* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 11th July, 2024.
Pronounced on: 04th October, 2024.

\+ **W.P.(C) 4884/2014, CM APPL. 9764/2014**

AIR FORCE SPORTS COMPLEX (AFSC) .....Petitioner

Through: Mr. Ankur Chhibber and Mr. Anshuman Mehrotra, Advocates.

versus

LT. GEN S S DAHIYA .....Respondent

Through: Mr. Shivain Vaidialingam, Advocate for R-1 with R-1 in person.
Ms. Arti Bansal, Ms. Pinky Yadav and Ms. Akanksha Kumari, Advocates for R-2, 3.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J.

1. The present case raises a fundamental question regarding the applicability of the Right to Information Act, 2005[1] to institutions that are beyond conventional governmental bodies. Specifically, the Court is tasked with determining whether the Air Force Sports Complex (AFSC) falls within the definition of a 'public authority' under Section 2(h) of the RTI

[1] "RTI Act"

Act, thereby necessitating the appointment of a Public Information Officer (PIO) and a First Appellate Authority in compliance with the provisions of the RTI Act.

THE FACTUAL BACKGROUND

2. Lt. Gen. S. S. Dahiya, the Respondent,[2] is a retired officer of the Indian Air Force. He filed an RTI application dated 22nd February 2011, addressed to the Central Public Information Officer (CPIO), Air HQ, Vayu Bhavan, New Delhi, seeking information regarding alleged misuse and commercial exploitation of lands under the AFSC, Air Force Station, New Delhi. The application posed 55 questions, including several pertaining to the internal functioning of AFSC. In response, the CPIO provided a para-wise reply based on the records available. However, it was contended that since AFSC did not fall within the definition of 'public authority' under Section 2(h) of the RTI Act, the provisions of the statute would not be applicable to it.

3. Dissatisfied with the response, the Respondent filed an appeal before the First Appellate Authority, which was dismissed through order dated 21st June, 2011, on the grounds that all available information had already been provided as per the records of the public authority. In the meantime, on 5th July 2011, the Respondent also filed another application with the PIO, seeking further information regarding the alleged misuse and commercial exploitation of AFSC land, which was responded to *vide* letter dated 16th

[2] Since contesting Respondent is only Respondent No. 1, accordingly, he is referred to as "the Respondent" hereinafter.

August, 2011.

4. In such circumstances, the Respondent filed a second appeal under Section 19 of the RTI Act against the aforenoted order dated 21st June, 2011, before the Central Information Commission (CIC). This was referred to a full bench consisting of the Chief Information Commissioner and two Information Commissioners (LS and SS). Through order dated 25th October, 2011, the appeal was allowed. The CIC held that AFSC qualified as a 'public authority' under Section 2(h) of the RTI Act, and accordingly directed the CPIO to provide the information requested by the Respondent.

5. Aggrieved by this order, the Petitioner filed a writ petition [W.P.(C) 741/2012], which was disposed of through order dated 10th February 2014. The Court set aside the impugned order dated 25th October, 2011 on the ground that AFSC had not been impleaded as a party, which amounted to violation of principles of natural justice. Consequently, the matter was remanded to the CIC for reconsideration, with the rights and contentions of all parties left open.

6. Pursuant to this Court's directions, the CIC reconsidered the matter and passed the impugned order dated 19th June, 2014[3]. The CIC once again concluded that AFSC is a 'public authority' under Section 2(h)(d)(i) of the RTI Act, and further directed the appointment of a Public Information Officer and a First Appellate Authority.

CONTENTIONS OF THE PARTIES

7. Mr. Ankur Chibber, counsel for the petitioner, raises the following

[3] "Impugned Order"

contentions to challenge the Impugned Order of the CIC:

7.1. The Petitioner, AFSC, is a private body established for the fitness, health, and recreation of Air Force personnel. It operates under its own rules and bylaws, governed by a Governing Council, and is autonomous, without government control. Consequently, Section 2(h)(d)(i) of the RTI Act, which mandates a body to be controlled by the government to qualify as a public authority, is not applicable to AFSC.

