

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 02.02.2015

+ **W.P.(C) 3110/2011 & CM 6577/2011**

**MOTHER DAIRY FRUIT & VEGETABLE
PRIVATE LIMITED**

..... Petitioner

versus

HATIM ALI & ANR.

..... Respondents

AND

+ **W.P.(C) 5809/2011 and CM 11833/2011**

**MOTHER DAIRY FRUIT & VEGETABLE
PRIVATE LIMITED**

..... Petitioner

versus

ASEEM TAKYAR

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Arvind Nigam, Sr. Advocate with Ms
Shweta Bharti.

For the Respondent : Mr.Y.R. Malhotra in W.P.(C) 3110/2011.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner calls into question rulings of the Central Information Commission (hereafter 'CIC') – order dated 15.04.2011 impugned in W.P.(C) No.3110/2011 and order dated 08.06.2011 impugned in W.P.(C) No.5809/2011 (hereafter 'impugned orders') - holding the petitioner to be a 'Public Authority' within the meaning of section 2(h) of the Right to

Information Act, 2005 (hereafter 'the Act') and calling upon the petitioner to appoint a Central Public Information Officer (CPIO) and an Appellate Authority.

2. Briefly stated, the relevant facts pertaining to W.P.(C) No.3110//2011 are under:-

2.1 Respondent no.2 – Gaurav Tripathi, filed an application dated 30.07.2010 and respondent no.1 - Hatim Ali filed applications dated 23.09.2010 and 20.11.2010 under the Act with the petitioner seeking various information. The petitioner rejected the said applications alleging that the Act is not applicable as the petitioner is not a 'public authority' under Section 2(h) of the Act.

2.2 Thereafter, Gaurav Tripathi filed a complaint (No. CIC/SS/C/2010/000595) under Section 18 of the Act, before the CIC for taking an action against the PIO of the petitioner for denial of information. Hatim Ali also filed separate complaints (No.CIC/SS/C/2010/000594 and No.CIC/SS/C/2010/000006) before the CIC alleging denial of information. The petitioner responded by stating that the information as sought for was provided to respondent nos.1 and 2 without prejudice to its contention that it is not a public authority under the Act; affidavits to this effect were also filed before the CIC.

2.3 By a common order dated 15.04.2011, the CIC held the petitioner to be a public authority under the Act and directed the petitioner to appoint a CPIO and an Appellate Authority.

3. Brief stated, the relevant facts related to W.P.(C) No.5809/2011 are as under:-

3.1 The respondent – Aseem Takyar filed an application dated 24.05.2010 under the Act with the PIO of Assistant Commissioner (HQ), Government of NCT of Delhi seeking various information. The said application was transferred to Central Public Information Officer (CPIO) of the petitioner under Section 6(3) of the Act. The petitioner, by its letter dated 08.06.2010, refused to furnish information contending that it was not a ‘public authority’ within the meaning of Section 2(h) of the Act.

3.2 Since the information sought for was declined, Aseem Takyar filed an appeal before the Additional Commissioner (HQ) - First Appellate Authority. By an order dated 26.07.2010, the First Appellate Authority directed the PIO(HQ) and APIO(HQ) to obtain the necessary information from the concerned authorities and provide the same to the respondent. And, pursuant to the order dated 26.07.2010, certain information was provided to Aseem Takyar.

3.3 On 21.06.2010, Aseem Takyar filed another application under the Act with the CPIO of the National Dairy Development Board, Gujarat (hereafter 'NDDB') seeking information as to whether the Act is applicable to the petitioner and *“whether any, financial grant was received from Government of India for setting up 'mother dairy'.* In response to the application, the CPIO of NDDB, by its letter dated 02.09.2010, provided the details of loans and grants as sought for by Aseem Takyar. However, with respect to the information pertaining to Mother Dairy he responded as under:-

“Under the Operation Flood programme four Mother Dairies were conceptualized i.e at Bombay, Calcutta, Delhi and Madras. Since you have mentioned only Mother Dairy in your request for information, we are unable to foresee to which Mother Dairy you are referring to. You are therefore, requested to clearly specify on which Mother Dairy you are seeking information.”

