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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2010

CORAM

THE HONOURABLE MR. JUSTICE K. CHANDRU

W.P.NO.9794 of 2008

and

M.P.NOs.1 and 2 of 2008

New Tirupur Area Development Corporation Ltd.,  
represented by its Authorized Signatory  
'Anurag'  
No.15, Murray's Gate Road,  
Alwarpet,  
**Chennai** - 600 018.  
Petitioner

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Vs.

1. State of Tamil Nadu,  
represented by its Secretary  
Personnel and Administrative  
Reforms AR III Department,  
Fort St. George,  
**Chennai** 600 009.
2. State Information Commission,  
Kamadenu Supermarket, 1st Floor,  
No.273, New No.378, Anna Salai,  
Teynampet,  
**Chennai**-600 018.
3. The Chief Information Commissioner,  
Kamadenu Supermarket, 1st Floor,  
No.273, New No.378, Anna Salai,  
Teynampet,  
**Chennai**-600 018.
4. Rehmat
5. Gaurav Dwivedi  
Respondents

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This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records of the first to third respondents leading to the passing by the second respondent of the impugned order dated 24th March, 2008 bearing No.31422/Enquiry/2006 and to quash the same and to forbear the respondents from acting in furtherance of the impugned order.

For Petitioner : Mr. AL Somayaji, SC  
for Mr.S.Raghunathan

For Respondents : Mrs.C.K.Vishnupriya, AGP for R1  
Mr.G.Rajagopal, SC  
for M/s.G.R.Associates for R2  
Mr.P.V.Ravi Chandran for RR4 and 5

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## ORDER

The petitioner is the New Tirupur Area Development Corporation Ltd. represented by its Authorised Signatory. The prayer in the writ petition filed by them is for setting aside the order, dated 24.3.2008 passed by the second respondent, wherein and by which the State Information Commission (R2) held that the petitioner is a "public authority" as defined under Section 2(h)(d) in view of the public funding and the Government control and therefore, they were directed to supply the information sought for by the fourth and fifth respondents within 15 days. The writ petition was admitted on 22.04.2008. Pending the writ petition, an interim stay was granted. In the other application for an interim injunction, only notice was ordered.

2. The short question arises for consideration is whether the petitioner company is a "public authority" within the meaning of Section 2(h)(d) of the Right to Information Act, 2005 (for short RTI Act).

3. Heard the arguments of Mr.AL.Somayaji, learned senior counsel appearing for Mr.S.Raghunathan, counsel for petitioner, Mrs.C.K.Vishnupriya, learned Additional Government Pleader for first respondent, Mr.G.Rajagopal, learned Senior Counsel appearing for GR Associates for second respondent and Mr.P.V.Ravi Chandran, learned counsel for respondents 4 and 5.

4. Section 2(h)(d) of the RTI Act reads as follows:  
*"Section 2(h)(a),(b) and (c) omitted.*

(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;*"  
(Emphasis added)

5. It is seen from the records that respondents 4 and 5 made an application seeking for certain details including tariffs being set for the industry as well as the households in Tiruppur fixed by the authority. According to the applicants, prices for industrial supply ranged from Rs.23/- per KL to Rs.45/- per KL. Therefore, they wanted to know why there is disparity in the tariff fixed for water. They also wanted to know several other details. On receipt of the said representation sent by respondents 4 and 5 from Badwani, Madhya Pradesh, the petitioner company informed that they are not a "public authority" under the RTI Act. It was thereafter, respondents 4 and 5 sent a complaint to the Information Commission.

6. In order to maintain their application before the Commission, respondents 4 and 5 informed the Commission that the petitioner company is a Special Purpose Vehicle (SPV) promoted by Tiruppur Exporters Association (TEA) and Tamil Nadu Water Investment Company (TWIC), which is owned by the Government of Tamil Nadu. They along with Infrastructure Leasing and Financial Services (IL&FS) had a joint venture for infrastructure development in Tamil Nadu. Respondents 4 and 5 wanted to know details regarding Tiruppur Water Supply and Sewerage Project (TWS&SP) which is implemented by the petitioner company. Since the said project is being implemented and operated by the petitioner company for supplying water and providing sanitation services both for industries and households in Tiruppur Municipality (presently Corporation) as well as for the nearby towns and villages, in larger public interest, they requested the Company to provide certain basic information regarding the project. They had also contended that major shareholders of the petitioner company included Tamil Nadu Water Investment Company, Life Insurance Corporation of India, General Insurance Corporation of India through its four subsidiary insurance companies. Since the petitioner company is controlling the water supply in Tiruppur and its project is substantially financed by the Government of Tamil Nadu along with other public sector companies, it is a "public authority", coming under Section 2(h) (d).

