IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 16.11.2018

\+ **W.P.(C) 7289/2015 & CM Nos. 13391/2015, 30884/2017**

CONSTRUCTION INDUSTRY DEVELOPMENT COUNCIL …Petitioner

versus

SUBHASH CHANDRA AGARWAL ...Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. N.K. Kantawala with Ms. Nimisha Menon, Advocates.

For the Respondents: Mr. T. Sudhakar, Advocate.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner (hereafter 'CIDC') has filed the present petition impugning the order dated 25.06.2015 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'CIC'). By the impugned order, the CIC has held CIDC to be a Public Authority within the meaning of Section 2(h) of the Right to Information Act, 2005 (hereafter 'the RTI Act').

2. The respondent had filed an application dated 08.04.2013 under the RTI Act, *inter alia*, seeking information about file notings/ correspondences/ documents regarding the establishment of CIDC. The respondent did not receive any information in response to the

aforesaid application. Consequently, on 21.05.2013, the respondent filed a complaint under the RTI Act before the CIC. The CIC took notice of the complaint and on 25.06.2015, passed the impugned order declaring CIDC a public authority in terms of the RTI Act. The CIC further directed CIDC to appoint a Central Public Information Officer and a First Appellate Authority under the relevant provisions of the RTI Act and to respond to the respondent's application.

3. The only question, which falls for consideration of this Court in the present petition, is whether CIDC is a 'public authority' as defined under Section 2(h) of the RTI Act.

4. The petitioner (CIDC) is a society registered under the Societies Registration Act, 1860. CIDC was established in terms of an Office Memorandum dated 11.04.1996 (hereafter 'the Memorandum') issued by the Planning Commission. It was stated therein that CIDC had been setup in light of the recommendations received by the Planning Commission for setting up a Central Nodal Authority, *"to look into construction related problems common to all sectors under different wings of the government"* and also of the construction industry itself.

5. The respondent, who claims to be a RTI activist, filed an application on 08.04.2013 under the RTI Act before the concerned Public Information Officer (PIO), *inter alia*, seeking the following information :-

> 1. Complete information together with related file notings/ correspondence/documents etc.

on establishing CIDC by planning Commission/Government of India/others concerned naming ministry/department etc of Government of India having role in establishment of CIDC mentioning also date of establishment

2. Complete information on role of planning Commission/Government of India/others in establishing CIDC

3. Complete information on assignment/role given co CIDC by planning commission/Government of India/others etc naming the ministries/departments etc concerned for assigning any role to CIDC

4. Is it true that Union Ministry of Coal has assigned some role to CIDC

5. Complete information on role assigned by Union Ministry of Coal to CIDC

6. Complete information of capital funded at CIDC

7. Complete information on year-wise income/expenses under various heads of CIDC from the date of its establishment

8. Complete information of CIDC complying with provisions of Right-To- Information (RTI)' Act for being a public-authority under section 2(h) of RTI Act for being established by planning commission/Government of India

9. Complete information on providing details of Public Information Officer, Appellate Authority and provisions under section 4 of RTI Act on CIDC website”

6. The respondent did not receive any response to the said application. Consequently, on 21.05.2013, the respondent filed a complaint before CIC under Section 18 of the RTI Act. It was stated therein that CIDC is a public authority covered under the ambit of the RTI Act and, thus, was required to provide the information as sought by the respondent.

7. Thereafter, the CIC passed an interim order dated 08.01.2014 directing CIDC and the Planning Commission to file submissions and documents as to why CIDC does not fall within the meaning of 'Public Authority' under the provisions of RTI Act. On 19.05.2014, the CIC referred the matter to a Full Bench to consider the aforesaid issue.

8. The CIC, in the impugned order, noted that, admittedly, CIDC had received ₹6.43 crores as total corpus fund and out of that amount, ₹2.74 crores were granted by the Planning Commission. The CIC further observed that ₹72,00,000/- out of the initial corpus fund of ₹1,99,40,000/- collected by CIDC was contributed by Government Organizations and Institutions. The CIC also analysed the balance sheets of CIDC, and observed that contribution to the extent of 84% of the total corpus of CIDC for the financial year 1997-1998, was made by the Planning Commission and other Government Agencies.

