



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF JANUARY, 2021

BEFORE

THE HON'BLE MR.JUSTICE P.B. BAJANTHRI

WRIT PETITION NO.18449/2015(GM-RES)

C/W

**WRIT PETITION NOS.38347/2013, 58192/2013,
8053/2015 AND 22774/2015 (GM-RES)**

IN W.P.NO.18449/2015

BETWEEN:

BANGALORE TURF CLUB LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT , 1956,
HAVING ITS REGISTERED OFFICE
AT: P.O. BOX NO.5038,
RACE COURSE ROAD,
BANGALORE – 560 001
REP BY ITS SECRETARY

... PETITIONER

(BY SRI. S.S. NAGANANDA, SENIOR COUNSEL FOR
SRI. SRIRANGA S., JUST LAW FOR PETITIONER)

AND:

1. STATE INFORMATION COMMISSIONER,
KARNATAKA INFORMATION COMMISSION
HAVING OFFICE AT NO.14/3,
FIRST FLOOR, SRI. ARAVIND
BHAVAN MYTHIC SOCIETY
NRUPATHUNGA ROAD,
BANGALORE – 560 001.
2. DR. KODUR VENAKTESH
FATHERS NAME NOT KNOWN
TO PETITIONER, AGE NOT KNOWN
NO.6, D MAIN, EAST END,

9TH BLOCK, JAYANAGAR,
BANGALORE – 560 009

... RESPONDENTS

(BY SRI. G.B. SHARATH GOWDA FOR R1
R-2 DR. KODUR VENKATESH SERVED)

THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF
THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED
25.2.2015 PASSED BY THE R-1 VIDE ANN-D AND ETC.,

IN W.P.NO.38347/2013

BETWEEN:

BANGALORE TURF CLUB LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
HAVIANG ITS REGISTERED OFFICE
AT: P.O.BOX NO.5038, RACE COURSE ROAD,
BANGALORE - 560 001
REPRESENTED BY ITS SECRETARY.

... PETITIONER

(BY SRI. S.S. NAGANANDA SENIOR COUNSEL FOR SRI. S. SRIRANGA)

AND:

1. THE STATE CHIEF INFORMATION
COMMISSIONER, KARNATAKA
STATE INFORMATION COMMISSION,
NO.14/3, 1ST FLOOR, SRI ARVAIND BHAVAN,
NRUPATUNGA ROAD,
BANGALORE - 560 001.
2. STATE OF KARNATAKA,
REPRESENTED BY SECRETARY,
PUBLIC WORKS DEPARTMENT,
KARNATAKA GOVERNMENT,
3RD FLOOR, VIKAS SOUDHA,
M.S.BUILDING, BANGALORE.
3. SRI. UMAPATHI.S
44 YEARS, TIRUMALA
NIVAS, HESSERGHATA MAIN
ROAD, BANGALORE
URBAN – 560 073.

... RESPONDENTS

(BY SRI. S. UMAPATHI FOR C/R3
(PARTY-IN-PERSON) (CP NO.3355/2013)
SRI. G.B. SHARATH GOWDA FOR R-1
SRI. KIRAN KUMAR, HCGP FOR R-2 (MA NOT FILED))

THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF
THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED
1.7.13 PASSED BY R2 IN KIC 3498 PTN 2012 VIDE ANNEX-E AND ETC.,

IN W.P.NO.58192/2013

BETWEEN:

MYSORE RACE CLUB LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT 1956,
HAVING ITS REGISTERED OFFICE AT
POST BOX NO. 11, RACE COURSE ROAD,
MYSORE - 570 010
REPRESENTED HEREIN BY
ITS SECRETARY SRI.ANANTHARAJ URS.

... PETITIONER

(BY SRI. KAMALACHARAN S.R. &
SRI. PRADEEP SAWKAR, ADVOCATES)

AND:

1. KARNATAKA INFORMATION COMMISSION
NO.14/3, MYTHIC SOCIETY,
NRUPATHUNGA ROAD,
BANGALORE - 560 001.
REPRESENTED BY ITS REGISTRAR

2. UMAPATHI.S
FATHER'S NAME NOT KNOWN
TO PETITIONER, MAJOR, RESIDITN
AT NO.1, THIRUMALA NIVAS,
KIRLOSKAR LAYOUT,
HESSARGATTA MAIN ROAD,
BANGALORE - 560 073.

... RESPONDENTS

(BY SRI. G.B. SHARATH GOWDA FOR R1
R2 – UMAPATHI .S. SERVED)

THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF
THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS OF

KIC3499PTN2012 PENDING BEFORE THE KARNATAKA INFORMATION COMMISSION RESPONDENT NO.1. NO.14/3 MYTHIC SOCIETY BUILDING NRUPATHUNGA ROAD, BANGALORE - 560 001 AND ETC.,

IN W.P.NO.8053/2015

BETWEEN:

LADIES CLUB,
(A SOCIETY REGISTERED
UNDER THE SOCIETIES
REGISTRATION ACT)
REPRESENTED BY ITS SECRETARY
SMT SUNANDA KUMAR
NO.1, INFANTRY ROAD,
BANGALORE - 560 001

... PETITIONER

(BY SRI. HARISH CHANDRA FOR SMT. VAISHALI HEGDE, ADVOCATES)

AND:

1. THE KARNATAKA STATE
INFORMATION COMMISSION,
M.S. BUILDING,
DR AMBEDKAR VEEDHI,
BANGALORE - 560 001
2. SRI S UMAPATHI,
S/O LATE SRI M SUBRAMANYAM,
AGED ABOUT 45 YEARS,
R/O PLOT NO.7062,
"SOBHA RUBY APARTMENTS",
NAGASANDRA, BANGALORE - 560 073

... RESPONDENTS

(BY SRI. UMAPATHI S (PARTY IN PERSON)
C/R-2 IN CP 2582/15, SRI. G.B. SHARATH GOWDA FOR R-1)

THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 23.1.2015 PASSED BY THE R-1 VIDE ANN-A AND ETC.,

IN W.P.NO.22774/2015

BETWEEN:

THE INSTITUTION OF ENGINEER
(INDIA) KARNATAKA STATE

CENTRE (KSC), NO.3,
DR.B.R. AMBEDKAR VEEDHI
BANGALORE – 560 001.
REP BY ITS SECRETARY

... PETITIONER

(BY SRI. B. RAMESH, ADVOCATE)

AND:

1. KARNATAKA INFORMATION
COMMISSION, NO.14/3,
1ST FLOOR, SRI ARAVIND
BHAVAN (MYTHIC SOCIETY)
NRUPATUNGA ROAD,
BANGALORE - 560 001.
2. UMAPATHI S
ADVOCATE, NO.7602
SHOBHA RUBY APARTMENTS
TUMKUR MAIN ROAD
NAGASANDRA, BANGALORE - 560 073.

... RESPONDENTS

(BY SRI. G.B. SHARATH GOWDA FOR R1
R-2 UMPATHI S SERVED)

THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH ENTIRE PROCEEDING ON THE FILE OF R-1 DTD.26.6.2013 INITIATED PURSUANT TO THE COMPLAINT LODGED BY THE R-2 VIDE ANNEX-G AND ETC.,

THESE PETITIONS HAVING BEEN HEARD AND RESERVED ON 15/12/2020 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

In these petitions, basically petitioners have questioned the validity of the orders/notice passed by the Karnataka Information Commission (Hereinafter referred to as 'KIC' for short) bearing Nos. KIC 5129 APL 2014 dated

25.2.2015(W.P.18449/2015), KIC 3498 PTN 2012 dated 1.7.2013 (W.P. 38347/2013), KIC3499PTN2012 dated 16.09.2013 (W.P.58192/2013), KIC6920PTN2013 dated 23.01.2015 (W.P.8053/2015) and KIC.6728PTN2013 dated 01.04.2015 (W.P.22774/2015) and sought for declaring that the petitioner – Bengaluru Turf Club Limited (Hereinafter referred to as 'BTCL' for short), Mysore Race Club Limited (Hereinafter referred to as 'MRCL' for short, Ladies Club and The Institution of Engineer (India) are not 'public authority' as defined under Section 2(h) of the Right to Information Act, 2005 (Hereinafter referred to as 'Act, 2005' for short).

2. In these petitions, contesting respondents – complainants filed applications seeking certain information from the respective petitioners. In not providing information sought or in not taking any action on their application, contesting respondents resorted to approach KIC and KIC passed order against each of the petitioner. Following are the dates and events of each petition:

W.P 18449/2015: (Bangalore Turf Club is the petitioner)

The gist of the matter is as under:

Sl. No.	Dates	Events
1		Memorandum and article and certificate of incorporation Ann-A page no12
2	01/03/2014	Copy of the RTI Application filed by 2 nd Respondent Ann-B. Page 33
3	09/02/2015	Copy of the summons received by the petitioner in matter KIC5129APL2014 for appearing in the Court Hall no. 4 on dated 25/02/2015 at 11.00 AM Ann-C. Page 36
4	25/02/2015	copy of the impugned order in the matter KIC5129APL2014.. Appeal is adjourned to 19/08/2015 at 3.00PM for further hearing. Ann-D page No.37
5	02/04/2014	Appellant preferred 1 st Appeal with FAA, office of Bengaluru Turf Club, Race Course Road, Bengaluru, u/s 19(1) of the Act Ann-D page No.37
6	09/05/2014	Appellant preferred 2 nd Appeal u/s 19(3) of the Act Ann-D page No.37
7	01/07/2013	Order copy in the Case No.KIC3498PTN2012 passed by the 1 st Respondent .Ann-E page No.38
8	03/09/2013	Copy of the interim order passed in W.P.No.38347/2013 (GM-RES) Ann-F page No. 48
9	07/09/2010	Status quo. Order passed by the Apex Court in SLP (Civil) 21157/2010 Page no.20 (Memo a/w Documents filed on 15/12/2020)
10	16/09/2006	Copy of the order passed by the Karnataka Information Commission in KIC 233 COM 06

Writ Petition No.38347/2013 - (Bangalore Turf Club is the petitioner)

The gist of the case is as follows:

Sl. No.	Dates	Events
1		Memorandum of article of association and certificate of incorporation Ann- A page no 17
2	15/02/2012	Application file u/s 6(1) of <i>RTI</i> 2005 along with vide reference No. EK4875015421IN. Ann-B page No.38
3	19/05/2012	Complaint copy u/s 18(1) of <i>RTI</i> Act 2005 before the office of the Karnataka Information Commission Ann-C page No.41
4		RTI Application Dated 14/02/2012 E-Mail application dated 15/02/2012 page no 43
5	03/12/2012	Statement of Objection in KIC3498PTN2012 Ann-D page No. 46
6	01/07/2013	Copy of order in case No. KIC3498PTN2012 Ann-E page No.51

