

**Non-Government organizations under
the Right to Information Act
and
*the Central Information Commission's 28.5.2007
DECISION NOTICE***

- Srinivas Madhav

Background

The Right to Information Act 2005, section 2(h)(d)(ii) defines "public authority":
"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 organization substantially financed, directly or indirectly by funds provided by the appropriate Government;

The Act does not define the phrase 'substantially financed'. For the last two years There was no guidance from any quarter on this issue. As there was no clarity, many non-Government organizations(N.G.O.s) ignored their obligations under the Act.

Second Administrative Reforms Commission

Second Administrative Reforms Commission(Government of India) in its first report,' RIGHT TO INFORMATION Master Key to Good Governance' (Para 6.6.5) attempted to address this issue:

"In the wake of outsourcing of functions which traditionally were performed by government agencies, it is desirable that institutions that enjoy a natural monopoly, or whose functions impinge on citizens' lives substantially, must come under the provisions of the RTI Act. Also it may be desirable to define what 'substantially financed' would mean, otherwise different authorities may interpret this in different ways."

It made the following recommendations (Para 6.6.6):

- Organisations which perform functions of a public nature that are

ordinarily performed by government or its agencies, and those which enjoy natural monopoly may be brought within the purview of the Act.

- Norms should be laid down that any institution or body that has received 50% of its annual operating costs, or a sum equal to or greater than Rs.1 crore during any of the preceding 3 years should be understood to have obtained 'substantial funding' from the government for the period and purpose of such funding.
- Any information which, if it were held by the government, would be subject to disclosure under the law, must remain subject to such disclosure even when it is transferred to a non-government body or institution.
- This could be achieved by way of removal of difficulties under section 30 of the Act.

Goa SIC Decision

Goa SIC made the following Decision on 22 June,2006 stating that there was no need of any government notification:

"NGO's substantially financed by the appropriate Government are covered even if no specific notification is issued by the appropriate Government. There is no need of separate notification or order listing all NGOs to be covered under the Act. s.2(h)(d) mentions two separate categories, one of which is notified the Government and others which are mentioned in the inclusive definition. Both the categories are separated by a comma and the conjunction "and"."

[Goa SIC Decision dt. -22 June,2006]

Central Information Commission's 28.5.2007 DECISION NOTICE

In a complaint, Pradeep Gupta has requested CIC as follows:

"It is brought to your kind notice that there is a society named "Servants of the People Society" ... are receiving and spending Government money but still they do not have Public Information Officer. Please look into the matter and please arrange to ensure the conformity."

[Decision dt.28.5.2007 and 1.5.2007 in Complaint No.CIC/WB/C/2006/00157

(Complainant - Pradeep Gupta and Respondent - Servants of the People Society)]

CIC directed the Assistant Registrar to visit the Servants of the Peoples Society and enquire into the matter. A report has been received from Astd. Registrar after his enquiry ... in which he has given details of the gross receipts of the Society...

Pradeep Gupta, complainant, argued that the Society falls under the

definition of public authority since it receives 'Substantial Finance' as defined in Chapter IX Grants in Aids and Loans of General Financial Rules, 2005, Govt. of India, Ministry of Finance, Department of Expenditure. Therefore, he claimed that the accounts of the Society were audited by the Comptroller & Auditor General.

"Mrs. Mamta Kundra, Principal Director and CPIO of the C&AG in her letter of 18-5-07 has presented details of prescribed duties and powers of CAG in relation to audit of accounts of Union/State/autonomous body/Corporations/Government companies.

Sections 14, 15 and 20 of the Act [THE COMPTROLLER AND AUDITOR-GENERAL'S (DUTIES, POWERS AND CONDITIONS OF SERVICE) ACT, 1971] deal specifically with audit of accounts of autonomous bodies provided the Government meets 75% of the expenditure or a minimum of Rs.25.00 lakhs. On the question of whether an organization/Institute is auditable or not, Section 14 (1) of the CAG's Act 1971 refers:

[Audit of receipts and expenditure of bodies or authorities substantially financed from Union or State Revenues]

Where any body or authority is substantially financed by grants or loans from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly, the Comptroller and Auditor-General shall, subject to the provisions of any law for the time being in, force applicable to the body or authority, as the case may be, audit all receipts and expenditure of that body or authority and to report on the receipts and expenditure audited by him.

Explanation: Where the grant or loan to a body or authority from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly in a financial year is not less than rupees twenty-five lakhs and the amount of such grant or loan is not less than seventy-five percent of the total expenditure of that body or authority, such body or authority shall be, deemed, for the purposes of this sub-section, to be substantially financed by such grants or loans as the case may be

Factors for deciding whether the NGO is eligible for audit by the CAG

CIC held that the NGO-which is eligible for audit by CAG - is indeed a public authority because it is substantially financed by Government and will, therefore, fall within the definition of public authority under Section 2 (h) (d) (ii).

Section 14 (2) of the CAG's Act 1971

THE COMPTROLLER AND AUDITOR-GENERAL'S (DUTIES, POWERS AND CONDITIONS OF SERVICE) ACT, 1971 states:

Notwithstanding anything contained in sub-section (1) the Comptroller 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 grants or loans 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.

Hence, an N.G.O. is a public authority under the RTI Act if :
grant or loan from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly in a financial year

- is not less than rupees one crore OR
- is not less than rupees twenty-five lakhs and the amount of such grant or loan is not less than seventy-five percent of the total expenditure of that body or authority,

It is immaterial whether CAG actually audits the accounts of NGO or not. It is sufficient if it is eligible for audit by CAG.

The issue of funding of NGOs and the aspect of external audit came up for discussion at the biennial conference of the States Accountants General held in the capital [2005]. There have been demands that NGOs getting Government grants should come under statutory audit and that the books of accounts of such voluntary organisations should be completely opened up to CAG audit. The Lok Sabha Speaker, Mr Somnath Chatterjee, too had supported CAG audit for those NGOs that receive Central aid. It has been estimated that there are more than eight lakh NGOs functioning in the country. The Comptroller and Auditor General made it clear that CAG was not averse to devising a broad system that would help ascertain whether the Central grants to NGOs have been used for the purpose for which they were

sanctioned. [<http://www.thehindubusinessline.com/2005/09/27/stories/2005092703870300.htm>]

Interestingly, Consultation Paper on EFFICACY OF PUBLIC AUDIT SYSTEM IN INDIA: C & AG – REFORMING THE INSTITUTION prepared by the NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION observed :

"A large number of autonomous bodies, NGOs and public funded institutions which receive substantial government grants escape C&AG's audit jurisdiction due to complex financing arrangements. It is for consideration that a Constitutional provision be made that all bodies which are publicly funded fall within the ambit of Comptroller and Auditor General's audit and any stipulation which ousts his jurisdiction would be *ultra-vires* . (Refer Section 3.2)"

[*This article reflects the law as at 28 May, 2007*]