7. In response to the query, the petitioner company informed the Commission that the petitioner is a public limited company incorporated under the Companies Act. They are promoted by the Tamil Nadu Water Investment Company Limited (TNWIC), which itself is a subsidiary of Infrastructure Leasing and Financing Services. They also gave a statement of shareholding pattern of the company in the Annexure to their letter. They also admitted that they were implementing Tiruppur Water Supply and Sewerage Project on a Build, Own, Operate & Transfer (BOOT) basis. The petitioner company has set up 185 Million liter per day capacity water supply project to cater to the needs of industries for their requirement of water and also supply of bulk water to Tiruppur municipality (presently Corporation) and various panchayats as well as Tamil Nadu Water Supply & Drainage Board. The petitioner company had also set up an underground sewerage system in Tiruppur municipal area.

8. The shareholders of petitioner company is set out in the Annexure, which reads as follows:

<b>1.Share Holders of NTADCL</b>		
<b>Sl. No.</b>	<b>Investor</b>	<b>Rs. in Crores</b>
1.	Tamilnadu Water Investment Company Ltd.(TWICL)	105
2.	AIDEC Fund (Mauritius)	90
3.	Wilbur Smith/Mahindra & Mahindra/United Utilities Consortium	45
4.	Life Insurance Corporation	20
5.	General Insurance Corporation and its associates	15
6.	Tirupur Exporters Association (through an SPV)	10
7.	Infrastructure Leasing & Financial Services Limited	37.7
	<b>Total</b>	<b>322.7</b>
<b>2.Share Holders of TWICL</b>		
<b>Sl. No.</b>	<b>Investor</b>	<b>Rs. in Crores</b>
1.	Infrastructing Leasing & Financial Services Limited	35
2.	Government of Tamil Nadu	30
	<b>Total</b>	<b>65</b>

9. It is also stated that the total equity capital of the petitioner company was Rs.322.7 Crores, out of which promoters TWICL had funded Rs.105 Crores. The Government of Tamil Nadu contributed Rs.50 Crores to the project, which was routed through the petitioner company through TWICL as equity. The shareholders pattern of the company was described hereunder:

"The shareholding pattern of the company classified on the basis of the category of the shareholders is given below:

<b>Sl.No.</b>	<b>Name of the shareholder</b>	<b>Share capital (Rs. in crores)</b>	<b>%</b>
1.	Foreign Company (AIDQUA Holdings (Mauritius) Inc.)	90	27.89
2.	Indian companies in Private Sector, of which IL&FS holds share capital of Rs.87.70 crores (27.17%) (directly and through TWICL)	142.7	44.22
3.	Government of Tamil Nadu (TWIC)	55	17.04
4.	Insurance Companies	35	10.85
5.	Individuals (7 shares @ Rs.70)		
	<b>Total</b>	<b>322.7</b>	<b>100</b>

10. It is also claimed that the total cost of the project developed by the petitioner company was Rs.1023 crores. The cost of the project has been funded as follows:

	<b>Rs. in crores</b>
Equity capital	322.70
Senior Debt	613.80
Sub-debt	86.50
Total	1,023.00

