$~79

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

\+ LPA 1180/2024 & CM APPL. 70810/2024 (25 Days Delay)

LT. GEN. S. S. DAHIYA (RETD.) .....Appellant

Through: Mr. Shivain Vaidialingam, Adv. along with appellant in person.

versus

AIR FORCE SPORTS COMPLEX & ORS. .....Respondents

Through: Ms. Arti Bansal, Mr. Kamal Digpaul, Ms. Suniti Singh and Mr. Akansha Kumari, Advs. for UOI.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

O R D E R

% **04.12.2024**

CM APPL. 70811/2024 (Ex.)

Allowed, subject to all just exceptions.

The application stands disposed of.

LPA 1180/2024 & CM APPL. 70810/2024 (25 Days Delay)

1. This appeal is directed against the order dated 04 October 2024 rendered by the learned Single Judge, who had chosen to interfere with the view expressed by the authorities under the Right to Information Act, 2005 [**"Act"**], that the Air Force Sports Complex would fall under the definition of a 'public authority' under Section 2(h) of the Act.

2. The learned Single Judge, while taking note of the judgment of the Supreme Court in **Thalappalam Service Coop. Bank Ltd. V.**

State of Kerala [(2013) 16 SCC 82], had principally examined the issues from the angle of whether a permissive use of government land would qualify clauses (d)(i) or (d)(ii) of Section 2(h), and ultimately came to observe as follows:-

> "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.
>
> **xxxx xxxx xxxx**
>
> 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."

3. We are in agreement with the view expressed by the learned Single Judge who had, on facts, found that there was no financial assistance which was being provided to the appellant by the Union. The learned Single Judge has also found the absence of any control which the Union exercises in the management or administration of the respondent. In our considered opinion, mere permissive use of land or occupation of a property which belongs to the government would not qualify the tests enumerated in clauses (d)(i) or (d)(ii) of Section 2(h).

4. We thus find no merit in the instant appeal. The same shall consequently stand dismissed.

YASHWANT VARMA, J

DHARMESH SHARMA, J

DECEMBER 04, 2024/gunn