3.4 Aseem Takyar was not satisfied by the information provided by the CPIO of NDDB and filed an appeal before Senior General Manager (CF) - First Appellate Authority.

3.5 Aseem Takyar also filed a complaint (No.CIC/SG/A/2010/002949) dated 09.10.2010 under Section 18(1) of the Act before the CIC alleging that the PIO of NDDB had failed to provide the information as sought for by him. By an order dated 06.01.2011, the CIC issued notice to the PIO of the petitioner. The petitioner filed an affidavit before the CIC that the loan of ₹31.71 crores and ₹13.60 crores was not granted to the petitioner. By the impugned order dated 08.06.2011, the CIC relied on its earlier order dated 15.04.2011 and held that the petitioner to be a public authority under Section 2(h) of the Act and directed the PIO of the petitioner to furnish the information sought for.

4. The CIC found the petitioner to be substantially financed and controlled by the appropriate government; the petitioner impugns these findings. Thus, the issue to be addressed is whether the petitioner is substantially financed and/or controlled by the appropriate government so as to fall within the sweep of section 2(h) of the Act.

5. Mr. Nigam, the learned senior counsel appearing for the petitioner submitted that the petitioner is a company registered under the Companies

Act, 1956 and is a subsidiary of NDDDB. He argued that the petitioner had neither received any finances from central government, nor did any government hold any equity capital of the petitioner. Therefore, the conclusion that the petitioner was a public authority was erroneous.

6. Mr. Nigam referred to the decision of the Supreme Court in **Thalappalam Service Cooperative Bank Limited and Others v. State of Kerala and Others: (2013) 16 SCC 82** in support of his contentions that the definition of public authority under section 2(h) of the Act was exhaustive and the control of an appropriate government as contemplated under section 2(h) of the Act meant substantial control.

7. Section 2(h) of the Act, which defines public authority, reads as under:-

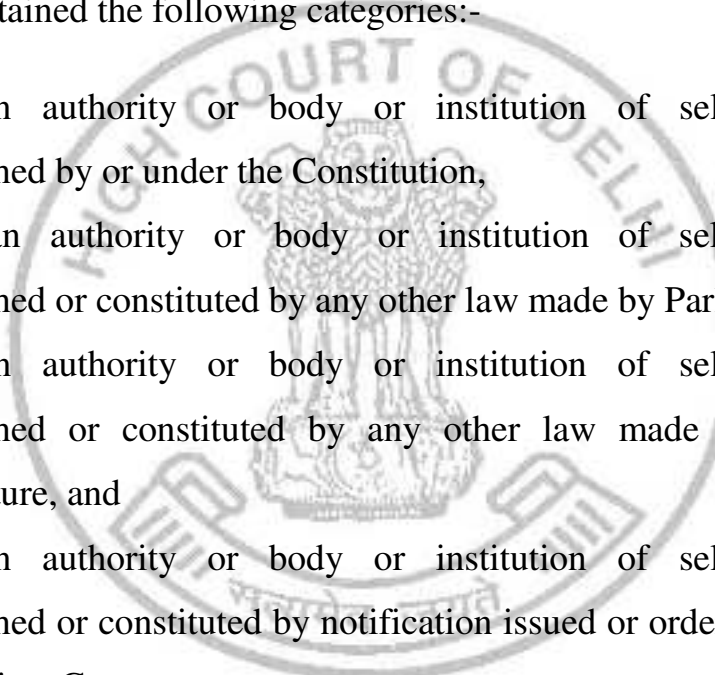
- “(h) “public authority” means any authority or body or institution of self-government established or constituted,—
- (a) by or under the Constitution;
 - (b) by any other law made by Parliament;
 - (c) by any other law made by State Legislature;
 - (d) by notification issued or order made by the appropriate Government, and includes any—
 - (i) body owned, controlled or substantially financed;
 - (ii) non-Government Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;”

