$~2 to 5

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

\+ W.P.(C) 542/2007 and CM APPL. 12937/2015, CM APPL. 69189/2024

Date of Decision**: 20.03.2026**

**IN THE MATTER OF:**

NORTH DELHI POWER LTD. .....Petitioner

Through: Mr. Vivek Tankha, Sr. Advocate, Mr. Dhruv Mehta, Sr. Adv., Mr. Nitin Kala, Adv., Mr. Kunal Singh, Adv., Mr. Tanmay Jain, Adv.

versus

GOVT. OF NCT OF DELHI .....Respondent

Through: Ms. Avni Singh, Panel Counsel-GNCTD with Mr. Vaibhav Sharma, Adv.
Mr Adit S. Pujaria, Ms. Raksha Awasya and Ms. Tanishqua Dhar Advocates for intervenors.

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\+ W.P.(C) 543/2007

BSES YAMUNA POWER LTD. .....Petitioner

Through: Appearance not given.

versus

GOVT. OF NCT OF DELHI .....Respondent

Through: Ms. Avni Singh, Panel Counsel-GNCTD with Mr. Vaibhav Sharma, Adv.

Mr. Sandeep Sethi Sr. Adv. with Mr. Anupam Varma, Mr. Nikhil Sharma, Mr. Aditya Gupta, Mr. Yash Srivastava, Mr. Krisna Gambhir, Ms. Shreya Sethi, Adcocates.

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\+ W.P.(C) 544/2007

BSES RAJDHANI POWER LTD. .....Petitioner

Through: Appearance not given.

versus

GOVT. OF NCT OF DELHI .....Respondent

Through: Appearance not given.

**5**

\+ W.P.(C) 6759/2007

INDRAPRASTHA GAS LIMITED .....Petitioner

Through: Mr. Shiv Kumar Pandey, Mr. Chandrashekhar Chakalabbi, Mr. Anshul Rai, Mr. Awanish Kumar and Mr. Rajan Parmar, Advs.

versus

UOI .....Respondent

Through: Ms. Avni Singh, Panel Counsel-GNCTD with Mr. Vaibhav Sharma, Adv.

**CORAM:**
**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

**JUDGEMENT**

**PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. The primary issue involved in these writ petitions is whether the petitioners herein, i.e., BSES Rajdhani Power Ltd., BSES Yamuna Power Ltd., North Delhi Power Ltd., and Indraprastha Gas Ltd. are 'public authorities' under Section 2(h) of the Right to Information Act, 2005 ('**RTI Act'**).

2. Until July, 2002 the Delhi Vidyut Board ('**DVB'**) distributed electricity across Delhi, barring area served by the New Delhi Municipal Council ('**NDMC'**) and the Cantonment Board. The Government of the National Capital Territory of Delhi ('**GNCTD**') decided to restructure the power sector and the Delhi Electricity Reform Act, 2000 ('**DERA'**) was enacted. Pursuant to Sections 14, 15, 16 and 60 thereof, read with Delhi Electricity Reforms (Transfer Scheme) Rules, 2001, DVB's distribution undertaking was carved into three zones and transferred to three successor entities BSES Rajdhani Power Ltd., BSES Yamuna Power Ltd., North Delhi Power Ltd., (collectively, '**successor entities'**).

3. On 04.07.2001, these companies were incorporated under the Companies Act, 1956 and the scheme of transfer was given effect to from 01.07.2002. On the effective date, DVB's land, substations, employees, consumers, and infrastructure vested in the successor entities. The GNCTD retained forty-nine per cent equity in BSES Rajdhani Power Ltd., BSES Yamuna Power Ltd., and North Delhi Power Ltd. The remaining fifty-one

per cent equity, along with management control, in BSES Rajdhani Power Ltd., and BSES Yamuna Power Ltd. is with Reliance Energy Limited, and in North Delhi Power Ltd., is with Tata Power Company Limited.