7.2. The case of AFSC is covered by the judgment in ***Air Vice Marshal J.S. Kumar v. Governing Council of Air Force***[4], wherein this Court held that AFSC is not a "State" under Article 12 of the Constitution. It was held that the government's involvement in AFSC is limited to providing certain benefits, which does not equate to control or ownership so as to transform a private body into a "State" under Article 12 of the Constitution. Thus, the CIC's reliance on government ownership of the land as the sole basis for declaring AFSC a public authority is legally flawed.

7.3. The government has no deep or pervasive control over AFSC's functioning, which is a also crucial factor in determining its status as a public authority. Further, AFSC does not perform any public function or public duty, and operates without government oversight. Consequently, it cannot be said to be owned by the government, and would be covered by this Court's judgment in ***Army Welfare Housing Organisation v. Adjutant General's Branch & Ors.***[5] Furthermore, AFSC's funds come from private contributions, and no funds are received from the Ministry of Defence or

[4] 2006 SCC OnLine Del 8
[5] 2014 SCC OnLine Del 6435

any other government source, which further reinforces AFSC's status as a private body.

7.4. The Impugned Order is primarily based on the fact that the land on which AFSC operates is owned by the government. The CIC equated this with substantial financing and control by the government without considering that simply operating a private institution on government-owned land does not imply pervasive government control over its affairs.

7.5. The CIC misapplied the ruling of the Supreme Court in ***Thalappalam Service Coop. Bank Ltd. v. State of Kerala***[6], focusing only on certain paragraphs of the judgment without taking the full context into account. The Court in ***Thalappalam*** emphasized that for an entity to be classified as a public authority, government control must be substantial and not merely incidental. Further, the Supreme Court clarified that "substantially financed" means significant, real, and positive financial support, and that the degree of financing must be substantial, not nominal or incidental. In AFSC's case, there is no evidence of such substantial financing by the government.

7.6. The CIC also did not acknowledge that, under ***Thalappalam*** the burden of proving that a body is owned, controlled, or substantially financed by the government lies with the applicant or the government. This burden was not satisfied in the present case, as the CIC failed to provide any concrete evidence of such control or financing.

7.7. The CIC's conclusion that AFSC is a public authority under the RTI Act was reached without a detailed examination of the facts. The CIC's

[6] (2013) 16 SCC 82

reasoning was limited to the fact that AFSC is situated on government land and pays no rent for it. However, this alone does not amount to government control or substantial financing. The CIC's order lacks a reasoned and comprehensive explanation as to why AFSC falls within the definition of a public authority.

7.8. The High Court of Uttarakhand in ***Asian Education Charitable Society v. State of Uttarakhand***[7] outlined the criteria for a body to qualify as a 'public authority' under the RTI Act. These criteria include being formed by a government notification, being owned or controlled by the government, or being substantially financed by the government. AFSC meets none of these criteria, as it is a private body, not created by any government notification, and is not subject to government control or financing.

7.9. AFSC is an autonomous body and its facilities are available only to those who hold membership. It is not open to all Air Force personnel, further emphasizing its private and exclusive nature. The CIC failed to consider this in its order.

7.10. In a similar case, the CIC had declared the Chandigarh Golf Club to be a public authority under Section 2(h) of the RTI Act, based on the fact that the land was provided at a concessional rent. However, the Punjab & Haryana High Court, *vide* order dated 5th November, 2012 in CWP No. 21967/2012[8], stayed the operation of that order. This again indicates that the mere provision of government land or facilities does not automatically bring a private body under the definition of a public authority.

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[7] 2010 SCC OnLine Utt 32

[8] Titled *Chandigarh Golf Club v. Central Information Commission & Anr.*

8. In addition to the aforenoted submissions, the Petitioner has also filed an affidavit in terms of the directions issued by this Court on 5th August, 2014, affirming that the AFSC could survive without any assistance by the Government. The AFSC houses golf-playing facilities as a mere subsidiary activity. It is utilizing the land belonging to the Government of India which is mainly used for many service activities like military training, sports, fitness, welfare, social and recreational activities. As such, the contention that recreational golf activity cannot be continued in absence of available land has a very limited application. The requirement of land is essentially for existence of Air Force service requirements, as well as a Sports Complex which undertakes activities of a wide spectrum. The contiguous location of land is *sine qua non* for various official, fitness, welfare and sporting commitments of Air Force Personnel for their requirements. Hence, any question of alternative infrastructure for recreational golf activity of AFSC is not practical since the facilities created are supplementary to the main requirements of service personnel at Air Force Station, New Delhi.