Writ Petition No.58192/2013 (Mysore Race Club Ltd – petitioner)

The gist of the matter is as under:

Sl. No.	Dates	Events
1	15/04/1968	Memorandum and articles of association along with the certificate of Incorporation of the petitioner Ann-A page no 21
2	15/02/2012	Respondent 2 filed Application u/s 6(1) <i>RTI</i> Act 2005 Ann.B page No.68
3	09/03/2012	Reply by the petitioner to the application filed by respondent on 15/02/2012 Ann. C page no.70
4	19/05/2012	Complaint u/s18(1) of the <i>RTI</i> Act before Respondent no1 Ann. D page no.71
5		Statement by the secretary, Mysore race club limited, in the matter No KIC3499PTN2012 Ann.E page No. 75
6	04/03/2013	written submissions filed by the petitioners along with audited balance sheets for three years 2010-2011 Ann.E1 page 77 2011-12 Ann.E2 page 116 2012-13 Ann.E3 page 155
7	18/03/2013	Statement of Rejoinders filed by the complainant in response to statements by Respondent before commissioner in the matter of KIC3499PTN2012 Ann.F page no.190
8	16/09/2013	Copy of order in the matter of KIC3499PTN2012 passed by the Respondent 1 Ann.G page no.210 And page no 219

WRIT PETITION No.8053/15
(Ladies Club, Bangalore – petitioner)

The gist of the matter is as under:

Sl. No.	Dates	Events
1	23/01/2015	Copy of the order passed by the 1 st Respondent in the matter in the case KIC6920PTN2013 Ann.A page no.16
2	11/07/1997	Lease agreement has executed by the state government of the 50 years in the favour of petitioner Ann.B page no.21
3	03/11/1970	Registration certificate of ladies club register under mysore societies registration act 1916 Ann.B1 page 31
4		Ladies club rules and regulation copy Ann B2 page 33
5	19/12/2012	Application u/s 6(1) of the RTI Act Ann.C page no. 47
6	26/06/2013	Complaint u/s 18(1) of RTI 2005 before Karnataka information commission Ann.D page 48
7	19/12/2012	RTI Application copy u/s 6(1) Ann-P1page no 52
8	12/12/2005	Documents showing the grant of land to Ladies Club AnnP-2 page no 53
9	16/04/2014	Statement of objections filed by the petitioner before the 1 st respondent Ann-E page 54

Writ Petition No.22774/2015 - (The Institute of Engr. India)

The gist of the matter is as under:

Sl. No.	Dates	Events
1	06/08/1960	Petitioner institution incorporated by Royal Chartered 09/09/1935 Government of Mysore meeting under its dated-17/06/1960 In terms of the said meeting under its order dated- 06/08/1960 Ann –A page no19
2	02/05/1974	Copy of the lease executed on 2/05/1974 in favour of petitioner for a period of 30 years Ann-B page no24 Extended lease Copies dated 22/08/1996 and 14/07/1997 Ann. C, C1 page no 27, 31
3	19/12/2012	Copy of the RTI application filed by 2 nd Respondent Ann- D page 39.
4	09/01/2013	Copy of the Reply by the petitioner Ann-E page 40
5	25/03/2010	Order copy passed by central government information commission Ann-F page 41
6	26/06/2013	Copy of the complaint filed u/s 18(1) of the RTI Act Ann-G page no 43
7	17/12/2013	Copy of the memo Ann-H page no-48
8	17/12/2013	Copy of the Order passed by CIC on dtd- 17/12/2013 that Appeal was filed on 25/04/2013 Ann-J page No 49
9	29/12/2014	Copy of the Rejoinder Statement filed by the 2 nd Respondent CIC decision dated 25/03/2010 Ann-K page no-51
10	01/04/2015	Copy of the Order passed by the central Government information Commission Ann-L page no-53

3. Learned Senior Counsel Mr.Naganand representing the petitioner – BTCL submitted that BTCL which is held to be a 'public authority' by the KIC is erroneous. Petitioner would not qualify as 'public authority' within the meaning of Section 2(h) of Act, 2005. State Government does not have any kind of say in the functioning of petitioner-company. He has pointed out errors at paragraphs 10 and 11 of the KIC Order dated 1st July, 2013 (W.P.18449/2015) which reads as under:

10. *Coming to the one more requirement of the Section 2(h)(d)(ii) is concerned, the Commission inclines to peruse the documents available in the record. Firstly, land measuring 32,17,995 sq.ft, where the Bangalore Race Course is existing was given on lease to the Bangalore Turf Club as per the lease agreement dated 09-09-1923 and expect the collection of betting tax, entertainment tax and license fee, no other revenue was collected in respect of the land till GO No. FD 14 CRC67 dated 02-11-1968 was issued by the Government. In the aforesaid GO, lease amount of Rs.50,000/- per annum was fixed and later it was enhanced to Rs.1,00,000, 5,00,000, 30,00,000. However, on the request of the Turf Club to treat it on par with the KSCA or Golf Club as a sports activity, and modify the decision fixing the lease amount at Rs.30,00,00/-per year was considered by the government and issued the GO dated 05-09-2000 leasing from 01-01-1989 to 31-12-1999 and from 01-01-2000 to 31-12-2009 for lease amount of Rs.10,000,00/- per year and thereafter to increase @ 10% per year. Considering (a) the location of the land **in the***

heart of the Bangalore Metropolitan City, (b) extent of 32,17,995 Sq.ft of land being leased FREE for 45 years from 09-09-1923 to 02-11-1968, (c) and then at the rate of Rs 50,000/- per year i.e., **at a very meager rate of Re.0.015/-per sq ft**, and (d) then again at **a very meager rate of Re.0.92 per sq. ft. per year for over a period of 21 years** from 01-01-1989 to 31-12-2009 (see CAG report), it is evident to note that the government has indirectly financed the Club. Thus, it could be held that another requirement of control by the Government as per Section 2(1)(h)(d)(ii) is fulfilled.

11. The decision of this Commission in KIC.284 COM 2006 - Sri. M.R. Shyamsunder Vs Secretary, Bangalore Turf Club is not binding and that apart the said decision appears to have been rendered **in the absence of material documents reflecting the facts which are being taken up for discussion to decide the issue as to if the Club is a 'public authority' or not.** On the other hand, the respondent has produced Memorandum and Articles of Association of Bangalore Turf Club Ltd and as reflected from it, nowhere it is stated that it is a private Ltd company having the private objects of carrying on the business of a race Club etc. That apart, the said decision is not binding on this Commission, as the principle relating the 'precedents' and binding is not applicable to decisions of the Information Commissions, as the information Commissioner gives a final decision of his own and no appeal lies much less to the Full bench of this Commission.

4. Learned Senior counsel pointed out that KIC in its order has relied on the decisions of the HIGH COURT OF DELHI in

WP(C) No.876/2007 between **INDIAN OLYMPIC ASSOCIATION** vs **VEERESHMALIK AND OTHERS AND OTHER CASES** disposed of on 07.01.2010 and the decision of PUNJAB AND HARYANA HIGH COURT in **DAV COLLEGE TRUST AND MANAGEMENT SOCIETY & ORS** vs **DIRECTOR OF PUBLIC INSTRUCTIONS & ORS** in judgment dated 25.02.2008 to hold BTCL as a 'public authority'. It is further submitted that to identify whether BTCL is a 'public authority' or not, it is necessary to see whether BTCL fulfills the ingredients of the definition of 'public authority' under Section 2(h) of Act, 2005. He relied on Memorandum and Articles of Association of BTCL and pointed out that BTCL is registered under the Companies Act, 1956 (1 of 1956). In the Memorandum of Association of BTCL, clause 31 relates to the 'Committee'; clause 32.a) stipulates that three Stewards and one Committee Member shall be nominated in each financial year by the Government of Karnataka. In view of these facts and circumstances, petitioner does not fit into the ingredients stated under Section 2(h) to identify BTCL as a 'public authority'. In support of the aforesaid contentions, learned Senior Counsel for the petitioner relied on the following citations:

(i) This Court In **M/s PATKAR AND COMPANY AND ANOTHER**
vs THE COMMISSIONER OF POLICE in WRIT PETITION

No.130/1987 decided on 24.06.1987. Para.15 reads as under:

15. In the instant case, as already indicated as the second respondent is not discharging any of the public duties or of like nature, it is not possible to hold that it is an authority or instrumentality of the State. It is only a private company incorporated under Companies Act carrying on abortive game of Horse-racing which but for the licence is prohibited. If that is so, principles of audi alteram partem are not attracted to decision of 2nd respondent. If the second respondent is not enjoined to hear him before considering the grant of licence, question of the first respondent hearing him will not at all arise as it is only a recommending authority. Assuring for the sake of argument that 1st respondent was required to provide an opportunity of hearing, as directed by this Court in previous writ petition, as this issue had not arisen for consideration, so long as the views or opinion of the first respondent are not binding on the second respondent, whether reasons assigned by the impugned order have relevance for the purpose of grant of Book-makers licence or not, matters very little. In nutshell ultimate decision is that of 2nd respondent. In this view, it is unnecessary to examine further whether reasons assigned by the first respondent are germane or not.

(ii) The Division Bench of this Court in Writ Appeal No.1106/1987 decided on 24.11.1987 has dismissed the Writ Appeal while affirming the order of the Learned Single Judge.

(iii) IN HYDER ALI KHAN vs REGISTRAR OF COMPANIES, HYD. AND OTHERS reported in 2001 SCC Online AP 344 in **page 24 (Para 32), page 30(Para3), page 44(Para 15), page 49(para 28) and page 57(para 46).**

5. The following material and citations were presented on 18.11.2020 by the learned Senior counsel for the petitioner:

(i) In Black's Law Dictionary the relevant portion is extracted hereunder:

9. Ownership. Collection of rights to use and enjoy property, including right to transmit it to others. Trustees of Phillips Exeter Academy v. Exeter, 92 N.H. 473, 33 A.2d 665, 673. The complete dominion, title, or proprietary right in a thing or claim. The entirety of the powers of use and disposal allowed by law.

The right of one or more persons to possess and use a thing to the exclusion of others. The right by which a thing belongs to some one in particular, to the exclusion of all other person. The exclusive right of possession, enjoyment, and disposal; involving as an essential attribute the right to control, handle, and dispose.

