of funds of the IRWO would be

predominantly and chiefly from nationalized and commercial banks. It is submitted that IRWO receives no grant from the Railway Board or the Central Government. It received a loan of Rs. 10 crores from the Ministry of Railways which has since been repaid. A loan of Rs. 6 crores was taken from the Railway public sector undertakings (PSUs) of which only Rs. 1.2 crores remains to be paid. IRWO submits that its affairs are administered by a governing body of which the Member (Staff) Railway Board is the ex-officio Chairman. It is submitted that the IRWO is neither an agent nor an instrumentality of State within the meaning of Article 12 of the Constitution of India. It maintains that there is neither a deep nor a pervasive control of the IRWO by the Indian Railways or the Ministry of Railways. There is no substantial funding of the IRWO either directly or indirectly by funds provided by the appropriate government, i.e the central government.

3. In the impugned order, the CIC has highlighted the following factors for concluding that IRWO is a 'public authority' within the meaning of Section 2(1) (h) of the RTI Act:

(a) IRWO is indirectly owned, controlled and substantially financed by the Railway Board and the Ministry of Railways.

(b) The initiation of the registration of the IRWO was by the Ministry of Railways. The basic infrastructure including land was also provided by the Railway Board and the Ministry of Railways.

(c) The initial loan of Rs.10 crores and the loans by the Railway PSUs constituted indirect financing of the IRWO.

(d) Property provided to the IRWO for its head quarters in Delhi was at a very nominal rate and that also constituted indirect financing by the central

government.

(e) IRWO works for the welfare of Railway employees and if a regime of transparency is ushered, the faith of Railway employees in it would be strengthened.

4. Learned counsel for the Petitioner submits that the IRWO had written to the Adviser, Land and Amenities, Railway Board on 10th May 2006 pointing out why it was not a public authority under Section 2(1)(h) of the RTI Act. No reply in response thereto was received from the Railway Board. On the other hand, at a meeting held to discuss the question of granting of loan to the IRWO by the Ministry of Railways, the Railway Board opined as under:

“IRWO is an independent organization. Ministry of Railway does not give any grant or loan to an independent organization. It cannot form part of our budget.

It is correct that financial assistance was provided in 1989-90. But that was with the approval of the Ministry of Finance. In this case also it has to be with the approval of Ministry of Finance.

Further, as per the extant orders on `New Service/New Instrument of Service`, loans to be provided to Public/Private institutions require Parliament's approval.”

5. It is submitted that it is not as if IRWO is granted a loan by the Ministry of Railways as and when it raises a demand. The Ministry of Railways exercises no control, whether administrative or financial, over the working of the IRWO. There are only 4 officials in the Ministry of Railways in ex

officio capacity out of the total 19 members in the governing body of the IRWO while the others are non-government members. No member of the governing body is nominated by the central government and no member can be removed by the central government. It is, therefore, submitted that there is no control of the IRWO by the central government. There is also no substantial financial assistance received by the IRWO from the Ministry of Railways.

6. Learned counsel for Respondent No. 1, on the other hand, highlights several other factors which make the IRWO a public authority for the purposes of the RTI Act. First, the Union Railway Minister in a budget speech made in Parliament in 1989-90 announced the registration of the IRWO and highlighted the fact that it had started its activities with a loan of Rs. 3 crores provided by the Ministry of Finance. Further, a sum of Rs. 10 crores had been proposed as a loan to the IRWO by way of capital in the Railway Budget of 1990-91. Secondly, in the registration process of the Society, the Ministry of Railways was the sole sponsor. The relevant extracts of the registration papers including a letter dated 20th September 1989 written by the Member (Staff) of the Railway Board to the Registrar of Societies stating that the “Ministry of Railways have decided to set up a Society to be known as Indian Railways Welfare Organisation...” is relied upon.