9. *Per contra*, Mr. Shivain Vaidialingam, counsel for Respondents, has advanced the following submissions:

9.1. The present writ petition is not maintainable either in law or on facts, and deserves to be rejected outright. There are no valid grounds for seeking relief under the extraordinary writ jurisdiction of this Hon'ble Court.

9.2. The AFSC claims to be a private and autonomous body governed by self-evolved rules and bylaws, however, it is neither a registered society under the Societies Registration Act, 1860, nor a company under the Companies Act, 1956. Thus, its legal status remains unclear, and this lack of legal foundation disqualifies AFSC from invoking this Court's

extraordinary jurisdiction under Article 226 of the Constitution of India.

9.3. Moreover, the affidavit supporting the present writ petition has been signed by Wing Commander Jinender Singh, a serving officer of the Indian Air Force, without any resolution or express authorization from AFSC allowing him to file the petition on its behalf. In the absence of such authorization, the deponent was not competent to institute these proceedings. Furthermore, the affidavit states that it was signed in his 'official capacity' as a Wing Commander of the Indian Air Force, which raises serious concerns since a serving officer cannot be involved in a private body without prior approval from the Central Government. If such approval was obtained, it would highlight the level of control the government exercises over AFSC.

9.4. AFSC has approached this Court with unclean hands, presenting contradictory versions of its rules and bye-laws in different forums. Before the CIC, AFSC filed one set of rules, which included details such as the operation of multiple dining halls and a civil bar. However, AFSC has since altered its rules and bye-laws, presenting more limited version before this Court, removing provisions that indicate direct control by the Air Headquarters. This deliberate manipulation of its rules reveals an attempt to mislead the Court and conceal the true extent of government involvement in its operations. Such deceptive conduct amounts to abuse of process of the court, and therefore, as noted in the Supreme Court's judgment in ***Manohar Lal v. Ugrasen***[9], justifies the dismissal of the petition with punitive costs.

[9] (2010) 11 SCC 557

9.5. The Petitioner has also failed to implead the Ministry of Defence, despite its direct involvement in the proceedings before the CIC, further highlighting AFSC's attempt to avoid transparency and undermine the judicial process.

9.6. The CIC correctly held that AFSC is a 'public authority" under Section 2(h)(d)(i) of the RTI Act, based on the fact that it occupies government land and is managed by serving Air Force Officers. These facts indicate substantial control by the government, justifying the CIC's decision.

9.7. AFSC is conducting its operations on prime government land, and without access to this land, it would not be able to function. AFSC admitted before the CIC that it operates predominantly on land belonging to the Ministry of Urban Development (MoUD). The CIC had accordingly directed AFSC to provide details regarding its legal status and its relationship to the land, underscoring the fact that the Petitioner is dependent on government resources. This substantial benefit from the government demonstrates that AFSC is effectively financed and controlled by the government, justifying the CIC's classification of AFSC as a public authority. Moreover, there is no document on the basis of which AFSC was allotted the government land. Thus, they are not even paying a concessional rate for using the said land for conducting its operations, which clearly amounts to substantial financing. This fact differentiates the present case from other instances wherein the courts have decided that providing subsidies in and of themselves do not amount to substantial financing.

9.8. AFSC's management is controlled by serving officers of the Indian Air Force, who play a central role in its governance and day-to-day activities. In fact, Rule 70 of the Petitioner's Rules and Bye-Laws, which

stipulates the composition of the Governing Council, clearly indicates that the individuals tasked with administration of the AFSC are all serving Air Force Officers, none of whom have been defined as *ex-officio* members. This control by government officials reinforces the CIC's conclusion that AFSC falls under the purview of the RTI Act as a public authority.