Ownership of property is either absolute or qualified. The ownership of property is absolute when a single person has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to

general laws. The ownership is qualified when it is shared with one or more persons, when the time of enjoyment is deferred or limited, or when the use is restricted. Calif.Civil Code, §§ 678-680.

There may be ownership of all inanimate things which are capable of appropriation or of manual delivery; of all domestic animals; of all obligations; of such products of labor or skill as the composition of an author, the goodwill of a business, trademarks and signs, and of rights created or granted by statute. Calif. Civil Code, § 655.

In the civil law, ownership is divided into perfect and imperfect. Ownership is perfect when it is perpetual, and when the thing is unencumbered with any real right towards any other person than the owner. On the contrary, ownership is imperfect when it is to terminate at a certain time or on a condition, or if the thing which is the object of it, being an immovable, is charged with any real right towards a third person; as a usufruct, use, or servitude. When an immovable is subject to a usufruct, the owner of it is said to possess the naked ownership. Civ.Code La.art.490.

In connection with burglary, "ownership" means any possession which is rightful as against the burglar.

See also Equitable ownership; Exclusive ownership; Hold; Incident of ownership; Interest; Interval ownership; Ostensible ownership; Owner, Possession; Title.

(ii) In **T.M. DEVASSY, SECRETARY-CUM-FINANCE
MANAGER, PERIYAR LATEX P. LTD. vs MANAGING**

DIRECTOR, PERIYAR LATEX P. LTD. AND ANR. reported in

ILR 1995(1) Kerala 338, it is held as hereunder:

6. Broadly stated, the tests which emerge from the judgments of the Supreme Court are whether :

- (a) the entire share capital is held by the Government,
- (b) the company concerned enjoys monopoly status conferred by the State,
- (c) the functions of the corporation are governmental or public functions,
- (d) substantial amount of financial assistance is received from the State, and
- (e) statutory duties are imposed upon the company.

(iii) Further, learned Senior Counsel relied on decision of this Court in Writ Petition No.49636/2018 decided on 16.11.2018 has held as under:

11. In almost an identical matter, the Division Bench of the Bombay High Court in the case of Pesi Shroff (supra) has held that the Turf Club does not answer the description of 'other authorities' employed in Article 12 of the Constitution of India. At paragraph 13, that Court has observed as under:

"13. Keeping in view the above basic facts pertaining to the Turf Club and the Racing conducted by it, it seems to us that the Turf Club cannot come in the sweep of the concept 'other Authority' as contemplated under Article 12, for the reasons that follow:

- 1) The Turf Club is a limited liability Company incorporated under the Indian Companies Act;
- 2) Its objects are wide and varied and have no nexus with the discharge of legal, statutory or public functions of the State;
- 3) Racing is only one of the activities of the Club though an important one;
- 4) But for the provisions of the Act of 1912, some of the activities like betting on horse races conducted by the Turf Club are illegal and prohibited under the general law;
- 5) Conditions of licence for racing and restrictions imposed thereunder are essentially regulatory in nature and are also to protect the revenue in the form of entertainment duty under the Bombay Entertainment Duty Act and tax on betting under the Bombay Betting Tax Act;
- 6) The Government neither holds the share capital of the Club nor funds it.
- 7) The Club and its activities including activity of racing are governed by the Managing Committee of 11 Members by Majority. Maximum 2 Members can be nominated by the Government. Those nominated members have no power to veto and no obligation to report to the Government. Government has no power to issue binding instructions to their nominees. Hence, there is no governmental control - in the case deep

or pervasive - over the functions of the Club;

8) No monopoly is conferred by the statute upon the Club in the matter of conducting races;

9) The Club is not formed by transfer of any Government Department".

This Court is in complete agreement with the above observation of the said Court which in all fours apply to the case of the petitioner.

6. Further, he relied on the order passed by the KIC in KIC.233 COM 2006 dated 16.09.2006 (Sri M R Shyamsunder vs Secretary, BTC) vide memo dated 10.04.2019 in W.P.18449/2015.

7. Per contra, learned counsel Sri G B Sharath Gowda for the 1st respondent submitted that there is no infirmity in the order of the KIC which is the subject matter of the case. Learned counsel further submitted that cited decisions on behalf of the petitioners do not assist their case in view of the finding given by the KIC in its order dated 25.02.2015 vide Paragraphs 10 to 13, The question to be considered by this Court is, "Whether BTCL is a 'public authority' or not?" On this point, Sri G B Sharath Gowda relied on Apex Court decision in the case of

D.A.V. COLLEGE TRUST AND MANAGEMENT SOCIETY AND OTHERS vs DIRECTOR OF PUBLIC INSTRUCTIONS AND OTHERS reported in (2019) 9 SCC 185 para 26 would suffice to determine that petitioners - BTCL would fall under the definition of 'public authority'. The respondent stressed his argument that petitioner's case is squarely covered by the principles laid down in the case of **DAV** cited supra, wherein Apex Court has interpreted Section 2(h) - 'public authority' by taking into consideration that 'body owned, controlled or substantially financed'; non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government; In the present case, KIC in its order dated 25.02.2015 has taken note of the fact that Government giving concession to the BTCL while leasing the landed property at para.10. Petitioner was put into lease of the Government land at concessional rate and not with reference to market rate. In fact, Comptroller and Auditor General of India (hereinafter referred to as 'CAG' for short) had raised certain objections in giving concession to the petitioner/BTCL which was also taken note of by the KIC (Annexure – E).

8. Learned Senior Counsel appearing on behalf of the petitioner while countering the contentions of the 1st respondent in order to distinguish the citations cited by the learned counsel for 1st respondent viz., **DAV** supra, relied on two decisions viz.,:

- (i) **PADMA SUNDARA RAO (DEAD) AND OTHERS vs STATE OF TAMIL NADU AND OTHERS** reported in (2002) 3 SCC 533 (Paragraphs 15 and 16)
- (ii) **DIVISIONAL CONTROLLER, KSRTC vs MAHADEVA SHETTY AND ANOTHER.** Reported in (2003) 7 ACC 197 (Para.23)]

9. Learned Senior counsel Mr.Naganand appearing for the petitioner in Writ Petition No.38347/2013 adopted the arguments advanced in W.P.18449/2015 for this petitioner. Further, he has pointed out paragraphs 34 and 35 of the Apex Court decision in **DAV** cited supra and distinguished the factual aspects of the present matter.

10. Sri Umapathi S – party-in-person for respondent No.3 adopted the arguments advanced by Sri G B Sharath Gowda, learned counsel appearing for 1st respondent in W.P.18449/2015.

11. In Writ Petition No.58192/2013, Sri Kamalacharan S R -learned counsel for the petitioner/MRCL (Hereinafter referred to as 'MRCL' for short) submitted that petitioner-MRCL is a registered Company with certificate of incorporation. It was pointed out from the Articles of Association of MRCL that clause 31 relates to 'Committee', clause 31(b) provides for the Government of Karnataka to nominate Two stewards. These material information do not suffice to hold that MRCL is a 'public authority' under Section 2(h) of Act, 2005. In the order of KIC dated 16.09.2013, reference has been made to the lease deed entered between the PWD and MRCL on concessional rent with reference to audit report of CAG and clause 31(b) of the Articles of Association. Paragraph 9 of the order dated 16.09.2013 relates to lease rent fixed by the State Government from time to time. In paragraph 10 of the order, KIC quoted the extent of leased area, amount of rent, revenue foregone in respect of BTCL, SBI, Bhoomika Interiors and Exteriors and petitioner/MRCL. The foregone revenue indicated is Rs.105.88 crores.

12. Learned counsel for the petitioner adopted the arguments advanced on behalf of Senior counsel Mr.Naganand insofar as interpretation of Section 2(h) of Act, 2005. Further he advanced arguments that as defined under Section 2(20) of the Companies Act, 2013, petitioner-MRCL is a "Company" and Section 2(27) relates to "Control" that is required to be taken into consideration for the purpose of determining whether petitioner/MRCL would fall under the definition of 'public authority' or not, since the State Government has no control over the MRCL. Consequently, the ingredients under Section 2(h) of Act, 2005 has not been addressed by the KIC – 1st respondent in its order dated 16.09.2013. He relied on the Apex Court decision reported in **THALAPPALAM SERVICE COOPERATIVE BANK LIMITED AND OTHERS vs STATE OF KERALA AND OTHERS** reported in (2013) 16 SCC 82 (paragraphs 30 to 35, 45 to 48). He further relied on the decision of the Apex Court in **CHIEF INFORMATION COMMISSIONER AND ANOTHER vs STATE OF MANIPUR AND ANOTHER** reported in (2011) 15 SCC 1

(Paragraphs 29 and 30). He further submitted that respondent No.1 without authority of law directed to appoint Public Information officer and furnished information, such direction is contrary to Section 18 of Act, 2005. In view of these facts and circumstances, the impugned order dated 16.09.2013 is liable to be set-aside.

13. Per contra, Sri G B Sharath Gowda, learned counsel for 1st respondent reiterated the **DAV** case cited supra with reference to the present case, he relied on paragraphs 14 to 17, 22 and 26. He has also pointed out paragraph 31 of **THALAPPALAM's** case supra. He submitted that paragraphs 9 to 11 of the impugned order dated 16.09.2013 would suffice to hold that MRCL would fall under 'public authority'. It is submitted that 1st respondent has not exercised power under Section 18(d) of Act, 2005. On the other hand, in an appeal under Section 19(1) of Act, 2005, Public Information Officer was directed to be appointed.

14. In the present case, Sri S Umapathi, party-in-person - 2nd respondent adopted the arguments advanced by the counsel for the 1st respondent.

15. In Writ Petition No.22774/2015, learned counsel for the petitioner Sri B Ramesh adopted the legal arguments advanced on behalf of the learned Senior counsel Mr.Naganand and submitted that petitioner would not fall under the definition of 'public authority'. It was submitted that petitioner's memo along with CIC order dated 17.12.2013 (Annexure - H) read with reply by the 2nd respondent dated 29.12.2014 was not appreciated while passing the impugned order dated 01.04.2015 (Annexure - L) and it is not binding on KIC. KIC in its order vide Annexure - K dated 29.12.2014 has taken note that State has substantially financed in granting land to the petitioner at concessional rate which has been recorded in paragraph 2.