9. Taking the aforesaid analysis into consideration, the CIC held that CIDC was running at a loss and it would not have survived without the huge financial support of the Planning Commission. The

CIC also referred to the decision of a Coordinate Bench of this Court in ***Mother Dairy Fruit & Veg Ltd. v. Hatim Ali & Anr, W.P.(C) 3110/2011***, ***decided on 02.02.2015***, wherein this Court had held that Mother Dairy Fruit & Veg Ltd. was a public authority in the light of the fact that it was receiving substantial funding (grants and loans) from the Central Government. The CIC also analysed the records of CIDC and observed that the Planning Commission is a permanent member of CIDC and further, the annual reports of CIDC are presented in the Parliament, both of which indicates that the Central Government exercises control over CIDC. The CIC concluded that CIDC is an instrumentality of the Planning Commission, as the Memorandum of Association submitted by CIDC reveals that the Planning Commission had decided to set up CIDC as the Apex Nodal Agency *"concerned with all aspects of Construction Industry"*.

10. The CIC, considering all the aforesaid documents and records, concluded that CIDC was a public authority since the role and contribution of the Central Government in terms of finance, control and operation, was substantial and pervasive.

Reasons & Conclusion

11. At the outset, it would be relevant to refer to Section 2(h) of the RTI Act, which defines the expression 'public authority'. Section 2(h) of the RTI Act is set out below:-

> "2. Definitions.- In this Act, unless the context otherwise requires,-

xxxx xxxx xxxx xxxx

> (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."

12. In the present case, CIC has held that the petitioner owes its origin to the Office Memorandum dated 11.04.1996 and, therefore, it would be a public authority by virtue of Section 2(h)(d) of the RTI Act. It is not disputed that the petitioner was set up by the Planning Commission and it was registered as a society on 07.03.1996. The Office Memorandum dated 11.04.1996 sets out the constitution of the Board of Governors of CIDC as well as objectives of CIDC. The said Office Memorandum is set out below:-

"NO. F-O-13019/9/95-PAMD

Government of India

Planning Commission

Yojana Bhavan,

Sansad Marg

New Delhi-110001

April 11,1996

OFFICE MEMORANDUM

Subject:- Constitution of Construction Industry Development Council (CIDC)

1. Construction constitutes 40 to 50 percent of the national plan expenditure in various sectors, the largest being the for infrastructure areas like energy and transport. Frequent time and cost overruns in projects due to a multitude of factors and occasional deficiencies in economy and quality of construction have plagued a large number of the Plan projects. On the initiative of the Planning Commission, a number of committees, conferences, seminars and a working group have examined the problems of this sector. Among their many recommendations accepted by the Planning Commission was the setting up of a central nodal authority as a full time body to look into construction related problems common to all sectors under different wings of the Government and that of the construction industry itself

2. Planning Commission has now set up a Construction Industry Development Council (CIDC) which has been registered on March 07,1996 as a Society under the Societies Registration Act. Deputy Chairman of the Planning Commission is the Patron of the Society who nominates the Chairman of CIDC. Currently Shri G.V. Ramakrishna, Member, Planning Commission, is the Chairman of CIDC.

3. Membership of CIDC is open to corporate bodies, institutions, Central and State Government departments and PSUs with major interest in various aspects of construction. They will be admitted as "Corporate" or "Institutional" (Educational, research, training etc.) members. Those who pay ten times the annual subscription will become "Permanent" members. Such corporate and institutional members including permanent members will constitute the "General Body" of the Council.

4. CIDC will have Board of Governors consisting of 30 members as follows:

S. No.	Particulars	
i.	Chairman of CIDC nominated by the Deputy Chairman of the Planning Commission	1
ii.	Elected Members: Elected from among and by each of the three categories of members for a tenure of two years, eligible for re-elections only after a gap of two years Permanent Members 4 Corporate Members 4 Institutional Members 2 Total Elected:	10
iii.	Industry Association: Nominated for a period of two years.	3

	Eligible for re-nomination	
iv.	Institutional Members (nominated)	1
v.	Govt. Departments who are major clients of the construction industry. Nominated for a period of two years. May be re-nominated	6
vi.	Central Public Sector Undertaking with major stake in Constructions. Nominated for a period of two years.	3
vii.	State Governments or their nominee departments/PSUs (by two year rotation). Nominated	3
viii.	Persons of Eminence in the field of constructions	1
	Total	30

5. A managing Committee of 10 members from the Board will supervise the day to day working of the CIDC, assisted by the Director General and his staff.