9.9. The additional affidavit submitted by AFSC pursuant to this Court's directions fails to provide any clarity as to the Petitioner's ability to function without any government assistance, further indicating its reliance on government resources and support. Rather, they have simply stated that the land used by AFSC is also utilized for military training purposes. However, this contradicts AFSC's claim of being a purely recreational body. The dual use of government land for both recreational and military purposes strengthens the argument that AFSC serves a public function and falls under the definition of a public authority.

9.10. The CIC appropriately relied on the Supreme Court's decision in ***Thalappalam*** to conclude that AFSC is a public authority. The substantial benefit it receives from government land use meets the criteria laid out by the Supreme Court for determining when a private entity qualifies as a public authority under the RTI Act.

9.11. In light of the above, the petition is not maintainable, as AFSC has failed to establish a legal cause of action under Article 226 of the Constitution of India. All of AFSC's contentions can be rebutted based on the facts and applicable legal precedent.

ANALYSIS AND FINDINGS

10. The RTI Act was enacted to promote transparency and accountability

in the functioning of public authorities. Its primary objective is to empower citizens by providing them access to information under the control of public authorities, thereby promoting openness, transparency and curbing corruption. However, the RTI Act applies exclusively to entities classified as 'public authorities', as defined under Section 2(h) of the RTI Act. In this context, the central issue in the present case is whether the AFSC qualifies as a 'public authority' under the RTI Act. This determination is crucial because if AFSC is deemed a public authority, it would be obligated to disclose information upon request, thereby subjecting it to the transparency requirements of the RTI Act. Conversely, if it does not fall within this definition, it would not be bound by the Act's provisions.

11. At the outset it is pertinent to note that this Court, in ***Air Vice Marshal J.S. Kumar***, has already held that AFSC does not qualify as 'State' in terms of Article 12 of the Constitution of India, noting that there is no deep and pervasive control of the government over the AFSC. It has also been held that AFSC is not performing public functions or discharging public duties. However, the definition of 'State' under Article 12 of the Constitution and 'public authority' under Section 2(h) of the RTI Act, while related, serve different purposes and consequently have different scopes. The purpose of Article 12 is to ensure that fundamental rights are protected not only against traditional government entities but also against those exercising public functions or wielding significant State-like power. Contrastingly, the focus of the RTI Act is on transparency and access to information from entities that are either governmental or significantly influenced by the government through control or financing. Thus, as observed by the Supreme Court in Thalappalam, there may exist bodies

which are not a State or instrumentality of the State, but still satisfy the definition of public authority under Section 2(h)(d)(i) or (ii) of the Act. Thus, notwithstanding the aforenoted ruling in ***Air Vice Marshal J.S. Kumar***, this Court must still determine whether the AFSC constitutes a 'public authority' within the meaning of Section 2(h) of the RTI Act.

Definition of 'Public Authority' Under the RTI Act

12. The pertinent provision for determining whether an entity is a public authority is Section 2(h) of the RTI Act, which defines "public authority" as follows:

> *"2. Definitions- In this Act, unless the context otherwise requires,-*
> *...xxx... ...xxx... ...xxx...*
> *(h) 'public authority' means any authority or body or institution of self-government established or constituted-*
> *(a) by or under the Constitution;*
> *(b) by any other law made by Parliament;*
> *(c) by any other law made by State Legislature;*
> *(d) by notification issued or order made by the appropriate Government,*
> *and includes any—*
> *(i) body owned, controlled or substantially financed;*
> *(ii) non-Government organisation substantially financed,*
> *directly or indirectly by funds provided by the appropriate Government;"*

13. The definition of Section 2(h) has two distinct aspects. The first part explicitly identifies entities that are fundamentally governmental in nature. Clause (a) encompasses bodies established by or under the Constitution, including the Union and State Executives, the Parliament and State Legislatures, as well as constitutional authorities like the Comptroller and Auditor General (CAG) and the Election Commission. Clauses (b) and (c) extend to entities formed by laws enacted by Parliament or State

Legislatures, such as the National Highways Authority of India (NHAI), the and the Insurance Regulatory and Development Authority of India (IRDAI). Clause (d) includes bodies constituted by government notifications or orders, like All India Council of Technical Education (AICTE).