16. Sri G B Sharath Gowda, Learned counsel for the 1st respondent pointed out at paragraph 4 of the order

dated 01.04.2015 (Annexure – L) wherein KIC had sought for audit reports from the petitioner and it was not furnished. Therefore the above contention of Sri B Ramesh is not tenable.

17. Sri S Umapathi, party-in-person who is the contesting respondent adopted the arguments advanced by Sri G B Sharath Gowda, learned counsel for 1st respondent.

18. Sri B Ramesh, learned counsel for the petitioner countered the arguments advanced on behalf of the 1st respondent and distinguished decision of **DAV** cited supra with reference to decision in **THALAPPALAM** cited supra. He relied on paragraphs 36, 38, 39, 46 and 48 to contend that decision in **DAV** cited supra has no application to the petitioner's case.

19. In Writ Petition No.8053/2015, Sri Harish Chandra, learned counsel appearing for the petitioner adopted the arguments advanced by the learned Senior Counsel Sri S S Naganand.

20. Sri G B Sharath Gowda, learned counsel for the 1st respondent – KIC reiterated the arguments as submitted in the aforementioned cases.

21. Sri S Umapathi, party-in-person who is the contesting respondent adopted the arguments advanced by Sri G B Sharath Gowda, learned counsel for 1st respondent.

22. Heard the learned counsels for the parties.

23. Core issues involved in the present petitions are as follows:

- (i) Whether petitioner - BTCL, MRCL, Ladies Club, and The Institute of Engineer (India) do fall under the definition of 'public authority' in terms of Act, 2005 or not?
- (ii) Whether Article 12 of the Constitution of India would come to the aid of excluding the petitioners from 'public authority' or not?

24. It is necessary to reproduce Section 2(1)(h) of Act, 2005:

Sec:2(1)(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 organization substantially financed, directly or indirectly by funds provided by the appropriate Government;

25. The relevant issues involved in the present petitions relates to the words 'and includes any' and "non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government" (vide part of Section 2(h)(d) and (i) and (ii) of Act, 2005)

The word 'and includes any' will have to be examined in the following manner like:

**Cruelty to children is a specific offence under Penal Code and includes any Act of wilfull assault, ill-treatment, neglect or abandonment;*

**Information about you that is not publicly available, and includes any list that is prepared using non-public personal information;*

**animal, which may directly or indirectly cause an unhealthy condition and includes any such condition caused by any pest;*

**This is the total amount that the financial institution is granting and includes any other amount that is being financed, like positions, consolidation of debts etc;*

**Income taxes or both, and after the obligatory deductions for social contributions*

and includes any additional benefits such as child allowances or housing benefits;

**Indirectly funding is a funding that an organization receives as the result of the genuine and independent private choice of beneficiary through voucher, certificate, coupon or similar mechanism including concession;*

(Underline emphasized)

26. Ordinarily, accounting for Government grants in respect of non-monetary Government grants :- Government grants may take the form of non-monetary assets such as land or other services, given at concessional rates. In these circumstances, it is usual to account such assets at their acquisition cost, non-monetary assets given free of cost are recorded at a nominal value.

27. In the present cases Section 2(h)(a) to (d) of Act, 2005, in particularly the words 'and includes any' **(vide (d))** read with

- (i) body owned controlled or substantially financed,
- (ii) Non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government
(Underline emphasized)

'and includes any' are to be read independently other than Section 2(h)(a) to (d) for the reasons that number of examples how 'and includes any' are cited supra. Therefore, the arguments advanced by the learned Senior counsel for the petitioners that the ingredients of Section 2(h)(a) to (d) are to be read with (i) and (ii) cited supra is not tenable. If, (i) and (ii) are read independently, then what is required to be examined is, "Whether petitioners would fall under substantially financed by the State and indirectly by funds provided by the aforesaid Government or not"? While interpreting, the Court has a duty to avoid a "head-on clash" at all cost between two sections of the same Act. When it is impossible to reconcile the

contradictory provisions, then Court must interpret in a way to give as much as possible effect to both provisions. To harmonise is not to destroy any other statutory provisions.

28. In this context, it is necessary to reproduce extract of the KIC order dated 01.07.2013 (**Sri Umapathi S vs PIO & The Secretary, BTC**, (Para.10 and 11 of W.P.18449/2015)

10. Coming to the one more requirement of the Section 2(h)(d)(ii) is concerned, the Commission inclines to peruse the documents available in the record. Firstly, land measuring 32,17,995 Sq.Ft, where the Bangalore Race Court is existing was given on lease to the Bangalore Turf Club as per the lease agreement dated 09-09-1923 and except the collection of betting tax, entertainment tax and license fee, no other revenue was collected in respect of the land till GO No.FD 14 CRC67 dated 02-11-1968 was issued by the Government. In the aforesaid GO, lease amount of Rs.50,000/- per annum was fixed and later it was enhanced to Rs.1,00,000, 5,00,000, 30,00,000. However, on the request of the Turf Club to treat it on par with the KSCA or Golf Club as a sports activity, and modify the decision fixing the lease amount at Rs.30,000,00/- per year was considered by the government and issued the GO dated 05-09-2000 leasing from 01-01-1989 to 31-12-1999 and from 01-01-2000 to 31-12-2009 for lease amount of Rs.10,000,00/- per year and

thereafter to increase @ 10% per year. Considering (a) the location of the land **in the heart of the Bangalore Metropolitan City**, (b) extent of **32,17,995 Sq. Ft of land being leased FREE for 45 years** from 09-09-1923 to 02-11-1968, (c) and then at the rate of Rs.50,000/- per year i.e., **at a very meager rate of Re.0.015/- sq ft**, and (d) then again at a **very meager rate of Re.0.92 per sq. ft. per year for over a period of 21** years from 01-01-1989 to 31-12-2009 (see CAG report), it is evident to note that the government has indirectly financed the Club. Thus, it could be held that another requirement of control by the Government as per Section 2(1)(h)(d)(ii) is fulfilled.

11. The decision of this Commission is KIC.284 COM 2006 – Sri M.R.Shyramsunder Vs Secretary, Bangalore Turf Club is not binding and that apart the said decision appears to have been rendered in the absence of material documents reflecting the facts which are being taken up for discussion to decide the issue as to if the Club is a 'public authority' or not. On the other hand, the respondent has produced Memorandum, and Articles of Association of Bangalore Turf Club Ltd and as reflected from it, nowhere it is stated that it is a private Ltd company having the private objects of carrying on the business of a race Club etc. That apart, the said decision is not binding on this Commission, as the principle relating to the 'precedents' and 'binding' is not applicable to decisions of the Information Commissions, as the Information Commissioner gives a final decision of his own and no appeal lies much less to the Full bench of this Commission.

29. In the aforementioned writ petition in W.P.58192/2013, the order of KIC dated 16.09.2013 **(UMAPATI S vs Secretary, Mysore Race Club Limited., Mysore,** relevant Paras. 9, 10 and 11 reads as under:

9) In the Government Order No.FD.21.CRC.94 Bangalore dated 30-11-1996 it is stated that an area of 153 acres and 39 guntas of land in SY. Nos.4 and 74 of Kurubarhalli, Mysore Kasaba Hobli has been leased on lease amount of Rs.80,000/- Per Annum for the first five years period, thereafter, lease rent was Rs.1.6 lakhs per annum from 5-2-1985 to 31-3-1986, from 1-4-1986 to 31-3-1991 it was Rs.1.6 lakhs per annum, from 1-4-1991 to 31-3-1996 lease amount was Rs.2 lakhs per annum, from 1996 to 2001 it was Rs. 2.5 lakhs per annum and from 1-4-2001 to 31-3-2006 lease amount was Rs. 2.75 laksh per annum. From 1-4-2006 lease was not renewed till 5-3-2013 and on 5-3-13 same has been renewed vide Government Order PWD.213.BMS.2007 Bangalore dated 5-3-13 and Annual Lease amount is fixed at the rate of 2% of the Annual Gross Income of Mysore Race Club Ltd.

10) Commission perused Audit Report (Revenue Receipts) for the year ended 31st March 2009 of CAG referred by complainant. The relevant paras of this report is reproduced below:

**"Audit Filings
System Deficiencies**

7.2.8 Non-revision of lease rent.

The KPWD Code envisages leasing out of Government lands and buildings to private bodies, associations, companies or individuals. Paragraph 206 thereof stipulates the following norms for fixation of annual rent in respect of lease of lands:

- a) Lease rent should be fixed based on the rates secured in the open auction.
- b) In cases where auctions are not held, the rates should be fixed in consultation with the jurisdiction Dy. Commissioners with reference to those obtainable in similar localities.
- c) The lease in each case not be for more than five years at a time.

* * * *

7.2.82 Scrutiny of records in four test-checked divisions revealed that fixation of concessional rent while leasing Government lands/buildings for non-charitable commercial purposes in respect of four premises resulted in foregoing of revenue of Rs.630.94 crore for the period from 1 April 2003 to 31 March 2008 as mentioned below:

Sl. No.	Name of the Organization	Extent of land/ Building leased and The period of lease.	Lease rent to be released.	Amount of Lease rent Released	Revenue Forgone.
1.	Bangalore Turf Club (BTC)	3217995 Sq.ft 1.1.89 to 31.12.2009	525.62	0.92	524.70
2.	State Bank of India at JB Nagar Complex	4687 sq.ft 5 years from 2002 to 2006	0.28 (1.4.03 to 31.12.06)	0.12	0.16
3.	Bhoomika interiors and Exterior decorators	2080 sq.ft 25 years from 2004	0.21	0.01	0.20
4.	Mysore Race Club Ltd (MRC)	6707151 sq.ft 10 years from 1.4.96	105.96 (1.4.03 to 31.3.06)	0.08	105.88
Total			632.07	1.13	630.94

- 11) From the above, it is clear that for three years the CAG estimated lease rental of Rs.105.96 crores which is about Rs.35 crores per year for Mysore Race Club Ltd. Even the Dy. Commissioner, Mysore District while recommending renewal of lease during 2009-10, he has recommended lease rental of Rs,. 32,11,91,036/- per annum. These two rentals are far higher than lease rentals fixed by government during the period 1976 to 2006 mentioned above vide Government Order FD.21.CRC.94 Bangalore dated 30-11-1996. From this, it is clear that substantial concession has been given by Government in leasing the said land to Mysore Race Club Ltd., which is prime land in Mysore City and this amounts to indirectly financing substantially by the Government of Karnataka.