7. Thirdly, as regards the management and control which the Ministry of Railways/Railway Board exercises over the IRWO, the following factors are highlighted:

– Chairman, Railway Board is the Patron of the IRWO

- Member (Staff) Railway Board is the ex-officio Chairman IRWO and is a member of its Governing Body
- Executive Director, Establishment, Railway Board is a member of the Governing Body
- Executive Director, Finance, Railway Board is a member of the Governing Body
- Executive Director/Adviser, Land Management is a member of the Governing Body
- Managing Director, IRWO is appointed by nomination by its Patron (who is the Chairman, Railway Board) and the MD is a member of the Governing Body
- Director (Technical) IRWO is appointed by nomination by Member (Staff), Railway Board (who is the Chairman, IRWO) and is a member of the Governing Body
- Director (Finance) IRWO is appointed by nomination by the Member (Staff) Railway Board (who is the Chairman, IRWO) and is a member of the Governing Body
- Four co-opted Members in the Governing Body of IRWO are nominated/approved by the Chairman, Railway Board who is also the Patron, IRWO
- IRWO Grievance Committee (a permanent body) is chaired by the Adviser, Land and Amenities, Railway Board, who is a member of the Governing Body of the IRWO. He is also the Head of the Land and Amenities Directorate of the Railway Board.
- All issues of the IRWO including appointment of Directors, terms and conditions of their service including their tenure, house rent etc., demands and representations of IRWO employees are processed by the Land and Amenities Directorate of the Railway Board. IRWO was instructed to submit all cases to that Directorate requiring approval of the Railway Board.

8. As regards financial assistance, apart from the above factors, it is pointed

out that in 1998 on the request of the IRWO some of the PSUs of the Ministry of Railways i.e. IRCON, RITES and CONCOR were directed to give Rs. 2 crores each as soft loan to the IRWO. Further a request for a loan of Rs.100 crores was considered by the Ministry of Railways recently. It is also pointed out that the Railway Board sanctions complimentary passes to officers and staff of IRWO every year. There are 14 sets of passes for the Managing Director/Directors, 15 sets of passes for General Managers, 15 sets of posts for other officers and staff. Importantly, it is pointed out that the IRWO has its Corporate Office (Headquarters) in Delhi and a number of Zonal Offices which have been provided land/office accommodation by the Ministry of Railways on either very nominal charges or without any charges. A list of 9 such offices has been set out in the counter affidavit in the present writ petition. As far as Delhi is concerned, it is pointed out that office space has been provided for the headquarters of the IRWO in the Delhi Railway Office Complex, Shivaji Bridge (Minto Bridge) behind Shankar Market, New Delhi on licence basis for 21 years for just Rs.12,400 for approximately 3,000 sq. ft. area. The market rent could be at least Rs. 3 lakhs per month or Rs. 36 lakhs per year. There are other factors highlighted in the counter affidavit to show that in fact it is the Ministry of Railways and/or the Railway Board that controls the IRWO. It is therefore submitted that the IRWO answers the description of a public authority under Section 2(1)(h) of the RTI Act.

9. The above submissions have been considered. There is no denial by the IRWO that it is a society which was formed by a letter written by the Member (Staff), Railway Board to the Registrar of Societies. However, the

said letter is sought to be explained away by saying that the Member (Staff) was not perhaps aware of the legal status of IRWO. This Court is unable to appreciate this submission. The question is not whether the person who sent that letter was aware of the legal status but whether in fact it was the Indian Railways which formed the society. On that score, there appears to be no doubt.

10. Section 2(1)(h) of the RTI Act defines the expression 'public authority' to mean any authority or body or institution of self-government established or constituted by a law made by the Parliament or State Legislature or by a Notification or order by the appropriate Government and includes under Section 2(1)(h) (d) (i) and (ii):

(i) body owned, controlled or substantially financed;

(ii) non-Government organization substantially financed, directly or indirectly by funds provided by

the appropriate Government;

11. As far as the present case is concerned, the question can be approached from two angles. The first is whether IRWO is **controlled** by the appropriate Government. The second is whether as a non-governmental organisation it is substantially financed directly or indirectly by funds provided by the central government.