11. Therefore, it was contended that holdings of the Government of Tamil Nadu in the said project was only Rs.55 crores constituting 17.04 % of total share capital and 5.38% of the total cost. It was also stated that the Government of Tamil Nadu had not contributed any debt capital. According to the petitioner, largest shareholders in the company are AIDQUA (27.89%) and IL&FS (27.17%). Therefore, the Government of Tamil Nadu is only the third largest shareholder to the petitioner company. Further, it was stated that substantial portion of the shareholders' capital constituting about 72% were raised from Foreign and Indian private sectors and Rs.35 Crores have been raised from the insurance companies. Therefore, they stated that the petitioner company is not substantially financed either directly or indirectly by the funds provided by the Government of India or Government of Tamil Nadu. Hence, it is not a "public authority" as defined under Section 2(h) of the RTI Act. The petitioner also was not established, constituted or owned or controlled by the Government of Tamil Nadu. According to them, RTI Act is both regulated by the State and Central Government. The term "appropriate Government" under Section 2(a) states that appropriate Government means in respect of the institutions which are funded directly or indirectly by the Central Government, it is the Central Government and if it is funded by any State Government, it is that State Government. Therefore, since there is no substantial funds provided directly or indirectly either by the Central Government or by the State Government, they are not covered by the provisions of the RTI Act.

12. Notwithstanding their defence, the Commission heard the matter on 14.3.2008 and passed an order which was made on 24.3.2008 and held that the petitioner is a "public authority" as defined under Section 2(h)(d) of the RTI Act. They were directed to give information sought for by respondents 4 and 5. It is this order, which is under challenge before this court as noted already.

13. Mr.AL.Somayaji, learned Senior Counsel appearing for the petitioner produced a copy of memorandum of Association and Articles of Association for the petitioner company which was incorporated on 24.2.1995 by the Registrar of companies. They referred to Article 120, in which numbers of Board of Directors of the company as per the ratio are described. While out of 14 Directors, 6 Directors belonged to TWICL, AIDQUA has 2 Directors, Special Investors had 1 Director, LIC and GIC Investor Group collectively had 1 Director, Lenders had 2 Directors, independent Directors 2. Article 147 shows that the Chairman will be elected from amongst the nominee Directors of TWICL. He holds the office such time as the Board of Directors may specify. The Managing Director of the company is appointed under Article 150 by the Board of Directors. Under Article 193, the decisions of the Company shall be taken by the Board. As per Article 193.2, in case of an AIDQUA reserved matter, no resolution shall be effective and valid unless it was adopted by the affirmative vote of one nominee of AIDQUA. Therefore, the argument of the counsel was not only there was no substantial finance by the Government, but it is not a body either owned or controlled by the Government.

14. The learned Senior counsel also stated that in case it is held to be non governmental organisation, even then, it is not substantially financed either directly or indirectly by the State Government. Therefore, it was contended that they are not bound to disclose the information sought for by the contesting respondents as it is

not a "public authority". They prayed for setting aside the impugned order directing them to furnish the information.

15. Per contra, Mr.G.Rajagopal, learned Senior counsel appearing for the TNIC contended that the petitioner company is a public authority substantially funded by the State Government. The definition found under Section 2(h) is only an inclusive definition. He referred to the judgment of the Division Bench of this court presided by A.K.Ganguly, C.J. (as he then was) in Tamil Nadu Road Development Company Limited, rep. By its Director-in-charge, Chennai Vs. Tamil Nadu Information Commission, rep. By its Registrar, Chennai and another reported in 2008 (6) MLJ 737. In that case, the division bench held that definition under Section 2(h)(d)(i) of the RTI Act must receive a liberal interpretation. After referring to the object and preamble of the RTI Act was to promote transparency and accountability in the working of every public authority, they also made it clear that democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed. They also stated that the RTI Act attempts to inculcate openness in our democratic republic. Once of the salient feature of openness in democracy is an access to information about the functioning of the public authorities.

16. After quoting the judgment of this court in R.Anbazhagan , Deputy Manager (Mechanical), Tamil Nadu Newsprint and Papers Ltd. Vs. State Information Commission reported in 2008 (5) MLJ 200, with approval, the division bench held in Tamil Nadu Road Development Corporation Ltd.'s case (cited supra) in paragraphs 22 and 24 observed as follows:

"22. The principle of purposive interpretation has been explained by Chief Justice S.R. Das in Bengal Immunity Co. Ltd. Vs. State of Bihar, AIR 1955 SC 661. In paragraph 22 at page 674 of the report the learned Chief Justice referred to and adopted the principles in Heydon's Case, (1584) 3 Co. Rep 7a(V). Those principles are: -

- (i) What was the common law before the making of the Act.
- (ii) What was the mischief and defect for which the common law did not provide.
- (iii) What remedy the Parliament hath resolved and appointed to cure the disease of the common law, and
- (iv) The true reason for the remedy.