In view of the above, it is clear that Mysore Race Club Ltd. is controlled and substantially financed by Government of Karnataka and hence I hold that Mysore Race Club Ltd. is a 'public authority' under section 2(h)(d)(i) & (ii) of RTI Act, 2005, and commission directs Mysore Race Club Ltd., Mysore to appoint within 90 days PIO, APIO and FAA as required under RTI Act,. 2005 to discharge the duties cast under RTI Act. After appointment of PIO, APIO and FAA, the Secretary, Mysore Race Club Ltd., Mysore, should file compliance report to the commission within 15 days.

The complainant is at liberty to approach the PIO of Mysore Race Club Ltd., Mysore, to be appointed, by way of fresh application under Section 6(1) of RTI Act, if desires to seek information.

The case is adjourned to 27-1-2014 at 12.30 p.m. for receiving compliance report from the Secretary, Mysore Race Club Ltd., Mysore. The Venue is, Mythic Society, Opposite Yavanika, Nrupathunga Road, Bangalore.

Pronounced in the open Court on 16th September 2013.

30. Perusal of the aforesaid information, it is evident that petitioners have availed concession of lease amount. If one takes note of the market value as on the date of various lease deeds, it is evident that larger chunk of monetary gains has favoured the petitioners from the State Largesse. In fact, State Government should have resorted to distribute the State Largesse while adhering to Article 14 of the Constitution, Courts have time and again held that State Largesse is required to be distributed while adhering to Article 14 of the Constitution. In the following decisions it is held as under:

1. SAROJ SCREENS (P) LTD. V. GHANSHYAM, (2012) 11 SCC 434 at page 455, Relevant paras reads as under: 38, 65, 66.

38. The question whether the State and/or its agency/instrumentality can transfer the public

property or interest in public property in favour of a private person by negotiations or in a like manner has been considered and answered in negative in several cases. In Akhil Bhartiya Upbhokta Congress v. State of M.P. [(2011) 5 SCC 29 : (2011) 2 SCC (Civ) 531] this Court was called upon to examine whether the Government of Madhya Pradesh could have allotted 20 acres land to Shri Kushabhau Thakre Memorial Trust under the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 read with the M.P. Nagar Tatha Gram Nivesh Vikasit Bhoomiyo, Griho, Bhavano Tatha Anya Sanrachanao Ka Vyayan Niyam, 1975. After noticing the provision of the Act and the Rules, as also those contained in the M.P. Revenue Book Circular and the judgments of this Court in S.G. Jaisinghani v. Union of India [AIR 1967 SC 1427] , Ramana Dayaram Shetty v. International Airport Authority of India [(1979) 3 SCC 489] , Erusian Equipment and Chemicals Ltd. v. State of W.B. [(1975) 1 SCC 70] , Kasturi Lal Lakshmi Reddy v. State of J&K [(1980) 4 SCC 1] , Common Cause v. Union of India [(1996) 6 SCC 530] , Shrilekha Vidyarthi v. State of U.P. [(1991) 1 SCC 212 : 1991 SCC (L&S) 742] , LIC v. Consumer Education & Research Centre [(1995) 5 SCC 482] and New India Public School v. HUDA [(1996) 5 SCC 510] , the Court culled out the following propositions: (Akhil Bhartiya Upbhokta case [(2011)

5 SCC 29 : (2011) 2 SCC (Civ) 531] , SCC p. 60, paras 65-66)

"65. What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies,

organisations or institutions dehors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution."

2. COMMON CAUSE, A REGISTERED SOCIETY (PETROL PUMPS MATTER) V. UNION OF INDIA, (1996) 6 SCC 530 at page 552 Relevant paras reads as under: 19, 22, 26.

19. *All the 15 allotments — discussed above — have been made by the Minister in a stereotyped manner. The applications have not been officially received by the Petroleum Ministry. There is no receipt-entry on any of the applications. The applicants seem to have approached the Minister directly. None of the applications have been dealt with in any of the branches of the Ministry. There is nothing on the record to indicate that the Minister kept any criteria in view while making the allotments. How the*

applicants came to know about the availability of the petrol pumps is not known. No advertisement was made to invite the applications. There is nothing on the record to show that any other method of inviting applications was adopted. There is no indication in the allotment orders or anywhere in the record to show that the Minister kept any guidelines in view while making these allotments. The allotments have been made in a cloistered manner. The petrol pumps — public property — have been doled out in a wholly arbitrary manner. This Court in Ramana Dayaram Shetty v. International Airport Authority of India [(1979) 3 SCC 489] , held as under: (SCC p. 506, para 12)

"It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and non-

discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down....”

22. *The Government today — in a welfare State — provides large number of benefits to the citizens. It distributes wealth in the form of allotment of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas and licences etc. Government distributes largesses in various forms. A Minister who is the executive head of the department concerned distributes these benefits and largesses. He is elected by the people and is elevated to a position where he holds a trust on behalf of the people. He has to deal with the people's property in a fair and just manner. He cannot commit breach of the trust reposed in him by the people. We have no hesitation in holding that Capt. Satish Sharma in his capacity as a Minister for Petroleum and Natural Gas deliberately acted in a wholly arbitrary and unjust manner. We have no doubt in our mind that Capt. Satish Sharma knew that the allottees were relations of his personal staff, sons of Ministers, sons/relations of Chairmen and members of the Oil Selection Boards and the members of the Oil Selection Boards themselves. The allotments made by him were wholly mala fide and as such cannot be sustained.*

26. *This Court as back as in 1979 in Ramana Shetty case [(1979) 3 SCC 489] held "it must, therefore, be taken to be the law..." that even in the matter of grant of largesses including award of jobs, contracts, quotas and licences, the Government must act in fair and just manner and any arbitrary distribution of wealth would violate the law of the land. Mr Satish Sharma has acted in utter violation of the law laid down by this Court and has also infringed Article 14 of the Constitution of India. As already stated a Minister in the Central Government is in a position of a trustee in respect of the public property under his charge and discretion. The petrol pumps/gas agencies are a kind of wealth which the Government must distribute in a bona fide manner and in conformity with law. Capt. Satish Sharma has betrayed the trust reposed in him by the people under the Constitution. It is high time that the public servants should be held personally responsible for their mala fide acts in the discharge of their functions as public servants. This Court in Lucknow Development Authority v. M.K. Gupta [(1994) 1 SCC 243] , approved "Misfeasance in public offices" as a part of the Law of Tort. Public servants may be liable in damages for malicious, deliberate or injurious wrongdoing. According to Wade:*

"There is, thus, a tort which has been called misfeasance in public office and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury."

With the change in socio-economic outlook, the public servants are being entrusted with more and more discretionary powers even in the field of distribution of government wealth in various forms. We take it to be perfectly clear, that if a public servant abuses his office either by an act of omission or commission, and the consequence of that is injury to an individual or loss of public property, an action may be maintained against such public servant. No public servant can say "you may set aside an order on the ground of mala fide but you cannot hold me personally liable". No public servant can arrogate to himself the power to act in a manner which is arbitrary.

3. SHIVSAGAR TIWARI V. UNION OF INDIA, (1996) 6 SCC 558 at page 562 Relevant paras reads as under: 9, 10, 17.

9. Question is whether they were selected in accordance with law, which aspect has its importance because apparently a large number of other persons could as well fall within the categories in question and had applied also. From the report of the CBI it is clear that the allottees had been selected, not by

following the tender system, as required by the policy of 1994, but because of their relationship with the Minister or her personal staff, or being employees or friends of such persons. If that be so, the allotments were wholly arbitrary and speak of misuse of power. The all important question is what is required to be done to undo the wrong and how the wrongdoer is to be dealt with within the parameters known to law.

10. *It would be apposite in this context to refer to the recent decision of this Court in Common Cause, a Registered Society v. Union of India [(1996) 6 SCC 530] , in which one of us (Kuldip Singh, J.) reiterated the need to act fairly and justly in the matter of grant of largesses, pointing out that any arbitrary distribution of national wealth would violate the law of the land. Mention was made of the judgment in Lucknow Development Authority v. M.K. Gupta [(1994) 1 SCC 243] , stating that the same approved "misfeasance in public office" as a part of the law of the tort. It was pointed out that public servants become liable in damages for malicious, deliberate or injurious wrongdoing.*

17. *Now, to take care of the illegality, we have to take two steps. First, cancel the allotments. To decide as to who should get the shops/stalls, the*

Government would first consider whether its policy of 1994 and categorisation made by it needs alteration in any way. While undertaking this work, the Government would make such provisions in the policy which are just and fair. After the policy has been framed, the shops/stalls would be allotted as per the policy and by following a procedure having the sanction of law. In case it would be that any of the present allottees would not be the person so selected, he/she shall be asked to vacate the shop/stall by giving three months' time. We would require the Government to formulate the policy within two months and thereafter to complete the exercise of allotment within two months. Till then, the present allottees would be allowed to continue.

In **VICTORIAN GRANITES (P) LTD. V. P. RAMA RAO**

AND OTHERS reported in (1996) 10 SCC 665 at page 667 paras

4 and 5, it is held as under:

4. It is true that a facade of compliance of law has been done by P. Rama Rao and Magam Inc. for having the transfer of the leasehold interests had by P. Rama Rao made in favour of the latter. The best of the legal brains will be available to escape the clutches of law and transactions would be so shown to be in compliance of semblance of law. In that pursuit, payment of royalty and permits remained in the name of P. Rama Rao. The court has to pierce through the process, lift the veil and reach the genesis and effect. Article 39(b) of the Constitution

envisages that the State shall, in particular, direct its policies towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Socio-economic justice is the arch of the Constitution. The public resources are distributed to achieve that objective since liberty and meaningful right of life are hedged with availability of opportunities and resources to augment economic empowerment. The question is whether the transfer is to subserve the above common good and constitutional objective? It is true that when the individuals have been granted lease of mining of the property belonging to the Government, the object of such transfer was to augment the economic empowerment of the transferee by himself or by a cooperative society or partnership composing persons to work out the mines to achieve economic empowerment. Whether such a transfer could be made a subterfuge to circumvent the constitutional philosophy and thereby the constitutional objective be sabotaged in that behalf? Answer would be obviously in the negative. It is seen that the Government has amended the rules and given powers to the Director to grant assignment after the two years from the date of leave from one firm, in favour of another firm of the lease rights obtained by one, and if it is sought to be transferred within two years, prior permission of the Government is required to be obtained. The object is to have control in the hanky-panky and shady transactions done in collaboration and collusion with the lower level officers for illegal gratification and to prevent the depletion of the assets of the State for personal benefit of the vested interests, defeating the constitutional objective behind Article 39(b) of the Constitution, the preamble and fundamental rights enshrined in the Constitution. This system of transfer would encourage corruption and nepotism and official acts done in secrecy would sabotage the constitutional objectives. Big fish will always eat away small fish in diverse forms, so as to drive the

latter away from the area. Legal form of action, if given primacy, the constitutional objective would be easily defeated, creating monopoly in the market by few vested interests controlling the economy. The problem has to be broached from this perspective and must seek an answer to the question whether such transactions would elongate and subserve common good?