14. The second part of the provision extends to bodies owned, controlled, or substantially financed by the government, including non-governmental organizations receiving significant government funding. Over time, judicial interpretations have broadened the scope of the provision, pulling entities traditionally seen as private into the RTI Act's purview. The focus of these interpretations has been on whether such bodies perform public functions or are subject to government control or substantial funding. As a result, even organizations not directly established by the government but significantly influenced through control or financial support are now required to meet the transparency standards mandated by the RTI Act.

15. The Supreme Court in ***Thalappalam*** undertook a comprehensive examination of the term 'public authority' as defined under Section 2(h) of the RTI Act. The Court meticulously noted that the use of both "means" and "includes" in this provision indicates an exhaustive explanation of what constitutes a 'public authority.' The judgment emphasized that for an entity to be classified as a 'public authority,' it must fit squarely within the categories explicitly laid out in Section 2(h). This includes (i) bodies established by or under the Constitution, (ii) those created by law made by Parliament or State Legislature, (iii) entities owned, controlled, or substantially financed by the government, and (iv) non-governmental organizations substantially financed directly or indirectly by government funds. The Supreme Court has cautioned against adopting a liberal or

expansive interpretation of the term 'public authority,' stating that doing so would stretch the provision beyond its intended scope and include entities not contemplated by the legislature. The Court also highlighted that the RTI Act imposes specific obligations on 'public authorities' to ensure transparency and accountability, and these obligations should not be imposed on entities unless they unequivocally fall within the purview of the statute. Consequently, the determination of whether an entity qualifies as a 'public authority' must be based on a strict construction of Section 2(h) and not on a general perception of public interest.

Assessing AFSC's status as a 'public authority' under Section 2(h) of RTI Act

16. The onus to demonstrate that an entity is owned, controlled, or substantially financed—or that a non-governmental organization is significantly funded, directly or indirectly, by the appropriate government—rests with the applicant seeking information or the government itself.

17. In the present case, it is undisputed that the Petitioner does not fall within the categories specified in Clauses (a), (b), or (c) of Section 2(h) of the RTI Act. Therefore, the crucial issue for determination is whether the AFSC can be classified under Clauses (d)(i) or (d)(ii) of Section 2(h), that is, whether it is a body "owned, controlled, or substantially financed" by the government. The CIC, in the Impugned Order, concluded that the AFSC qualifies as a 'public authority' based on two primary considerations: (a) the AFSC operates on government land, suggesting that its existence is dependent on this land, which, in turn, constitutes substantial financing by the government; and (b) the management of AFSC by serving Air Force

Officers implies significant government control. The pertinent question is whether these factors satisfy the criteria set forth by judicial interpretations for an entity to be deemed a public authority under the RTI Act.

18. First, let us examine whether the degree of ownership exercised by the government is so pervasive so as to indicate that the AFSC is controlled by the government. AFSC is an autonomous entity governed by its own rules and bye-laws, and has not been established by any specific law or government notification. Consequently, there is no legal documentation to demonstrate that the AFSC has been created or is owned by the government. In fact, in ***Air Vice Marshal J.S. Kumar***, the Court, after detailed examination, observed that the AFSC "*is a private body only providing recreation to Air Force Officers, and it is not discharging any public function or public duty.*" Further, it has been held that AFSC generates funds through monthly subscription and grants from welfare funds and no funds are sanctioned from the Ministry of Defence.

19. The Respondent's contention, which the CIC endorsed, posits that the involvement of Air Force Officers and government members within the administrative structure of the AFSC demonstrates substantial government control over its management and decision-making. However, this Court finds such an argument unpersuasive. In ***Thalappalam***, the Supreme Court unequivocally stated that substantial control must go beyond mere regulatory or supervisory oversight. It requires direct and pervasive participation in the entity's decision-making processes, impacting its day-to-day operations. Simply having government officials within an administrative body does not automatically translate into substantial control, particularly if these officials do not actively shape or influence the entity's key decisions

or operations. Thus, the mere presence of Air Force Officers does not fulfil the stringent criterion set out in ***Thalappalam*** for what constitutes 'substantial control'. The fact that government officers may come together to form a club for recreational purposes does not automatically transform such an entity into a public authority. It remains a private club, distinct from government function or control. The mere involvement of government officers, without substantial government financing or direct, pervasive control over the club's operations, does not alter its fundamentally private character. As established in ***Army Welfare Housing Organisation***, the presence of serving Army officials in management roles does not imply they will automatically act under the directives of Army Headquarters or the Ministry of Defence in their capacity as Governing Council members. Simply having a government nominee or ex-officio officers on the board does not equate to substantial control. There must be evidence of pervasive government influence over the operations of the organisation, including its appointments and policy decisions, to meet this threshold.