If we go by the aforesaid four principles, it will appear that the constitutional principle of right to know which was virtually a common law principle of universal application was holding the field before the coming into effect of the RTI Act, inasmuch as the Hon#ble Supreme Court has held that the right to know is a part of the fundamental right to speech and expression and also a part of the fundamental right to life. But, there was no well-structured

Act laying down the procedure on how to exercise one's right to know and right to information, which is why the RTI Act came into existence.

.....

24. This Court, therefore, holds that the appellant is a 'public authority' within the meaning of Section 2(h)(d)(i) of the RTI Act, and the learned Judge of the writ Court came to a correct conclusion, may be on the basis of some different reasons." Therefore, he stated that the order of the Commission was perfectly in order.

17. Mr.P.V.Ravi Chandran, learned counsel appearing for respondents 4 and 5 submitted that their organisation was set up to monitor, analyse and research water and energy related issues with special emphasis to liberalisation, globalisation and privatisation of the economy. Their main office is located at Badwani, Madhya Pradesh which is 5 kms. from the banks of Narmada river. According to them, they are also working on global issues relating to water. They are very much interested in the activities of the petitioner company, which operates in the vital sector. According to them, with public resources invested in any company, the involvement of the State Government and the local municipal body in the project will be deemed to be coming under the purview of the laws of the land and a citizen has got right to gain access to the information about the project to be implemented for the larger public interest. They are seeking information about the financial aspects of the public private partnership project where tax payers monies are invested. They also stated that they petitioners are implementing and operating a public private partnership project for water supply for 30 years and has been functioning since 2005 i.e. for the past five years. The objectives proposed for the project are to improve water supply to the citizens of Tiruppur and nearby village panchayats, improving sanitation and hygiene in slums in Tiruppur municipality, developing a sewerage system and sewage treatment plant for treatment of municipal sewage and to control pollution of local water resources like Noyyal river which is severely contaminated due to influx of industrial effluents and municipal waste dumped into the river and for supplying a fresh water to the local textile industries which are severely water starved due to water scarcity in that region. In any event, they are public authority bound to supply the information sought for by them.

18. Therefore, the short question that arises for consideration is whether the petitioner company is a "public authority" coming within Section 2(h) (d) of the RTI Act.

19. Though the said sub-section has uses the term substantially financed, Section 2(h)(d)(i) also preceded by the words "body owned or controlled". In respect of the first two words i.e. "body owned" or "body controlled", nowhere it is stated that a body must be wholly owned or wholly controlled by the State. In fact, the two words are qualified by the words directly or indirectly funded by the appropriate Government, Even the term "substantially financed" has not been defined. Therefore, it has to be analysed as to what is the intent and purpose of the said sub-section. Section 2(h) (d)(ii) even ropes in non governmental organisation (NGO), which is substantially financed. It also qualifies by the very same sentence, i.e. either directly or indirectly funded by the Government. Therefore, if the object of the Act is to provide right to information from a public authority, then the section must also receive a liberal interpretation as held by the Division bench in Tamil Nadu Road Development Corporation Ltd.'s case (cited supra).

20. The issue raised herein should also be looked into from the nature of the project carried out by the petitioner company. It is an admitted case that the

petitioner company was engaged a Build, Own, Operate & Transfer basis to execute water supply to Tiruppur Corporation and the other areas and also to provide for sewerage treatment system. Under Article 243(W), it is the responsibility of a Municipality to provide subject to the provisions of the Constitution and law made by the State legislature to have power and authority to carry out the responsibility conferred upon them including those matters listed under XII Schedule to the Constitution. XII Schedule prescribed under Article 243(W) item 5 relates to water supply for domestic, industrial and commercial purpose. Item 6 related to public health, sanitation, conservancy and solid waste management. Therefore, the activity that is undertaken by the petitioner company is essentially a power vested on the municipal authority under Article 243(W) read with items 5 and 6 of the XII schedule to the Constitution.