4. The shareholding structure with respect to Indraprastha Gas Limited (IGL) is different. It is unconnected to DVB, DERA, or the aforesaid scheme of transfer of the functions of the DVB to its successor entities. Gas Authority of India Limited, and Bharat Petroleum Corporation Limited hold twenty-two and a half per cent equity each in IGL, and the GNCTD holds five per cent therein. The remaining fifty per cent equity is held publicly.

5. Earlier, the Central Information Commission ('**CIC**') had passed order dated 16.03.2006, whereby, the successor entities were held to be 'public authorities' under the RTI Act. The said order was challenged by the successor entities in W.P. (C) Nos. 6833 to 6835/2006. The petitions were allowed *vide* order dated 21.09.2006 and the order of the CIC dated 16.03.2006 was set aside on the ground that the petitioners were not afforded any opportunity of hearing. The matters were remanded to the CIC for reconsideration after hearing all concerned parties.

6. The impugned order dated 30.11.2006 has been passed by the CIC pursuant to the aforesaid directions. The said order has been stayed by this Court *vide* order dated 23.01.2007.

7. Order dated 28.07.2007, which is assailed in W.P. (C) 6759/2007, has been passed by the CIC in proceedings arising out of an unconnected RTI application dated 02.08.2006. The said order too, has been stayed by this Court *vide* order dated 14.09.2007.

8. In the *interregnum*, petitions assailing similar orders passed by the CIC were challenged before various High Courts on similar grounds as

raised in the instant petitions. Therefore, the CIC had, in ***Central Information Commission v. BSES Rajdhani Power Limited and Ors***.,[1] approached the Supreme Court seeking consolidation of all the cases before a single High Court. However, the same was disposed of *vide* order dated 04.02.2022, holding that the question whether the entities are 'public authorities' or not would be a mixed question of law and facts and could not be answered analogously.

9. Mr. Vivek Tankha, Mr. Sandeep Sethi, and Mr. Shiv Kumar Pandey, learned senior counsel for the petitioners, submit that the petitioners do not fall under the purview of the term 'public authority' under Section 2(h) of the RTI Act. It is submitted that the petitioners are not 'Government-companies' and have been incorporated under the Companies Act, 1956, with a majority stake being held by private entities. The day-to-day management of the petitioners is with the private majority stakeholder and not the GNCTD.

10. They submit further that, forty-nine per cent stake in the petitioners is held not by the GNCTD, but by public sector undertakings which are not 'appropriate government' under the RTI Act, and the GNCTD does not contribute any funds towards the day-to-day functioning of the petitioners.

11. They contend that the petitioners are 'for-profit' organisations and tax-paying entities, whose operations are maintained out of the revenue generated from their business.

12. During the course of hearing, it has also been pointed that this Court, in ***MIAL v. Sanjay Ramesh Shirodkar***,[2] as well as the High Court of

[1] Transfer Petition (C) 812-824/2020
[2] Order dated 17.05.2019 in W.P. (C) 4321/2011

Karnataka, in ***BIAL v. Karnataka Information Commission & Ors***.,[3] while considering the decision of the Supreme Court in the case of ***Thalappalam Service Cooperative Bank Limited and Ors. v. State of Kerala and Ors***.,[4] have relegated the matters to the CIC for fresh disposal.

13. Ms. Avni Singh and Mr. Adit S. Pujaria, learned counsel for respondents, the CIC has correctly held the petitioners to be 'public authorities' under Section 2(h) of the RTI Act. They submit that the petitioners perform public functions and therefore, there ought to be transparency in their working. Distribution Companies were created in terms of Section 14(1) of the DERA, and incorporated under the Companies Act, 1956 by and on behalf of the GNCTD, thereby fulfilling the conditions in Section 2(h)(c) of the RTI Act.

14. According to them, assets worth thousands of crores of Rupees have been transferred to the petitioners at nominal rates, indicating substantial financing by the GNCTD.