6. Objectives of the CIDC:

   a) To improve, strengthen and develop all aspects of the construction industry in India — its magnitude, corporate strength, its diversity and specialization, project execution systems, machinery and material backing and financial support systems so as (i) to be able to engender quality, speed, economy and efficiency in all types of construction activity necessary for achieving the objective of construction programmes and projects planned and execution in India, (ii) to be competent and competitive in the domestic and international market, and (iii) to be responsive to the latest economic, technical, environmental and social public policies.

b) To act as a nodal agency for an all round modernization, growth and development of the construction sector as a whole including consulting organizations, engineering, architecture, design, contracting and other specialist agencies, manufacturers and suppliers of construction material, machinery and plant, trained workers, supervisors and managers and also clients supervisory departments and their project execution systems.

c) To make suggestions/ recommendations regarding policies and procedures concerning supervision/execution of construction works and infrastructural development in areas like modernization, industrialization, energy and ecology conservation, privatization, joint venturing etc.

d) To suggest ways and means to improve the quality and economy of all types of inputs as well as the products of construction

e) To suggest ways to bring about more effective and harmonious co-ordination among concerned government departments, PSUs, other councils, project authorities, executing agencies, machinery and material manufacturers and their associations for promoting more efficient and effective methods of project management as well as better and more environmental friendly methods and materials of construction to be adopted by construction, designing, supervising and executing agencies.

7. All Ministries/ departments of the Government of India and all state Governments and Union Territories, PSUs, institutional and other organizations concerned are requested to extend their co-operation and support of CIDC.

PRABIR SENGUPTA

ADVISER (PAMD)"

13. It is apparent from the above that not only is CIDC promoted by the Planning Commission but the Deputy Chairman of the Planning Commission, who is described as the patron of the society, is entitled to nominate the chairman of the Governing Body of CIDC. Also, a member of the Planning Commission was the first Chairman of CIDC.

14. The constitution of the Board of Governors of CIDC also clearly indicates that the majority of the members are nominees of Government Departments or the Central Public Sector Undertakings or State Governments. In addition, the said Office Memorandum also indicates that all Ministries / Departments of the Government of India, all State Governments, Union Territories, Public Sector Undertakings, Institutional and other organizations were called upon to extend their cooperation and support to CIDC.

15. It is also not disputed that Planning Commission had contributed ₹2.74 crores as a corpus of CIDC and the interest on the same was required to be utilized for its functioning. The CIDC contends that the same could not be stated to form the edifice of its substratum, as it only amounts to 38% of the corpus fund. This contention is unpersuasive. Indisputably, ₹2.74 crores constitutes 38% of the CIDC's corpus fund. The said fund was contributed in the year 1997 and it cannot be disputed that the same is a substantial amount and such contribution was necessary for CIDC to discharge its functions. The CIC had found that but for the aforesaid contribution, it would have been difficult for CIDC to survive. The CIC had found that as on 31.03.1998, the operations of CIDC indicated that it had resulted in a deficit. However, that was more than made up by grant of finance from the Planning Commission. The CIC also found that as on 31.03.1998, the contribution by the Planning Commission itself was 48% in the capital of CIDC.

16. In ***Thalappalam Service Cooperative Bank Ltd. and Ors. v. State of Kerala and Ors.: (2013) 16 SCC 82*** , the Supreme Court had explained that the expression "substantially financed", as used in Section 2(h)(d)(i) and (ii) of the RTI Act, meant that degree of financing must be "*actual, existing positive and real to a substantial extent, not moderate, ordinary, tolerable etc.*" In the present case, it can hardly be disputed that the financial support extended by the Planning Commission was not hypocritical; it was real and substantial.

At the material time, the Planning Commission had provided to a significant extent, the funds required by CIDC to exist.

17. It is not necessary that the funds provided by Planning Commission ought to constitute majority of CIDC’s corpus. The words “substantially financed” must be understood in the manner as explained by the Supreme Court in ***Thalappalam Service Cooperative Bank Ltd.*** (*supra*); it should be positive, real and to a substantial extent.

18. In view of the above, this Court finds no reason to interfere with the decision of the CIC holding CIDC to be a public authority. The petition is, accordingly, dismissed. The pending applications are also disposed of.

VIBHU BAKHRU, J

NOVEMBER 16, 2018
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