21. Newly enacted Tiruppur Municipality Corporation Act also empowers the corporation to undertake these works. When a State Government instead of itself undertaking a work, if it allows an agency like the petitioner Company by substantially funding them to undertake such work which is essentially that of a municipality, no one can say that such work of the petitioner company as a private activity. On the other hand, it is very much a public activity over which public interest can generate. The Articles of Association of the petitioner company in the definition provision referred to a Concession agreement, dated 11.2.2000 executed between the Government of Tamil Nadu and Tiruppur Municipality as well as the petitioner company. The term project agreement also defined to mean the Concession agreement as well as the Bulk Water Supply and Sewage Offtake Agreement among the Government of Tamil Nadu, Tiruppur municipality and the petitioner company, dated 11.2.2000. Chapter 29 of the Articles of Association provides for operational principle to be followed by the company. Article 324(vi)(vii) reads as follows:

*"324.The Company:*

*(i) to (v) omitted*

*(vi) shall make appropriate representations and give other undertakings and do all other acts, deeds, matters and things, which may be required by GOTN or TM to provide the necessary clearances;*

*(vii) shall make appropriate representations to GOTN to notify, declare or classify the Project as a public infrastructure utility facilitating the levy of Charges and/or availing of benefits for recovery of the investments in the Company and the Project;"*

22. The essential activity of the company is to provide water supply and sewage treatment which is akin to activities of a municipality. One is at loss to know as to how the petitioner can claim that they are not controlled by the appropriate Government. Even on the question of being substantially financed, it was admitted by the petitioner that the funds of the State Government is to the extent of 17.04% of the total share capital. It is not clear as to how the petitioner can contend that it is not under the control of the State Government. By merely showing the Articles of Association of the shareholders and saying that they neither controlled nor substantial financed, the petitioner company cannot escape from the coverage under

the Act. They have not made available to this court the text of the Concession agreement signed with the Government of Tamil Nadu and the Tiruppur Municipality as well as the Bulk Water Supply and Sewage Offtake Agreement between the same parties.

23. In such circumstances, the court can pierce the veil and find out the real nature of the petitioner company as held by the Supreme Court vide its judgment in LIC v. Escorts Ltd., reported in (1986) 1 SCC 264. In paragraph 90, the Supreme Court observed as follows:

*"90. It was submitted that the thirteen Caparo companies were thirteen companies in name only; they were but one and that one was an individual, Mr Swraj Paul. One had only to pierce the corporate veil to discover Mr Swraj Paul lurking behind. It was submitted that thirteen applications were made on behalf of thirteen companies in order to circumvent the scheme which prescribed a ceiling of one per cent on behalf of each non-resident of Indian nationality or origin, or each company 60 per cent of whose shares were owned by non-residents of Indian nationality/origin. Our attention was drawn to the picturesque pronouncement of Lord Denning M.R. in Wallersteiner v. Moir<sup>414</sup> and the decisions of this Court in Tata Engineering and Locomotive Co. Ltd. v. State of Bihar<sup>515</sup>, CIT v. Sri Meenakshi Mills Ltd.<sup>616</sup> and Workmen v. Associated Rubber Industry Ltd.<sup>717</sup> 'While it is firmly established ever since Salomon v. A. Salomon & Co. Ltd.<sup>818</sup> was decided that a company has an independent and legal personality distinct from the individuals who are its members, it has since been held that the corporate veil may be lifted, the corporate personality may be ignored and the individual members recognised for who they are in certain exceptional circumstances Pennington in his Company Law (4th Edn.) states:*

*'Four inroads have been made by the law on the principle of the separate legal personality of companies. By far the most extensive of these has been made by legislation imposing taxation. The government, naturally enough, does not willingly suffer schemes for the avoidance of taxation which depend for their success on the employment of the principle of separate legal personality, and in fact legislation has gone so far that in certain circumstances taxation can be heavier if companies are employed by the taxpayer in an attempt to minimise his tax liability than if he uses other means to give effect to his wishes. Taxation of companies is a complex subject, and is outside the scope of this book. The reader who wishes to pursue the subject is referred to the many standard text books on corporation tax, income tax, capital gains tax and capital transfer tax.*

*The other inroads on the principle of separate corporate personality have been made by two sections of the Companies Act, 1948, by judicial disregard of the principle where the protection of public interests is of paramount importance, or where the company has been formed to evade obligations imposed by the law, and by the courts implying in certain cases that a company is an agent or trustee for its members.¶*