8. In ***Thalappalam (supra)***, the Supreme Court interpreted 2(h) of the Act to exhaustively define the expression “public authority” and held as under:-

“30. The legislature, in its wisdom, while defining the expression “public authority” under Section 2(h), intended to

embrace only those categories, which are specifically included, unless the context of the Act otherwise requires. Section 2(h) has used the expressions “means” and “includes”. When a word is defined to “mean” something, the definition is prima facie restrictive and where the word is defined to “include” some other thing, the definition is prima facie extensive. But when both the expressions “means” and “includes” are used, the categories mentioned there would themselves.”

9. The Court further analysed Section 2(h) of the Act and held that it exhausts the categories mentioned therein. The former part of Section 2(h) of the Act contained the following categories:-

- 
- (1) an authority or body or institution of self-government established by or under the Constitution,
 - (2) an authority or body or institution of self-government established or constituted by any other law made by Parliament,
 - (3) an authority or body or institution of self-government established or constituted by any other law made by the State Legislature, and
 - (4) an authority or body or institution of self-government established or constituted by notification issued or order made by the appropriate Government.

While the latter part of Section 2(h) of the Act contained the following categories:-

- (5) a body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate Government,
- (6) non-governmental organisations substantially financed directly or indirectly by funds provided by the appropriate Government.

10. The quintessential question is whether the petitioner could be said to be 'owned, controlled or substantially financed' by an appropriate government (in this case the central government).

11. The entire equity of the petitioner is held by the National Dairy Development Board (hereafter 'NDDB'). Thus, even though petitioner's Board of Directors manages its affairs, NDDB would exercise control over the affairs of the petitioner as its principal shareholder. The power of shareholders of a company to appoint and remove directors results in them exerting real influence over the affairs of a company.

12. In **LIC v. Escorts Ltd.:** (1986) 1 SCC 264, the Supreme Court drew an analogy between a democratic State functioning under the Constitution and a company. It was explained that just as citizens exercise control over the affairs of a nation by electing their representatives, the shareholders of a company - although not directly controlling or supervising the affairs of a company - also exert a similar influence. The fact that all shareholders are not in direct management of a company, does not in any manner dilute their sphere of influence over the company. The learned senior counsel appearing for the petitioners also did not dispute that the petitioner was a company, which was under control of NDDB; the focus of his arguments was that NDDB did not fall within the definition of an appropriate government within the meaning of Section 2(a) of the Act and, therefore, the petitioner could not be stated to be controlled by an appropriate government. The petitioner also relied on the following passages from the decision in ***Thalappalam*** (*supra*):-

“34. We are of the opinion that when we test the meaning of expression “controlled” which figures in between the words “body owned” and “substantially financed”, the control by the appropriate Government must be a control of a substantial nature. The mere “supervision” or “regulation” as such by a statute or otherwise of a body would not make that body a “public authority” within the meaning of Section 2(h)(d)(i) of the RTI Act. In other words just like a body owned or body substantially financed by the appropriate Government, the control of the body by the appropriate Government would also be substantial and not merely supervisory or regulatory. The powers exercised by the Registrar of Cooperative Societies and others under the Cooperative Societies Act are only regulatory or supervisory in nature, which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled. The management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Cooperative Societies Act and not on the authorities under the Cooperative Societies Act.

35. We are, therefore, of the view that the word “controlled” used in Section 2(h)(d)(i) of the Act has to be understood in the context in which it has been used vis-à-vis a body owned or substantially financed by the appropriate Government, that is, the control of the body is of such a degree which amounts to substantial control over the management and affairs of the body.”