5. In this case, as rightly contended by Shri K.R. Chowdhary, there is a facade of compliance of law, but, as stated earlier, it is only a subterfuge to comply with the law and an attempt by a private company whose polishing centre is situated in Chittor District and Head Office in Madras to secure unjustifiable enrichment. We have got our own doubts with regard to the very constitution and genuineness of the partnership said to have been entered into between P. Rama Rao and other partners of Magam Inc. However, in this case, it is not necessary for us to go into that issue. Suffice it to state that the entire transaction is smacked of bona fides and would defeat the constitutional objectives. The Government should restructure their rules and contractual clauses consistent with constitutional philosophy. The Government, therefore, has rightly, though for different reasons, set aside the assignment of leases granted by P. Rama Rao and sub-lease in favour of Magam Inc. by exercising its suo motu power.

5. **S. SUBRAMANIAM BALAJI V. STATE OF T.N.,** (2013) 9 SCC 659 : 2013 SCC OnLine SC 579 at page 695 Relevant paras reads as under: 62, 68.

Issue 2: Whether the schemes under challenge are within the ambit of public purpose and if yes, is it violative of Article 14?

62. *The concept of State largesse is essentially linked to the directive principles of State policy. Whether the State should frame a scheme, which directly gives benefits to improve the living standards or indirectly by increasing the means of livelihood, is for the State to decide and the role of the court is very limited in this regard.*

68. *As a result, we are not inclined to agree with the argument of the appellant that giving of colour TVs, laptops, mixer-grinders, etc. by the Government after adhering to due process is not an expense for public purpose. Judicial interference is permissible when the action of the Government is unconstitutional and not when such action is not wise or that the extent of expenditure is not for the good of the State. We are of the view that all such questions must be debated and decided in the legislature and not in court.*

31. In view of the aforesaid principles laid down by the Apex Court, one has to come to the conclusion that State Largesse had not been distributed in the manner known to law. At the same time, each of the petitioners are beneficiaries of State Largesse at a concessional rate as is

evident from the records and findings given by the KIC in its orders read with audit reports.

32. It is necessary to take note of what is meant by 'Largesse' – Government is simply funding its Largesses towards private charities anyway, and politicizing the non-profit world to an unprecedented degree in the process.

33. Further, the following would come under the definition of 'Largesse' viz., synonyms of 'Largesse' are bestowal, comp, donation, durative, faining, free bie, gift, give away, handsel, lagniappe, present, presentation, alms, benefaction, beneficence, benevolence, charity, contribution, dole, hand out, oblation, offering, philanthropy, tithe, grant, subsidy, remembrance, tribute, valentine, bonus, boon, windfall, courtesy, favour, generosity, sacrifice, gratuity, propine, award, prize, reward, liberalise. If these meanings are taken into consideration for the purpose of State Largesse, one has to draw inference that each of the petitioners are the

beneficiary of substantially financed **by way of indirectly by funds** provided by the Government.

34. Learned Senior counsel for the petitioners distinguished the impugned KIC Orders in these bunch of petitions with reference to **M R Shyamsunder Vs Secretary, Bangalore Turf Club** (KIC 233 COM 2006). In all fairness, KIC should have taken note of **M R Shyamsunder's** case supra. KIC in the impugned order distinguished **M R Shyamsunder's** case supra with reference to factual aspects of the matter which has been quoted in paras. 9, 10 and 11 read with audit reports as to how each of the petitioners were indirectly benefited by means of concession in the monetary terms.

35. The petitioners contention is that there is no participation on behalf of the Government in respect of running the petitioners company/organization. Whereas, in the Articles of BTCL clause 31 relates to 'committee' and clause 32(a) relates to 'representation of one Steward from Government of Karnataka'. Similarly, in Article of

Association of MRCL, clause 31 relates to 'Committee' and 31(b) provides for 'two stewards from the Government of Karnataka'. Petitioners further contended that sub-section (27) of Section 2 of Companies Act, 2013 deals with '**Control**' read with Memorandum and Article of Association, it is clear that State Government has no control over the petitioners. If there is no Government control, then what made the petitioners to appoint Stewards from the Government of Karnataka is not forthcoming from the Memorandum and Articles of Association of the petitioners.

36. No-doubt each of the petitioners were not controlled by the Government of Karnataka in any manner and at the same time Section 2(h) of Act, 2005 are to be read independently from Section 2(h)(a) to (d) and (i) and (ii). If part of (d) and (i) and (ii) ingredients are taken into consideration, petitioners would fall under the definition of 'public authority', since, monetarily each of the petitioners were beneficiary as their lease deeds revealed that they

have been given substantial financial aid/concession. This issue was taken note of by the Apex Court in the case of **DAV** supra.

37. Learned counsel for MRCL submitted that direction issued by KIC to appoint PIO and furnish information is contrary to Section 18 of RTI Act for which learned counsel for the 1st respondent submitted that in the order of KIC at paras.9 to 11, reasons have been assigned and further, it is contended that order of KIC is not with reference to Section 18(d) of Act, 2005 and it is under Section 19(1) of Act, 2005.

38. Mr. B Ramesh, learned counsel for the petitioner in W.P.Nos.22774/2015 submitted that CIC order dated 17.12.2013 read with reply was not taken into consideration by KIC in its order dated 1.4.2015 for which the learned counsel for the 1st respondent submitted that petitioner was asked to furnish audit report and other materials, however, the same was not furnished. Therefore, the aforesaid contention of the petitioner cannot be accepted. Perusal of

the KIC order dated 1.4.2015 (Ann.L), it is evident that petitioner has not furnished the audit reports despite directing petitioner to produce. Consequently, the aforesaid contention of the learned counsel for the petitioner is hereby rejected.

39. Learned Senior counsel for the petitioner – BTCL cited the status of the pending litigation which is under consideration before the Apex Court in SLP(C) No.18238-39/2010 and further, pointed out order dated 7.9.2010 passed in SLP(C) 21157/2010 wherein parties were directed to maintain status-quo. Further, he relied on decisions of **PADMA SUNDARA RAO** and **DIVISIONAL CONTROLLER, KSRTC** cited supra relating to *stare decisis*. The aforesaid decisions do not assist the petitioners-BTCL. If the petitioners-BTCL status of ownership of the lands is decided by the Apex Court in their favour, **thereafter** the status of the petitioners-BTCL would be decided whether it would fall under 'public authority' or not. However, as on this day, in terms of the lease-documents it is evident that petitioners-

BTCL is running club on the Government land in terms of existing lease deeds.

40. **M/s PATKAR and COMPANY, HYDER ALI KHAN, MR.SANDHU GREGORY and Dr. K R LAKSHMANAN's** cases cited supra has no application to the present cases in view of the fact that whether petitioners would fall under definition of Article 12 of the Constitution is not the subject matter **on the other hand**, what is required to be examined is, "Whether petitioners do fall under the definition of 'public authority' under Section 2(h) of Act, 2005 or not". It is not necessary for the purpose of identifying 'public authority' one must have ingredients of Article 12 of the Constitution as held by the Apex Court in the case of **BOARD OF CONTROL FOR CRICKET IN INDIA Vs CRICKET ASSOCIATION OF BIHAR AND OTHERS reported** in AIR 2015 SC 3194. Extract of Para.30 is reproduced hereunder:

30. The majority view thus favours the view that BCCI is amenable to the writ jurisdiction of the High Court under Article 226 even when it is not "State" within the meaning of Article 12. The rationale

underlying that view if we may say with utmost respect lies in the "nature of duties and functions" which the BCCI performs. It is common ground that the respondent Board has a complete sway over the game of cricket in this country. It regulates and controls the game to the exclusion of all others. It formulates rules, regulations, norms and standards covering all aspects of the game. It enjoys the power of choosing the members of the national team and the umpires. It exercises the power of disqualifying players which may at times put an end to the sporting career of a person. It spends crores of rupees on building and maintaining infrastructure like stadia, running of cricket academies and supporting State associations. It frames pension schemes and incurs expenditure on coaches, trainers, etc. It sells broadcast and telecast rights and collects admission fee to venues where the matches are played. All these activities are undertaken with the tacit concurrence of the State Government and the Government of India who are not only fully aware but supportive of the activities of the Board. The State has not chosen to bring any law or taken any other step that would either deprive or dilute the Board's monopoly in the field of cricket. On the contrary, the Government of India has allowed the Board to select the national team which is then recognised by all concerned and applauded by the entire nation including at times by the highest of the dignitaries when they win tournaments and bring laurels home. Those distinguishing themselves in the international arena are conferred highest civilian awards like the Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri apart from sporting awards instituted by the Government. Such is the passion for this game in this country that cricketers are seen as icons by youngsters, middle aged and the old alike. Any organisation or entity that has such pervasive control over the game and its affairs and such powers as can make dreams end up in smoke or come true cannot be said to be undertaking any private activity. The functions of the

Board are clearly public functions, which, till such time the State intervenes to takeover the same, remain in the nature of public functions, no matter discharged by a society registered under the Registration of Societies Act. Suffice it to say that if the Government not only allows an autonomous/private body to discharge functions which it could in law take over or regulate but even lends its assistance to such a non-government body to undertake such functions which by their very nature are public functions, it cannot be said that the functions are not public functions or that the entity discharging the same is not answerable on the standards generally applicable to judicial review of State action. Our answer to Question (i), therefore, is in the negative, qua, the first part and affirmative qua the second. BCCI may not be "State" under Article 12 of the Constitution but is certainly amenable to writ jurisdiction under Article 226 of the Constitution of India.