12. In a judgment dated 7th January 2010 of the learned Single Judge of this Court in *Indian Olympic Association v. Veeresh Malik* [W.P.(C) No. 876 of 2007] it has been observed, in the context of Section 2(h) as under:

“In the case of control, or ownership, the intention here was that the irrespective of the constitution (i.e. it might not be under or by a notification), if there was substantial financing, by the appropriate government, and ownership or control, the body is deemed to be a public authority. This definition would comprehend societies, co-operative societies, trusts, and other institutions where there is control, ownership, (of the appropriate government) or substantial financing. The second class, i.e. non-government organization, by its description, is such as cannot be "constituted" or "established" by or under a statute, or notification.”

13. As regards what could constitute substantial financing, the Court in *Indian Olympic Association v. Veeresh Malik* observed as under:

“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 non-government organization means that it is independent of any manner of government control in its establishment, or management. That the organization does not perform - or pre-dominantly perform - "public" duties too, may not be material, as long as the object for funding is achieving a felt need of a section of the public, or to secure larger societal goals. To the extent of such funding, indeed, the organization may be a tool, or vehicle for the executive government's policy fulfillment plan.”

14. As regards the control of IRWO, this Court finds that the key posts in the IRWO are held by officials of the Railway Board although in an *ex*

officio capacity. It is not denied that the Chairman of the Railway Board is the patron of the Indian Railways and the Member(Staff), Railway Board is the Chairman of IRWO in *ex officio* capacity; that the Executive Directors of Establishment, Finance and Land Management are all members of the governing body; that the Managing Director of the IRWO is appointed by nomination by the Chairman, Railway Board and the Director (Technical), IRWO is by nomination by the Member (Staff) of Railway Board and is also a member of the governing body. The Director (Finance), IRWO is nominated by the Member (Staff) Railway Board. Four co-opted members are nominated/approved by the Chairman Railway Board. The IRWO Grievance Committee which is a permanent body is chaired by the Adviser, Land & Amenities, Railway Board. The above factors point to the control of the IRWO by the Ministry of Railways.

15. At this juncture it must be observed that the submission that the control has to be 'deep and pervasive' is based on the decisions rendered by the courts in the context of Article 12 of the Constitution. In the first place, the question whether IRWO is "state" is not relevant for answering the question whether it is a public authority for the purposes of the RTI Act. The definition of 'public authority' under Section 2 (1) (h) RTI Act does not talk of 'deep and pervasive' control. It is enough if it is shown that the authority is 'controlled' by the central government. The composition of the Governing Body of IRWO and the manner of appointments of key personnel of the IRWO as noticed hereinbefore bears testimony to the control that the central government through the Ministry of Railways and Railway Board has over IRWO.

16. As regards the financing, it is important to note that apart from the past financing through loans by the Indian Railways and the Ministry of Railways even the recent proposal from the Ministry of Railways for a loan to the IRWO has not been rejected. All that is said is that “in this case also it has to be with the approval of the Ministry of Finance”. Also importantly as regards the request by Indian Railways for loan from the PSUs it has been observed as under:

“IRWO requested for loan from Railway PSUs like Rs. 20 crores each from RITES, CONCOR and IRCON and Rs.10 crores each from IRCTC & Railtel Corporation at the same term and conditions as last time as mentioned at Genesis above. IRWO has discussed the matter with IRFC and advised that IRFC is agreeable to advance loan to IRWO at appropriate terms. However, IRWO still feels that possibilities may be explored for advancing the loan from Railway PSUs (viz. IRCON, RITES, CONCOR, etc.) since rate of interest from bank would be high.”

17. It is, therefore, not possible to agree with the contentions of learned counsel for the Petitioner that there is no substantial financing of the IRWO through funds directly or indirectly provided by the Ministry of Railways. The point here is whether such financing is accessible to the IRWO. The answer to that question has to be in the affirmative. This distinguishes IRWO from any other society that may not have similar access to government funds. The other factors highlighted in the counter affidavit filed by the Respondents also demonstrate the control over the IRWO of the Ministry of Railways.

18. For the aforementioned reasons, this Court is satisfied that no error has been committed by the CIC in holding that IRWO is a public authority within the meaning of Section 2(1)(h) of the RTI Act and directing disclosure to the Respondent of the information sought by them from the IRWO. The writ petition is dismissed. The interim order is vacated and the application is also dismissed.

S. MURALIDHAR, J.

MAY 03, 2010
dn