13. In my view, the decision of the Supreme Court in *Thalappalam* (*supra*) has to be understood in the context of the facts of that case. The Supreme Court was concerned with the issue whether a cooperative society registered under the Kerala Cooperative Societies Act, 1969 would fall within the definition of a public authority by virtue of the control exercised by the Registrar of Cooperative Societies. In that context, the Supreme Court had explained that the control exercised by a Registrar of

Cooperative Societies under the Kerala Cooperative Societies Act would not qualitatively constitute control that would warrant a Cooperative Society to be considered as a public authority within the meaning of Section 2(h)(d)(i) of the Act. The supervisory and regulatory control exercised by the Registrar of Cooperative Societies does not qualitatively qualify to be control as contemplated in the context of section 2(h)(d)(i) of the Act.

14. Plainly, the control exercised by a shareholder holding the entire share capital of a company is qualitatively different from the control exercised by any regulatory authority such as a Registrar of Companies or a Registrar of Cooperative Societies. The extent of control exercised by such authorities is defined and circumscribed by its purpose; that is, to ensure compliance with the governing statutes, rules and regulations. An incorporated entity is required to conform with the statute under which it is incorporated. Such control does not, directly or indirectly, influence the manner in which the affairs of an incorporated entity are to be conducted or the course, which such incorporated entities may legitimately take. The Registrar of Companies is not concerned in the manner in which a company conducts its business as long as it does not violate the provisions of the enactment under which it is incorporated or transgresses its charter documents (i.e Memorandum of Association or Articles of Association). It is open for a company to carry on its business in the manner as its shareholders or its directors deem fit. The nature of control exercised by shareholders is qualitatively different from the control exercised by the Registrar of Companies over such incorporated entity. The shareholders have the ability to laydown the policy to be followed by a company and

further guide its affairs in the direction that they deem appropriate in their wisdom. The control exercised by shareholders, pervades the entire functioning of the company. The fact that such control may be exercised by amending the Articles of Association or by appointment/removal of directors does not dilute the grip of the majority shareholders over the affairs of the company.

15. In *LIC v. Escorts Ltd.* (*supra*) the financial institutions, which held 52% shares in Escorts Ltd., a public company, used their voting power to remove non-executive directors to ensure that Escorts Ltd. did not pursue a litigation against Reserve Bank of India and the Central Government. The Supreme Court declined to interfere with the right exercised by the financial institutions as shareholders as it was considered within their power to control the affairs of the company and exercise their voting powers as they deemed fit.

16. The fact that shareholders of a company do not interfere with the day to day functions of the company cannot lead to a conclusion that shareholders do not control the company. In my view, 'managing' a company, cannot be read as synonymous to 'controlling' a company. There is nothing in the language of Section 2(h)(d)(i) of the Act, which indicates that the appropriate government must directly control a public authority or such control must be manifested by direct interference with the day-to-day management of the company. If an appropriate government has the ability to direct the affairs of a body and exercise its dominion over its affairs, the fact that it does so by appointing its representatives as managers of the said body or ensuring that its representatives are so appointed, would not mean

that the body is not controlled by the appropriate government. The test as laid down by the Supreme Court in *Thalappalam* (*supra*) is the qualitative test; the control exercised by an appropriate government, which is restricted only to ensuring regulatory compliance, would not make a body a public authority under section 2(h) of the Act. However, if the control of an appropriate government is pervading and not restricted to enforcing regulatory compliance, the body controlled by the appropriate government would be a public authority.

17. The Supreme Court in **Balmer Lawrie & Co. Ltd. & Ors v. Partha Sarathi Sen Roy & Ors.:** (2013) 8 SCC 245 held as under:-

“24. When we discuss “pervasive control”, the term “control” is taken to mean check, restraint or influence. Control is intended to regulate, and to hold in check, or to restrain from action. The word “regulate”, would mean to control or to adjust by rule, or to subject to governing principles.”