15. Mr. Vivek Tankha, Mr. Sandeep Sethi, and Mr. Shiv Kumar Pandey submit that, at the time of passing of the impugned orders, the issue involved herein was *res integra*. However, at this point of time, the issue has been answered by various High Courts, including in the aforesaid decisions. Therefore, it is submitted that the said decisions would guide the CIC on the adjudication of the issue. Therefore, they pray that the matter be relegated to the CIC to be considered afresh.

16. Ms. Avni Singh and Mr. Adit S. Pujaria submit that, considering the facts in the present case, this Court may examine the entire controversy and

[3] Order dated 30.11.2022 in W.A. 900/2010
[4] (2013) 16 SCC 82

render a finding on whether the petitioners would be covered under the definition of 'public authorities' under Section 2(h) of the RTI Act. It is further submitted that the matter has remained pending for a long time, and therefore, at this point in time, the same may not be relegated to the CIC for its disposal.

17. The Court, however, finds that the question as to whether the petitioners would fall within the definition of public authority, involves adjudication of facts and law, as has been observed by the Supreme Court in ***Central Information Commission v. BSES Rajdhani Power limited and Ors***.[5] Under the scheme of the RTI Act, the Information Commissions adjudicate questions of fact. In fact, under Section 18 (3), while enquiring into any complaint, they are vested with the powers of a Civil Court for the appreciation of evidence. On the other hand, this Court, in exercise of its powers under Article 226 of the Constitution of India, is possessed of limited jurisdiction and cannot reappreciate evidence and the materials on record. Reference can be made to the decision of the Supreme Court in ***Rajendra Diwan v. Pradeep Kumar Ranibala and Ors***.[6] The relevant portion of the decision is extracted below, for reference:

> *"**86.** In exercise of its extraordinary power of superintendence and/or judicial review under Articles 226 and 227 of the Constitution of India, the High Courts restrict interference to cases of patent error of law which go to the root of the decision; perversity; arbitrariness and/or unreasonableness; violation of principles of natural justice, lack of jurisdiction and usurpation of powers. The High Court does not re-assess or re-analyse the evidence and/or materials on record. Whether the High Court would exercise its writ jurisdiction to test a decision of the Rent Control Tribunal would depend on the facts and circumstances of the case. The writ jurisdiction of the High Court cannot be converted into an alternative appellate forum, just because there is no other provision of*

[5] Order dated 04.02.2022 in Transfer Petition (C) 812-824 of 2020
[6] (2019) 20 SCC 143

*appeal in the eye of the law."*

18. As noted earlier, this Court as well as the High Court of Karnataka, in various cases, have remanded the matter to the CIC for fresh reconsideration. There is no justifiable reason to depart from this recourse, now.

19. At this point, it is pertinent to peruse the provision under Section 2(h) of the RTI Act, which is extracted below, for reference:

> *"2.(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;"*

20. Therefore, it is seen that for the purposes of the RTI Act, an entity constituted by or under the Constitution, a law enacted by the Parliament or the State Legislature, or by notification issued by the appropriate Government would qualify as 'public authority' under Section 2(h)(a) to (d). Apart from the aforesaid, the term also includes entities which are 'owned, controlled or substantially financed directly or indirectly, by funds provided by the appropriate Government'.

21. A Division Bench of this Court, in ***Delhi Sikh Gurudwara Management Committee and Ors. v. Mohinder Singh Matharu***,[7] has explained the import of Section 2(h) of the RTI Act in the following terms:

> *"7. We are of the opinion that Section 2(h) of the RTI Act is in two parts: an authority or body or institution of self-Government becomes "public*

[7] 2012:DHC:5654-DB

*authority" if it is established or constituted in any manner provided in Clause (a) to (d). Once it falls under any of the aforesaid four categories, there is no further or additional requirement at all and such an authority or body or institution of self-Government will be treated as "public authority". This becomes clear from the reading of four clauses, as such a body to become public authority is either constituted by or under the Constitution or by or under the law made by the Parliament/State Legislature or by Notification issued or made by the appropriate Government. They are, thus, having either constitutional/statutory character or Governmental flavour because of their constitution by the appropriate Government.*