*In Palmer's Company Law (23rd Edn.), the present position in England is stated and the occasions when the corporate veil may be lifted have been enumerated and classified into fourteen categories. Similarly in Gower's Company Law (4th Edn.), a chapter is devoted to 'lifting the veil' and the various occasions when that may be done are discussed. In Tata Engineering and Locomotive Co. Ltd.<sup>15</sup> the company wanted the corporate veil to be lifted so as to sustain the maintainability of the petition, filed by the company under Article 32 of the Constitution, by treating it as one filed by the shareholders of the company. The request of the company was turned down on the ground that it was not possible to treat the company as a citizen for the purposes of Article 19. In CIT v. Sri Meenakshi Mills Ltd.<sup>16</sup> the corporate veil was lifted and evasion of income tax prevented by paying regard to the economic realities behind the legal facade. In Workmen v. Associated Rubber Industry Ltd.<sup>17</sup> resort was had to the principle of lifting the veil to prevent devices to avoid welfare legislation. It was emphasised that regard must be had to substance and not the form of a transaction. Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc."*

(Emphasis added)

24. On the question of being substantially financed, there is no clear definition as to what is meant by the term "substantially financed". The Supreme Court while dealing with the Taxation on Income (Investigation Commission) Act, 1947 (Central Act 30 of 1947), had an occasion to deal with a provision where the term substantive was attacked as vague and after its amendment indicating the quantum, the provision was held to be definite and clear vide its judgment in Shree Meenakshi Mills Ltd. v. Visvanatha Sastri reported in (1955) 1 SCR 787 = AIR 1955 SC 13. The following passage found in paragraph 13 may be usefully extracted below:

*"13...It was argued in 'Mohta's case (A)' as well as in these petitions that the classification made in section 5(1) of the impugned Act was bad because the word "substantial" used therein was a word which had no fixed meaning and was an unsatisfactory medium for carrying the idea of some ascertainable proportion of the whole, and thus the classification being vague and uncertain, did not save the enactment from the mischief of Article 14 of the Constitution. This alleged defect stands cured in the amended section 34 inasmuch as the legislature has clearly indicated in the statute what it means when it says that the object of the Act is to catch persons who to a substantial extent had evaded payment of tax, in other words, what was seemingly indefinite within the meaning of the word "substantial"*

*has been made definite and clear by enacting that no evasion below a sum of one lakh is within the meaning of that expression."*

Since the present Act do not quantify the amount of funding required the Court will have to apply proper test in each case and apply the provisions of the RTI Act to those authorities.

25. Under the RTI Act, quantum of the finance to hold a body being considered as substantially financed is not specified. That was why this court in Tamil Nadu Road Development Company Limited rep. By its Director-in-charge, Chennai Vs. Tamil Nadu Information Commission reported in 2008 (8) MLJ 17, which was confirmed by the division bench vide judgment (2008 (6) MLJ 737), in paragraph 16 observed as follows:

*"16. In this context, the plea of the petitioner is that the said two amounts are meager which should not be treated as substantially financed. The word "substantial" is not defined in the Act. For the word "substantial" it is not possible to lay down any clear and specific definition. It must be a relative one, however, "substantial" means real or actual as opposed to trivial. "Substantial" also means practicable or as far as possible, hence the word substantial not to be construed as higher percentage of the estimated amount or otherwise. The said financial assistance and also exclusive privilege conferred on the petitioner in exclusion of others to lay the road, which is one of the Governmental functions of public importance, this Court applying the provisions of Section 2(h) of the Act in harmony with its objects and reasons is of the view that the petitioner is a public authority."*

26. Yet another aspect is the application of the Controller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 (Central Act 56/71). It authorises the Controller and Auditor General to audit receipts and expenditure of bodies or authorities substantially financed by the Union or State Revenues. Section 14(2) and (3) of the Act reads as follows:

*"(2) Notwithstanding anything contained in sub-section (1), the Controller and Auditor-General may, with the previous approval of the President or the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, audit all receipts and expenditure of any body or authority where the grant or loan to such body or authority from the Consolidated Fund of India or of any State, or of any Union territory having a Legislative Assembly, as the case may be, in a financial year is not less than rupees one crore.*