18. In **Krishak Bharti Cooperative Ltd. v. Ramesh Chander Bawa:** W.P. (C) 6129/2007, decided on: 14.05.2010, a coordinate bench of this Court held as under:-

“18. At this juncture a brief reference may be made to the legal and ordinary meanings of the word 'control'. The word 'control' has been defined in Black's Law Dictionary (6th Edn.) to mean 'power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. The ability to exercise a restraining or directing influence over something.' The Shorter Oxford English Dictionary (5th Edn.) defines it as 'the act of power of directing or regulating; command, regulating influence' or 'a means of restraining or regulating; a check; a measure adopted to regulate prices, consumption of goods etc.' In both senses therefore the key word is 'influence' and not necessarily 'domination'.”

19. The question whether the petitioner is controlled by the Central Government has to be viewed in context of its structure that evolved over a period of time. The National Dairy Development Board was set up in 1965 by the Government of India as a registered society with the primary objective for providing technical services to implementing agencies in building up their dairy projects on co-operative lines on the pattern of the Kaira District Co-operative Milk Producers' Union Limited Anand, popularly known as the "Anand pattern".

20. In the year 1970, the Government of India incorporated Indian Dairy Corporation - a company registered under the Indian Companies Act, 1956 - for the implementation of the Operation Flood Programme. Mother Dairy, Delhi was commissioned in the first phase of Operation Flood in 1974 and Fruit and Vegetable Project was established in Delhi in the year 1988. These were initiatives of the Government of India and it cannot be disputed that, at this stage, the Government was in control of the Mother Dairy, Delhi as well as Fruit and Vegetable Project either through its company Indian Dairy Corporation or Society established by the Government. The National Dairy Development Board and other initiatives had become a project of national importance and, accordingly, it was decided to enact the National Dairy Development Board Act, 1987 (hereafter 'NDDB Act') to incorporate NDDB as an incorporated entity. Section 2 of the NDDB Act declared NDDB as an institution of national importance. By virtue of section 44 of the NDDB Act, NDDB is exempt from payment of any tax on income.

21. The Preamble of the NDDB Act indicates that one of the objects of the Act was to merge the Indian Dairy Corporation with NDDB since the functions of the two bodies were complementary to each other. Section 42 of the NDDB Act provides that undertaking of Mother Dairy, Delhi would become a subsidiary unit of NDDB from the appointed date. The NDDB Act resulted in dissolution of the Indian Dairy Corporation and the consolidation of the initiatives made by the Central Government under the institution of NDDB.

22. By virtue of section 8 of the NDDB Act, the management of NDDB was vested with its Board of Directors. Section 8(2) of the Act provides that the board of directors of NDDB shall consists of a Chairman; one director from amongst the officials of the Central Government; two directors from amongst the Chairmen of the State Co-operative Dairy Federations; whole-time directors – not more than three in number – appointed from the executives of the higher grade of the NDDB; and one expert from outside NDDB. By virtue of Section 8(3) of the Act, the Central Government is empowered to appoint all directors including the Chairman of NDDB whereas the Chairman and the official of the Central Government are to be appointed directly by the Central Government. The other directors are to be nominated by the Central Government in consultation with the Chairman. Thus, the Central Government has the exclusive power to constitute the board of directors of NDDB. Section 9 of the NDDB Act provides for the term of the Chairman and the board of directors. However, by virtue of Section 9(2) of the Act, the Central Government has a right to terminate the services of the Chairman by giving him a notice of not less than three months or salary and allowances in lieu thereof. Section 9(6) of the Act

expressly provides that “every director, other than the Chairman, shall hold office during the pleasure of the Central Government”.

23. As I see it, the Central Government retains complete control over NDDB and for all practical purposes, it is an instrumentality of the Central Government.

24. Section 43 of the NDDB Act empowers the Board to form, with the previous approval of the Central Government, one or more companies for implementation of any of its objectives. NDDB, by its letter dated 17.02.1999, sought the necessary approval of the Central Government for the resolution passed by the Board of Directors of NDDB in its 51st meeting held on 11.02.1999 to create a wholly owned private limited company to take over the functioning of Mother Dairy, Delhi – which, by virtue of section 42 of the NDDB Act, was an undertaking of NDDB - and Fruit and Vegetable Project. The Director of Department of Animal Husbandry and Dairying, Ministry of Agriculture, Government of India issued a letter dated 13.12.1999 granting the government’s approval as sought for by NDDB.