20. Applying these principles to the present case, it becomes evident that the involvement of Air Force Officers in AFSC's management does not, in itself, constitute the 'substantial control' required under the RTI Act. While their presence might suggest some form of governmental involvement, it does not automatically equate to the deep, pervasive control necessary to transform AFSC into a public authority. The key distinction here lies between mere government representation and actual, substantive control over the entity's policies and operations. The Air Force Officers serve in roles that are incidental to their primary duties, fulfilling functions that do not actively shape AFSC's daily decision-making or align it with

government directives. This arrangement appears to be more about organizational convenience than a demonstration of substantive control, and it does not elevate AFSC to the status of a government instrumentality. Furthermore, AFSC's governance and administration are conducted strictly in accordance with its internal rules and bye-laws. There is no evidence indicating that the government dictates AFSC's policies or interferes in its operational decisions. The officers act more as *ex officio* members within an independent governance structure, rather than agents of government command.

21. Thus, the conclusion drawn by CIC fails to meet the 'substantial control' standard outlined in the RTI Act, as elucidated in the afore-noted judgments. Its findings did not present evidence that the government directs AFSC's activities or policies in a manner that qualifies as deep and pervasive control. Thus, the mere involvement of government officials, without more, is insufficient to bring AFSC within the scope of the RTI Act. In light of these observations, the Court finds that AFSC operates sufficiently independently of governmental control, and the CIC's determination lacks the evidentiary basis required for classifying AFSC as a public authority.

22. This brings us to the second point of consideration – whether AFSC is substantially financed by the government. The Respondent's argument, which has been accepted by the CIC, is that the AFSC's location on government land amounts to substantial financing. The Supreme Court in ***Thalappalam*** extensively discussed the term "substantially financed", holding that the nature of financing must be actual, significant, and necessary for the entity's survival. The mere providing of subsidies, grants,

etc. would not amount to substantial financing, unless it is proved that the body would struggle to exist without the same. The CIC considered AFSC's location of government land to constitute substantial financing, holding that if AFSC was not permitted to use the same, it would cease to exist.

23. In ***The Karnataka Golf Association v. Karnataka Information Commission***[10], the High Court of Karnataka, following its earlier decision in ***Bangalore Turf Club Limited v. State Information Commissioner***[11], held granting land at a concessional rate constitutes substantial financing. The Court held that the Golf Association could operate the golf course only if the land was made available to them at a heavily subsidized rent, thus amounting to substantial financing as contemplated under the RTI Act. The aforementioned decisions emphasize that if the establishment of an institution relies on the State's largesse in obtaining land at a concessional rate, it constitutes substantial financing. However, this Court has taken a different view in ***Batra Hospital & Medical Research Centre v. Central Information Commission & Anr.***[12], ruling that receiving land at concessional rates does not automatically equate to substantial financing unless the entity's operations are significantly dependent on such support. The Court emphasized that substantial financing involves government aid that is "real, existing, and positive", such that the entity would struggle to survive without it. Reliance is also placed on the reasoning adopted by this Court in ***Hardicon Ltd. v. Madan Lal***[13] holding that link between the financing received by an entity and the appropriate government must be

[10] Judgment dated 17th April, 2023 in W.P. No. 55173/2014
[11] Judgment dated 13th January, 2021 in W.P. No. 18449/2015(GM-RES) and connected matters.
[12] Neutral Citation No. – 2018:DHC:939

clearly established. The Respondent, however, attempts to distinguish the present case by arguing that in ***Batra Hospital*** and other similar judgments, the concessions were granted explicitly to incentivize operations, suggesting that the entities would otherwise pay the market rate. Here, Respondent points out that there is no document of allotment of land, nor any payment of fees, implying that AFSC operates purely on the goodwill of the government. They contend that this use of government land without any consideration effectively amounts to substantial financing.