*(3) Where the receipts and expenditure of any body or authority are, by virtue of the fulfillment of the conditions specified in sub-section (1) or sub-section (2), audited by the Controller and Auditor-General in a financial year, he shall continue to audit the receipts and expenditure of that body or authority for a further period of two years notwithstanding that the conditions specified in sub-section (1) or sub-section (2) are not fulfilled during any of the two subsequent years."*

27. Therefore, the office of the Controller and Auditor General (CAG) can also audit the accounts of the petitioner company after getting prior approval from the State Government. In the light of the above, it cannot be contended that the petitioner company will not come within the term "public authority" under Section 2(h)(d). On the contrary, it is an authority controlled by the State government and substantially financed by the State Government.

28. Off late, control of water sources and water supply has assumed great importance. It is a popular notion World War-I was fought for the division of territories, World War-II was fought to control of finance capital. But World War-III (if there is to be one) will be over the control of water. When Constitution had mandated the local bodies to discharge such functions and the State legislature had created a local body with the essential function of water supply and sewage treatment and if that work is entrusted to another body corporate, certainly that body corporate discharges functions akin to a local body. Therefore, every citizen has a right to know the working of such bodies, lest they may be fleeced by such companies which until the BOOT period must explain to the people about their activities. Transparency in their functioning and the right to know by the citizen can never be curtailed on the plea of the petitioner company before the Commission.

29. For the purpose of interpreting the term "controlled by Government" as found in Section 2(h)(d)(i) of the RTI Act, the 'public authority' need not be a "State" within the meaning of Article 12 of the Constitution. That is taken care of by definition Section 2(h) (a), (b), (c) and portion of d(i). By a notification an appropriate government under Section 2(h) (d) can include any other organisations which are not "State" and even a private organisation. In order to make its intention to cover a wider range of bodies an inclusive definition is found in Section 2(h)(d)(i) and subsection (ii) covers Non governmental organisations (NGO) with substantive funding by the Government. The only requirement for a private body or an NGO to be covered by the term "public authority" is that either it must be a body controlled or substantially financed by the Government. Therefore, the tests applied to bring an organisation within the definition of Article 12 are unnecessary to interpret Section 2(h)(d)(i) and (ii) of the RTI Act. The tests that are to be applied must keep in mind the preamble and the object and reasons behind the RTI Act.

30. Even on the question of maintainability of a Writ Petition under Article 226, the Supreme Court in *Zee Telefilms Ltd. v. Union of India* reported in (2005) 4 SCC 649 in paragraphs 32 and 33 had observed as follows:

*"32. This Court in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani<sup>12</sup> has held: (SCC pp. 692-93)*

*'Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to 'any person or authority'. The term 'authority' used in the context, must receive a liberal meaning unlike the term in Article 12 which is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-*

*fundamental rights. The words 'any person or authority' used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party, no matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.'*

33. *Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226. Therefore, merely because a non-governmental body exercises some public duty, that by itself would not suffice to make such body a State for the purpose of Article 12. In the instant case the activities of the Board do not come under the guidelines laid down by this Court in Pradeep Kumar Biswas case<sup>1</sup> hence there is force in the contention of Mr Venugopal that this petition under Article 32 of the Constitution is not maintainable."*

Thus, the emphasis made therein is the activity of a body must be based on its "public duty".

31. In the light of the above, there is no illegality or infirmity in the order passed by the second respondent State Information Commission. Hence, the writ petition will stand dismissed. No costs. Consequently, connected miscellaneous petitions stand closed.

**K. CHANDRU, J.**

06.04.2010

To

1. The Secretary  
State of Tamil Nadu,  
Personnel and Administrative  
Reforms AR III Department,  
Fort St. George,  
**Chennai** - 600 009.
2. State Information Commission,  
Kamadenu Supermarket, 1st Floor,  
No.273, New No.378, Anna Salai,  
Teynampet,  
**Chennai** - 600 018.
3. The Chief Information Commissioner,  
Kamadenu Supermarket, 1st Floor,  
No.273, New No.378, Anna Salai,  
Teynampet,  
**Chennai** - 600 018