25. On 24.03.2000, the petitioner was incorporated as a private limited company under the name of M/s Mother Dairy Fruit & Vegetable Private Limited. On 22.08.2000, the company was converted into a public company and the name of the company was changed to Mother Dairy Fruit & Vegetable Limited. Thereafter, the petitioner company was again converted to private company and the name of the company was changed from Mother Dairy Fruit & Vegetable Limited to Mother Dairy Fruit &

Vegetable Private Limited. The entire share capital of the petitioner is held by NDDB.

26. Clause 5 of the memorandum of Association of the petitioner provides that the object of the petitioner would be to assist NDDB in furthering NDDB's objectives. Clause 13 of the memorandum provides that the petitioner shall takeover the assets and functions of the Mother Dairy, Delhi and the Fruit and Vegetable Project and to manage, improve, expand and diversify the business undertaken by the said two undertakings. Clause 5 and 13 of the memorandum are relevant and are quoted below:-

“5 . Generally to function as a subsidiary company of the National Dairy Development Board, and to assist in functioning the NDDB's objectives.”

“13. To take over the assets, functions and personnel of –

- a. the Mother Dairy, Delhi, referred to in referred to in Section 42 of the National Dairy Development Board Act 1987 (37 of 1987);
- b. the Fruit and Vegetable Project, (having activities in Delhi and elsewhere in India and abroad), and

to continue such business as are being undertaken by them as on the date of the formation of the Company and to manage, improve, expand and diversify the same to such extent and in such manner as circumstances may require without prejudice to the continuance of the two subsidiary units as separate undertakings of the company unless the Board of Directors of the Company decides otherwise.”

27. It is apparent from the above that the formation of the petitioner was only for the purposes of corporatizing certain activities and undertakings, which were being managed directly as divisions of NDDB. The entire

shareholding of the petitioner is held by NDDB and indisputably the petitioner is under control of NDDB.

28. The controversy to be addressed is whether vesting certain undertakings by NDDB in a wholly owned subsidiary would result in the Central Government losing control over those undertakings. In my view, the answer to this must be in the negative. It is apparent that the incorporation of the petitioner as a wholly owned subsidiary of NDDB was for the purpose of better management of certain undertakings and the petitioner was to continue functioning to further the objectives of NDDB. Plainly, NDDB is under the control of the Central government and the petitioner being a subsidiary of NDDB would be indirectly under the control of the central government.

29. A constitution bench of the Supreme Court in **CIT v. Messers Jeewanlal Limited, Calcutta**: AIR 1953 SC 473 had way back in 1953, while considering the expression “controlling interest” had observed that:

“6. In common parlance a person is said to have “a controlling interest” in a company when such a person acquires, by purchase or otherwise, the majority of the vote-carrying shares in that company, for the control of the company resides in the voting powers of its shareholders. In this sense, the directors of a company may well be regarded as having “a controlling interest” in the company when they hold and are entered in the share register as holders of the majority of the shares which, under the Articles of Association of the company, carry the right to vote. (See *Glasgow Expanded Metal Co. Ltd. v. Commissioners of Inland Revenue* [(1923) 12 Tax Cas 573] and *Commissioners of Inland Revenue v. B.W. Noble* [(1926) 12 Tax Cas 911]). It is not, however, necessary that in order to have “a controlling interest” the person or persons who hold the majority of the vote-carrying shares must

have a beneficial interest in the shares held by them. These persons may hold the shares as trustees and may even be accountable to their beneficiaries and may be brought to book for exercising their votes in breach of trust, nevertheless, as between them as shareholders and the company, they are the shareholders, and as such, have “a controlling interest” in the company. (See *Inland Revenue Commissioners v. J. Bibby & Sons Ltd.* [(1946) 14 ITR (Supp) 7] and *CIT v. Bipin Silk Mills Ltd.* [AIR 1947 Bom 45 : 14 ITR 344] .) According to the facts found in the statement of the case the directors of the respondent company do not themselves hold the majority of shares which, on the contrary are registered in the name of the Aluminium Ltd. and therefore, according to the principles discussed above, they cannot be said to have “a controlling interest” in the respondent company.