41. Learned Senior counsel for the petitioners pointed out that petitioners are private companies registered under the Companies Act, 1956/2013. Therefore, it is necessary to take note of the definition of 'Control'. On this point, he relied on the following:

- (1) P.RAMANATH AIYAR's Advanced Law Lexicon, 3rd edition, Volume 1 at Pages 1037-1041
- (2) The Legal Lexicon, 1992 Edition, Page 242
- (3) Black's Law Dictionary, Fifth Edition Page No.298
- (4) T M DEVASSY, SECRETARY CUM-FINANCE MANAGER, PERIYAR LATEX P. LTD. vs MANAGING

DIRECTOR, PERIYAR LATEX P. LTD. AND ANR.
(1994)81 Comp Cas 560 (Ker)

- (5) TATA CELLULAR vs UNION OF INDIA (AIR 1996 SC 11)
- (6) DIRECTORATE OF EDUCATION AND OTHERS VS EDUCOMP DATAMATICS LIMITED AND OTHERS (AIR 2004 SC 1962)
- (7) CHIEF INFORMATION COMMISSIONER & ANOTHER vs STATE OF MANIPUR AND ANR. (AIR 2012 SC 864)
- (8) SMT VEENA HARISH vs STATE OF KARNATAKA AND ANR. Order dated 16.11.2018 in Writ Petition No.49636/2018

42. These citations related to whether State Government controls the petitioners company or not. The 'control' of a company need not be necessarily by the Government so as to determine whether petitioners fall under definition of 'public authority' or not. As discussed above, each clause of Section 2(h) is required to be read independently like Section 2(h)(a) to (d) and (i) to (ii). Consequently, what is required to be taken into consideration is whether petitioner would fall under (i) to (ii) of Section 2(h)(a) to (d) or not in particularly "and includes any" and "non-government organization substantially financed, directly or indirectly by funds provided by the appropriate

Government.” Therefore, question of taking note whether State Government can ‘control’ a company or not is irrelevant for the cases on hand in view of the aforementioned clauses of Act, 2005. None of the above decisions cited on behalf of the petitioners relates to interpretation of Section 2(h) of Act, 2005. While deciding the matter, what is relevant is the statute. In the present cases, Court cannot go beyond Act, 2005 read with Article 19(1)(a) of the Constitution. In the **DAV** case supra, Apex Court at para 26 interpreted Section 2(h) of Act, 2005, wherein the latter portion of Section 2(h) has been discussed and has come to the conclusion that **DAV** institution would fall under the definition of ‘public authority’ under Act, 2005.

43. Paras 30 to 35, 45 to 48 of **THALAPPALAM’S** case supra cited on behalf of petitioner’s counsel for MRCL, learned counsel for the 1st respondent distinguished with reference to **DAV** decision at paras 14 to 17, 22 and 26 and further, relied on paragraph 31. Similarly, Mr.B Ramesh, counsel for the petitioners in W.P.No.22774/2015 relied on **THALAPPALAM’S** case supra to distinguish **DAV** decision (**THALAPPALAM’S** case para 36, 46 and 48). Apex Court

in the case of **THALAPPALAM's** case supra has held as under:

30. The legislature, in its wisdom, while defining the expression "public authority" under Section 2(h), intended to embrace only those categories, which are specifically included, unless the context of the Act otherwise requires. Section 2(h) has used the expressions "means" and "includes". When a word is defined to "mean" something, the definition is prima facie restrictive and where the word is defined to "include" some other thing, the definition is prima facie extensive. But when both the expressions "means" and "includes" are used, the categories mentioned there would exhaust themselves. The meanings of the expressions "means" and "includes" have been explained by this Court in DDA v. Bhola Nath Sharma [(2011) 2 SCC 54 : (2011) 1 SCC (Civ) 344] (in paras 25 to 28). When such expressions are used, they may afford an exhaustive explanation of the meaning which for the purpose of the Act, must invariably be attached to those words and expressions.

31. Section 2(h) exhausts the categories mentioned therein. The former part of Section 2(h) deals with:

- (1) an authority or body or institution of self-government established by or under the Constitution,*
- (2) an authority or body or institution of self-government established or constituted by any other law made by Parliament,*
- (3) an authority or body or institution of self-government established or constituted by any other law made by the State Legislature, and*
- (4) an authority or body or institution of self-government established or constituted by notification issued or order made by the appropriate Government.*

32. The Societies, with which we are concerned, admittedly, do not fall in the abovementioned categories, because none of them is either a body or institution of self-government, established or constituted under the Constitution, by law made by Parliament, by law made by the State Legislature or by way of a notification issued or made by the appropriate Government. Let us now examine whether they fall in the latter part of Section 2(h) of the Act, which embraces within its fold:

(5) a body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate Government,

(6) non-governmental organisations substantially financed directly or indirectly by funds provided by the appropriate Government.

33. The expression "appropriate Government" has also been defined under Section 2(a) of the RTI Act, which reads as follows:

"2. (a) 'appropriate Government' means in relation to a 'public authority' which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly—

(i) by the Central Government or the Union Territory administration, the Central Government;

(ii) by the State Government, the State Government;"

34. The RTI Act, therefore, deals with bodies which are owned, controlled or substantially financed, directly or indirectly, by funds provided by the appropriate Government and also non-government organisations substantially financed, directly or indirectly, by funds provided by the appropriate Government, in the event of which they may fall within the definition of Section 2(h)(d)(i) or (ii) respectively. As already pointed out, a body, institution or an organisation, which is neither "State" within the meaning of Article 12 of the Constitution or instrumentalities, may still answer the

definition of 'public authority' under Section 2(h)(d)(i) or (ii).

35. A body owned by the appropriate Government clearly falls under Section 2(h)(d)(i) of the Act. A body owned, means to have a good legal title to it having the ultimate control over the affairs of that body, ownership takes in its fold control, finance, etc. Further discussion of this concept is unnecessary because, admittedly, the societies in question are not owned by the appropriate Government.

45. 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-à-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.

Substantially financed

46. The words "substantially financed" have been used in Sections 2(h)(d)(i) and (ii), while defining the expression 'public authority' as well as in Section 2(a) of the Act, while defining the expression "appropriate Government". A body can be substantially financed, directly or indirectly by funds provided by the appropriate Government. The expression "substantially financed", as such, has not been defined under the Act. "Substantial" means "in a substantial manner so as to be substantial". In *Palser v. Grinling* [1948 AC 291 : (1948) 1 All ER 1 (HL)] , while interpreting the provisions of Section 10(1) of the Rent and Mortgage Interest Restrictions Act, 1923, the House of Lords held that "substantial" is not the same as "not unsubstantial" i.e. just enough to avoid the de minimis principle. The word "substantial" literally means solid, massive, etc. The legislature has used the expression "substantially financed" in Sections 2(h)(d)(i) and (ii) indicating that the degree of financing must be actual, existing,

positive and real to a substantial extent, not moderate, ordinary, tolerable, etc.

47. We often use the expressions "questions of law" and "substantial questions of law" and explain that any question of law affecting the right of parties would not by itself be a substantial question of law. In Black's Law Dictionary (6th Edn.) the word "substantial" is defined as

"Substantial.—Of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real; not seeming or imaginary; not illusive; solid; true; veritable. ... Something worthwhile as distinguished from something without value or merely nominal. ... Synonymous with material."

The word "substantially" has been defined to mean "essentially; without material qualification; in the main; in substance; materially". In Shorter Oxford English Dictionary (5th Edn.), the word "substantial" means "of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; solid; weighty; important, worthwhile; of an act, measure, etc. having force or effect, effective, thorough". The word "substantially" has been defined to mean "in substance; as a substantial thing or being; essentially, intrinsically". Therefore the word "substantial" is not synonymous with "dominant" or "majority". It is closer to "material" or "important" or "of considerable value". "Substantially" is closer to "essentially". Both words can signify varying degrees depending on the context.

48. Merely providing subsidies, 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 Government, may answer the definition of 'public authority' under Section 2(h)(d)(i).

44. Apex Court in **DAV** case supra interpreted Section 2(h) of Act, 2005 which suffice to distinguish the contention of the petitioner-MRCL and petitioners-Institute of Engineer (India).

45. High Court of Kerala in the case of **M P VARGHESE, SECRETARY vs THE MAHATMA GANDHI UNIVERSITY**, AIR 2007 KER 230 elaborately examined the meaning of 'public authority' under Act, 2005 wherein it is held that those organisations which are receiving the financial aid from the State are under the ambit of the 'public authority'. The word 'State' is defined under Article 12 of the Constitution in relation to the enforcement of fundamental rights through Courts, whereas Act, 2005 is intended at achieving object of providing an effective frame

work for effectuating the right to information recognized under Article 19 of the Constitution of India. Information of the private companies can only be assessed from its regulator. The information of the private companies can only be obtained from its regulator. Regulators can provide only the information a company is bound to furnish. At the same time, not all this information can be shared with the applicant. The Act, under Sections 8 and 9, exempts certain categories of information from disclosures.

46. In the **DAV's** case supra, Apex Court at paras 6, 8, 9, 10, 14, 15, 16, 17, 18, 19, 22, 24 to 29 has held as under:

6. As far as definition of 'public authority' is concerned this Court has dealt with the matter in detail in Thalappalam Service Cooperative Bank Ltd. and Ors. v. State of Kerala and Ors.¹ It would however, be pertinent to mention that in that case the Registrar of Cooperative Societies had issued a Circular No. 23 of 2006 directing that all cooperative societies would fall within the ambit of the Act. This notification was challenged before this Court. Dealing with Section 2(h) of the Act, this Court in the aforesaid judgment held as follows² SCC pp. 103-04, paras 30-32)

"30. The legislature, in its wisdom, while defining the expression "public authority" under Section 2(h), intended to embrace only

those categories, which are specifically included, unless the context of the Act otherwise requires. Section 2(h) has used the expressions "means" and "includes". When a word is defined to "mean" something, the definition is prima facie restrictive and where the word is defined to "include" some other thing, the definition is prima facie extensive. But when both the expressions "means" and "includes" are used, the categories mentioned there would exhaust themselves. The meanings of the expressions "means" and "includes" have been explained by this Court in DDA v. Bhola Nath Sharma (in paras 25 to 28). When such expressions are used, they may afford an exhaustive explanation of the meaning which for the purpose of the Act, must invariably be attached to those words and expressions.

31. Section 2(h) exhausts the categories mentioned therein. The former part of Section 2(h) deals with:

- (1) an authority or body or institution of self-government established by or under the Constitution,
- (2) an authority or body or institution of self-government established or constituted by any other law made by Parliament, 1 (2013) 16 SCC 82
- (3) an authority or body or institution of self-government established or constituted by any other law made by the State Legislature, and
- (4) an authority or body or institution of self-government established or constituted by notification issued or order made by the appropriate Government.