*8. In the second category, some more bodies are sought to be included by the incorporation of the words "and includes any". These are included Clauses (i) and (ii). The requirement for these bodies is as under: viz.,*

*(i) Body owned, controlled or substantially financed;*

*(ii) Non-Government Organization substantially financed, and both should be directly or indirectly by funds provided by the appropriate Government.*

*Thus, if it is a body either owned by the appropriate Government or controlled by the appropriate Government or substantially financed directly or indirectly by the appropriate Government, it would become public authority. Any of the aforesaid requirement is sufficient, viz. either ownership or control or substantially financed. When it comes to the NGO, obviously such an NGO not be owned or controlled or substantially financed by the appropriate Government directly or indirectly by funds provided by the appropriate Government."*

22. This Court, in ***Batra Hospital v. Central Information Commission***,[8] has examined the aspect of financing by the appropriate Government, and has held as under:

*"17. Concededly, the petitioner was not given any special grant or any special treatment by allotment of land. The land was leased to the petitioner as per the prevalent policy of the Government at the material time. Leasing of land for the purposes of education and health care to Non-Governmental Organizations for establishing educational institutes and health care facilities at a rate lower than what is charged for commercial establishments, cannot be considered as financing those institutions. The allocation of the resource of land for various purposes and charging appropriate rate for the same does not mean that the particular lessees that acquire leasehold interest in land are financed by the Government. The object of leasing land at lower rates is to ensure the*

[8] 2018:DHC:939

*availability of health services at lower rates to the public. The incentive, if at all, is directed towards ensuring availability of healthcare and education to public at affordable rates and not to finance the concerned entity."*

23. The Supreme Court, in ***Thalappalam Service Co-operation Bank Ltd. and Ors. v. State of Kerala and Ors.***,[9] has also examined the provision in detail, and held as follows:

*"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-a-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.*

*xxxx*

*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. The State may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD etc., but those facilities or assistance cannot be termed as "substantially financed" by the State Government to bring the body within the fold of "public authority" under Section 2(h)(d)(i) of the Act. But, there are instances, where private educational institutions getting ninety five per cent grant-in-aid from the appropriate governmentt, may answer the definition of public authority under Section 2(h)(d)(i)"*

24. Further, in ***DAV College Trust and Management Society v. Director of Public Instructions***,[10] the Supreme Court has analysed the scope of the term 'substantial financing' and has held as under:

***26.*** *In our view, "substantial" means a large portion. It does not necessarily have to mean a major portion or more than 50%. No hard-and-fast rule can be laid down in this regard. Substantial financing can be both direct or indirect. To give an example, if a land in a city is given free of cost or on heavy discount to hospitals, educational institutions or such other body, this in itself could also be substantial financing. The*

[9] 2013 (16) SCC 82
[10] (2019) 9 SCC 185

> *very establishment of such an institution, if it is dependent on the largesse of the State in getting the land at a cheap price, would mean that it is substantially financed. Merely because financial contribution of the State comes down during the actual funding, will not by itself mean that the indirect finance given is not to be taken into consideration. The value of the land will have to be evaluated not only on the date of allotment but even on the date when the question arises as to whether the said body or NGO is substantially financed."*

25. The aforementioned decisions would provide the necessary guidance to the CIC for adjudicating the issue.

26. For all those reasons, the impugned decisions passed by the CIC stand set aside. The matters are directed to be reconsidered by the CIC after affording an opportunity of hearing to all concerned. The parties, thereafter, shall be at liberty to take appropriate recourse in accordance with law.

27. Since the matter remained pending for a significant time, therefore, the CIC is requested to decide the second appeal, with due expedition, not beyond six months from the date of the receipt of a copy of the order passed today.

28. It be noted that interveners are contesting the matter on behalf of employees' union, therefore, for arriving at the rightful conclusion, the intervener be also heard by the CIC.

29. Petitions stand disposed of.

30. All rights and contentions of the parties are left open.

**PURUSHAINDRA KUMAR KAURAV, J**

**MARCH 20, 2026/AR/P**