30. In common parlance the expression “controlling interest” would denote the majority equity interest in a company. This concept of “controlling interest” in the context of a corporate structure consisting of holding companies and subsidiary companies was considered by the Supreme Court in **Vodafone International Holdings BV v. Union of India: (2012) 6 SCC 613**. In that case, the Court examined the issue of transfer of controlling interest in a downstream subsidiary company in India by transfer of share capital of its holding company overseas. The Income Tax Authorities sought to tax gains, which had resulted from transfer of shares of an ultimate holding company incorporated in Cayman Islands as arising in India since it resulted in the transfer of controlling interest in an Indian company. The Supreme Court recognized that acquisition of the share capital of the overseas holding company provided the acquirer a controlling interest in the downstream Indian subsidiary, however, held that controlling interest was an effect of the transaction of sale and purchase of

shares and could not be taxed in India. Some of the relevant observations of the Supreme Court are quoted below:

“354. Vodafone on acquisition of the CGP share got controlling interest of 42% over HEL/VEL through voting rights through eight Mauritian subsidiaries, the same was the position of HTIL as well. On acquiring the CGP share, CGP has become a direct subsidiary of Vodafone, but both are legally independent entities. Vodafone does not own any assets of CGP. Management and the business of CGP vests in the Board of Directors of CGP but of course, Vodafone could appoint or remove members of the Board of Directors of CGP. On acquisition of CGP from HTIL, Array became an indirect subsidiary of Vodafone. Array is also a separate legal entity managed by its own Board of Directors.”

“355. Share of CGP situates in the Cayman Islands and that of Array in Mauritius. Mauritian entities which hold 42% shares in HEL became the direct and indirect subsidiaries of Array, on Vodafone purchasing the CGP share. Voting rights, controlling rights, right to manage, etc., of Mauritian companies vested in those companies. HTIL has never sold nor has Vodafone purchased any shares of either Array or the Mauritian subsidiaries, but only CGP, the share of which situates in the Cayman Islands.....”

“357. Mauritian entities being a WOS of Array, Array as a holding company can influence the shareholders of various Mauritian companies. Holding companies like CGP, Array, may exercise control over the subsidiaries, whether a WOS or otherwise by influencing the voting rights, nomination of members of the Board of Directors and so on. On transfer of shares of the holding company, the controlling interest may also pass on to the purchaser along with the shares. Controlling interest might have percolated down the line to the operating companies but that controlling interest is inherently contractual and not a property right unless otherwise provided for in the statute.....”

31. The question whether a body is “controlled” by an appropriate government in the context of section 2(h) of the Act has to be answered by considering the expression “controlled” as plainly understood in common parlance and not in a technical sense.

32. A number of business houses organize their affairs through several subsidiary companies, which are held through a holding company. It is well accepted fact that subsidiary companies are sometimes created for better and a focused management of cohesive units. This does not imply that the ultimate shareholders have ceded control over the affairs of the corporate entities or their business undertakings. The influence and control exercised by shareholders of the holding company extends not only to the holding company but also to its downstream subsidiaries. Commercially, it is well understood that control of wholly owned subsidiaries, vests with the majority shareholders of the holding company.