24. While Respondent's argument does not necessarily establish a clear basis for substantial financing under the RTI Act. The mere provision of land—even without documented concession—does not automatically imply substantial financing unless the entity's survival hinges on it. The absence of a formal allotment document or payment does not, in itself, prove that AFSC is substantially financed by the government. For the Respondent's contention to hold, they would need to demonstrate that AFSC's operations are so dependent on the use of this government land that its very existence would be imperilled without it. Simply arguing that there is no formal document or payment fails to meet the stringent threshold of "real, existing, and positive" government support, as articulated in ***Batra Hospital***. Therefore, the Respondent's argument, while novel, does not convincingly establish the substantial financing necessary to bring AFSC under the ambit of the RTI Act.

25. The AFSC is situated in the Restricted Area of the Air Force, which is accessible only to such persons holding membership cards and/or Armed

[13] 2015 SCC OnLine Del 8063

Forces Identity Cards. In their additional affidavit, the AFSC has admitted that they do utilise the government land in order to provide services to its members, which include sports services such as golfing, swimming, lawn tennis, basketball and volleyball, as well as the operation of a wet canteen/ kitchen. However, this is an incidental use of the land, which is primarily used for the training of Air Force Officers. It is more so advantageous than it is critical for the AFSC to use the government land, as its members are Air Force Officers who would, in any case, be using the said land for the purposes of their training activities. Thus, AFSC's operations, which include a range of services, are not reliant on the land to the extent that its survival hinges on government support. Furthermore, The CIC's assertion that AFSC is substantially financed by the government due to its location on government land fails to consider key aspects of AFSC's operations. AFSC has made it clear that the upkeep of the complex, including the various sports, social, and recreational facilities, is funded primarily through contributions and subscriptions from its members. These funds cover the maintenance of the land and infrastructure, including the subsidiary golf facility. This arrangement indicates financial independence rather than reliance on government resources. Therefore, the occupation of government land does not signify financial dependence of the AFSC on government resources in the sense contemplated by the RTI Act.

26. Thus, the absence of a formal allotment document or mere use of the government land does not inherently imply financial support or subsidy. Judicial precedents have consistently underscored that the key test is not just access to government resources, but whether such access is indispensable to the entity's survival. Substantial financing requires direct, active financial

assistance critical to the entity's functioning. While the land may serve as an asset, its use alone does not constitute the pervasive financial dependence envisioned by the RTI Act, especially in light of the fact that the AFSC is neither owned or created by the government and neither does it serve any public function or public duty. The Petitioner's attempt to equate occupancy with substantial financing conflates mere use with direct government expenditure. In ***Thalappalam***, the Supreme Court emphasized that the financial aid must be tangible, direct, and essential to the entity's operations. Here, the use of land—absent documented financial support—fails to meet this stringent standard. Therefore, the Respondent's contention stretches the interpretation of 'substantial financing' beyond its intended legal scope.

CONCLUSION

27. In light of the judicial precedents noted above and careful examination of the facts, the Court is of the opinion that AFSC does not meet the criteria to be classified as a 'public authority' under Section 2(h) of the RTI Act. AFSC is not owned or established by the government. There is no deep and pervasive governmental control over AFSC's management or policies, and neither does AFSC perform public functions/ duties, as its services are limited to a specific group and do not serve the public at large. AFSC does not receive significant government funding essential for its operations, and the use of government land in itself does not constitute substantial financing. Thus, in the opinion of the Court, the CIC has erroneously concluded that the AFSC qualifies as 'public authority' under Section 2(h) of the RTI Act, based on an incorrect application of the law and a misinterpretation of the facts.

28. Accordingly, the present petition is allowed and the Impugned Order dated 19th June, 2014 of the CIC is hereby set aside. It is declared that AFSC is not obligated to comply with the provisions of the RTI Act.

29. With the aforesaid, the petition is disposed of, along with pending application(s), if any.

SANJEEV NARULA, J

OCTOBER 4, 2024
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