33. The position of the Central Government is akin to the position of shareholders of a holding company. The influence of Central Government in controlling the affairs of NDDB cannot be disputed. By virtue of Section 8(3) of the NDDB Act, the entire Board of Directors of NDDB is to be appointed by the Central Government. Thus, in this aspect, the power of Central Government is similar to that of shareholders of a company. Viewed from this perspective, it can hardly be disputed that the petitioner is a body that is under the control of the Central Government. The fact that the same is exercised by NDDB would not in any manner dilute the Central Government’s control over the petitioner. There is no reason to assume that the control of the appropriate government as contemplated under Section

2(h)(d)(i) of the Act must be a direct control and not through any other incorporated body. A body which is owned or controlled by an appropriate government would not cease to be controlled by an appropriate government only because an intermediary corporate entity is introduced for better management.

34. Mr Nigam submitted that the loans granted by NDDB to the petitioner accounted for only 18% of the petitioner's borrowing and, thus, the petitioner could not be stated to have been substantially financed by NDDB. He further submitted that in order to fall within the definition of a Public Authority under sections 2(h)(d)(i) & (ii) of the Act, a body must be substantially financed by an appropriate Government. He contended that in this case, the loans granted to the petitioner were not by the Central Government but by NDDB and other banks. He relied on the decision of the Supreme Court in *Thalappalam* (*supra*) in support of his contention that mere providing subsidies, grants or exemption would not amount to substantially financing the body.

35. The question whether a body is substantially financed by a Central Government has to be viewed in the facts of each case. In the present case, it is not disputed that the undertakings of Mother Dairy were initiatives that were conceived as a part of Operation Flood Programme. During the period 1979-1999, the Central Government granted grants amounting to ₹13.6 crores for Mother Dairy, Delhi alone. In addition, loans to the extent of ₹31.71 crores were granted by the Central Government for the Mother Dairy Initiative in Delhi. Undoubtedly, the undertakings, which now vest with the petitioner were substantially funded by the Central Government at

the material time. The edifice of the petitioner's substratum was built by such funding. The petitioner's entire share capital vests with the NDDB. Since the petitioner's undertaking had been set up by funds provided by the Central Government, the equity capital that is currently held by NDDB also owes its origin to the assets funded by the Central Government.

36. The Supreme Court in *Thalappalam* (*supra*) observed as under:-

“The word ‘substantially’ has been defined to mean ‘in substance; as a substantially thing or being; essentially, intrinsically.’ Therefore the word ‘substantial’ is not synonymous with ‘dominant’ or ‘majority’. It is closer to ‘material’ or ‘important’ or ‘of considerable value.’ ‘Substantially’ is closer to ‘essentially’. Both words can signify varying degrees depending on the context.

38. Merely providing subsidiaries, grants, exemptions, privileges etc., as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist.”

37. Applying the aforesaid principles to the facts of the present case, it would be seen that the undertakings of the petitioner had been funded, to a significant extent, by the Central Government. This cannot be considered as a case where assistance was granted by the Central Government under schemes for betterment of cooperative sector or as general subsidies, which are available to a specified class of entities. The undertaking of Mother Dairy, Delhi and other projects were special initiatives of the Central Government as a part of Operation Flood Programme. It is also not the petitioner's case that the assistance granted to promote Mother Dairy, Delhi or the Fruit and Vegetable Project were in terms of any general scheme floated by the Government. It is relevant to note that the expression

“substantially financed” is suffixed by the words “directly” or “indirectly”. Thus, the finances indirectly provided by an appropriate Government would also have to be considered while determining whether a body has been substantially financed by an appropriate Government. The test to be applied is whether funds provided by the Central Government, directly or indirectly, are of material or considerable value to the body in question. In the present case, the basic infrastructure of the petitioner’s undertakings were promoted by funds provided by the Central Government; whether the said funds found their way through NDDB or otherwise is not material. Thus, in my view, the petitioner would also be a public authority on account of being substantially financed by the Central Government.

38. Accordingly, the present petitions and the applications are dismissed. No order as to costs.

FEBRUARY 02, 2015
RK

VIBHU BAKHRU, J