32. The Societies, with which we are concerned, admittedly, do not fall in the abovementioned categories, because none of them is either a body or institution of selfgovernment, established or constituted under the Constitution, by law made by Parliament, by law made by the State Legislature or by way of a notification issued or made by the appropriate Government. Let us now examine whether they fall in the latter part of Section 2(h) of the Act, which embraces within its fold:

(5) a body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate Government,

(6) non-governmental organisations substantially financed directly or indirectly by funds provided by the appropriate Government.”

8. It is a well settled statutory rule of interpretation that when in the definition clause a meaning is given to certain words then that meaning alone will have to be given to those words. However, when the definition clause contains the words ‘means and includes’ then both these words must be given the emphasis required and one word cannot override the other.
9. In P. Kasilingam v. P.S.G. College of Technology & Ors.² this Court was dealing with the expression ‘means and includes’, wherein Justice S.C. Agrawal observed as follows: (SCC p.356, para 19)

“19. ...A particular expression is often defined by the Legislature by using the word ‘means’ or the word ‘includes’. Sometimes the words ‘means and includes’ are used. The use of the word ‘means’ indicates that “definition is a hardandfast definition, and no other meaning can be assigned to the expression

than is put down in definition". (See : Gough v. Gough; Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court.) The word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words "means and includes", on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions". (See : Dilworth v. Commissioner of Stamps (Lord Watson); Mahalakshmi Oil Mills v. State of A.P. The use of the words "means and includes" in Rule 2(b) would, therefore, suggest that the definition of 'college' is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended. Insofar as engineering colleges are concerned, their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTE from time to time..."

This judgment was followed in Bharat Coop. Bank (Mumbai) Ltd. v. Employees Union(2007) 4 SCC 685 and DDA v. Bhola Nath Sharma (2011) 2 SCC 54

10. It is thus clear that the word 'means' indicates that the definition is exhaustive and complete. It is a hard and fast definition and no other meaning can be given to it.

On the other hand, the word 'includes' enlarges the scope of the expression. The word 'includes' is used to signify that beyond the meaning given in the definition clause, other matters may be included keeping in view the nature of the language and object of the provision. In P. Kasilingam's case (supra) the words 'means and includes' has been used but in the present case the word 'means' has been used in the first part of sub-section (h) of Section 2 whereas the word 'includes' has been used in the second part of the said Section. They have not been used together.

14. The Section, no doubt, is unartistically worded and therefore, a duty is cast upon us to analyse the Section, find out its true meaning and interpret it in a manner which serves the purpose of the Act.
15. If we analyse Section 2(h) carefully it is obvious that the first part of Section 2(h) relates to authorities, bodies or institutions of selfgovernment established or constituted (a) under the Constitution; (b) by any law of Parliament; (c) by any law of State Legislature or (d) by notification made by the appropriate Government. There is no dispute with regard to clauses (a) to (c). As far as clause (d) is concerned it was contended on behalf of the appellants that unless a notification is issued notifying that an authority, body or institution of selfgovernment is brought within the ambit of the Act, the said Act would not apply. We are not impressed with this argument. The notification contemplated in clause (d) is a notification relating to the establishment or constitution of the body and has nothing to do with the Act. Any authority or body or institution of self-government, if established or constituted by a notification of the Central Government or a State Government, would be a 'public authority' within the meaning of clause (d) of Section 2(h) of the Act.
16. We must note that after the end of clause (d) there is a comma and a big gap and then the definition goes on to

say 'and includes any -' and thereafter the definition reads as:

"(i) body owned, controlled or substantially financed;

(ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;" The words 'and includes any', in our considered view, expand the definition as compared to the first part. The second part of the definition is an inclusive clause which indicates the intention of the Legislature to cover bodies other than those mentioned in clauses (a) to (d) of Section 2(h).

17. We have no doubt in our mind that the bodies and NGOs mentioned in subclauses (i) and (ii) in the second part of the definition are in addition to the four categories mentioned in clauses (a) to (d). Clauses (a) to (d) cover only those bodies etc., which have been established or constituted in the four manners prescribed therein. By adding an inclusive clause in the definition, Parliament intended to add two more categories, the first being in subclause (i), which relates to bodies which are owned, controlled or substantially financed by the appropriate Government. These can be bodies which may not have been constituted by or under the Constitution, by an Act of Parliament or State Legislature or by a notification. Any body which is owned, controlled or substantially financed by the Government, would be a 'public authority'.
18. As far as subclause (ii) is concerned it deals with NGOs substantially financed by the appropriate Government. Obviously, such an NGO cannot be owned or controlled by the Government. Therefore, it is only the question of financing which is relevant.

19. Even in the Thalappalam case (supra) in para 32 of the judgment, this Court held that in addition to the four categories there would be two more categories, (5) and (6).
22. Therefore, in our view, Section 2(h) deals with six different categories and the two additional categories are mentioned in sub clauses (i) and (ii). Any other interpretation would make clauses (i) 6 (2008) 3 SCC 279: Aharon Barak, Purposive Interpretation in Law, (2007) at pg.87 7 (2017) 2 SCC 629 and (ii) totally redundant because then an NGO could never be covered. By specifically bringing NGOs it is obvious that the intention of the Parliament was to include these two categories mentioned in sub clauses (i) and (ii) in addition to the four categories mentioned in clauses (a) to (d). Therefore, we have no hesitation in holding that an NGO substantially financed, directly or indirectly, by funds provided by the appropriate government would be a 'public authority' amenable to the provisions of the Act.
24. A society which may not be owned or controlled by the Government, may be an NGO but if it is substantially financed directly or indirectly by the government it would fall within the ambit of sub clause (ii).
25. That brings us to the second limb of the argument of the appellants that the colleges/schools are not substantially financed. In this regard, we may again make reference to the judgment in the Thalappalam case (supra) wherein this Court dealing with the issue of substantially financed made the following observations: (SCC pp.107-08, paras 47-48)
- "47. We often use the expressions "questions of law" and "substantial questions of law" and explain that any question of law affecting the right of parties would not by itself be a substantial question of law. In

Black's Law Dictionary (6th Edn.) the word "substantial" is defined as

"Substantial.—Of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real; not seeming or imaginary; not illusive; solid; true; veritable. ... Something worthwhile as distinguished from something without value or merely nominal. ... Synonymous with material."

The word "substantially" has been defined to mean "essentially; without material qualification; in the main; in substance; materially". In Shorter Oxford English Dictionary (5th Edn.), the word "substantial" means "of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; solid; weighty; important, worthwhile; of an act, measure, etc. having force or effect, effective, thorough". The word "substantially" has been defined to mean "in substance; as a substantial thing or being; essentially, intrinsically". Therefore the word "substantial" is not synonymous with "dominant" or "majority". It is closer to "material" or "important" or "of considerable value". "Substantially" is closer to "essentially". Both words can signify varying degrees depending on the context.

48. Merely providing subsidies, 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 ninetyfive per cent grant-inaid from the appropriate Government, may answer the definition of 'public authority' under Section 2(h)(d)(i)."

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 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.
27. Whether an NGO or body is substantially financed by the government is a question of fact which has to be determined on the facts of each case. There may be cases where the finance is more than 50% but still may

not be called substantially financed. Supposing a small NGO which has a total capital of Rs.10,000/ gets a grant of Rs.5,000/ from the Government, though this grant may be 50%, it cannot be termed to be substantial contribution. On the other hand, if a body or an NGO gets hundreds of crores of rupees as grant but that amount is less than 50%, the same can still be termed to be substantially financed.

28. Another aspect for determining substantial finance is whether the body, authority or NGO can carry on its activities effectively without getting finance from the Government. If its functioning is dependent on the finances of the Government then there can be no manner of doubt that it has to be termed as substantially financed.
29. While interpreting the provisions of the Act and while deciding what is substantial finance one has to keep in mind the provisions of the Act. This Act was enacted with the purpose of bringing transparency in public dealings and probity in public life. If NGOs or other bodies get substantial finance from the Government, we find no reason why any citizen cannot ask for information to find out whether his/her money which has been given to an NGO or any other body is being used for the requisite purpose or not.

(Emphasis supplied)

47. In view of the principle laid down in the case of **THALAPPALAM's** supra and **DAV** supra, it is crystal clear that Section 2(h) is required to be taken note of "and includes any" (i) and (ii) are to be read independently. Petitioners are all non-government organizations and **who**

are all benefited from the State like indirectly funded by the State Government, while availing at concessional rate in respect of leased out land in favour of each of the petitioner. Consequently, non-government organization whoever benefited by directly or indirectly by funds provided by the appropriate Government would fall under "public authority" under Section 2(h) of Act, 2005. Since 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 like sports club, this in itself could be substantial financing. The 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. Further, 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. In Writ Petition No.58192/2013 the order of KIC dated 16.09.2013 at para.10 reveals the following details of extent of land,

building leased and the period of lease, lease rent to be released, amount of lease rent released and revenue foregone:

Sl. No.	Name of the Organization	Extent of land/ Building leased and The period of lease	Lease rent to be released	Amount of Lease rent Released	Revenue Forgone
1.	Bangalore Turf Club (BTC)	3217995 Sq.ft 1.1.89 to 31.12.2009	525.62	0.92	524.70
2.	XXXX	XXXX	XXXX	XXXX	XXXX
3.	XXXX	XXXX	XXXX	XXXX	XXXX
4.	Mysore Race Club Ltd (MRC)	6707151 sq.ft 10 years from 1.4.96	105.96 (1.4.03 to 31.3.06)	0.08	105.88
Total			XXXX	XXXX	XXXX

48. CAG submitted report on grant, lease, eviction of the encroachment and regularisation of unauthorised occupation of the Government lands in March 2017, Government of Karnataka Report No.5 of the year 2018 consists of:

- Chapter-I relates to Introduction, Para:1.1 pertains to disposal of lands belonging to the Government. Chapter -II relates to Audit Framework. Chapter - III relates to Inventory Management of Government land. Chapter - IV relates to Disposal of Government land by Grant/lease.

Para:4.3 deals with Verification of status of land before grant/lease. Chapter - V relates to Lands prohibited for grant/lease under the Karnataka Land Revenue Rules, 1969. Chapter VI relates to Valuation of land granted/leased. Para:6.1 relates to Concessions in the Valuation of land and Para:6.2 relates to Application of Rule 22A of the KLG Rules. Chapter - VII relates to Monitoring the usage of land. Para:7.1 deals with Mechanism to monitor compliance to the conditions. Para:7.2 deals with Joint Physical Verifications to ascertain usage of land and Para: 7.3 deals with Non-demand of lease rent. Chapter - VIII relates to Eviction of encroachment of Government land. Chapter - IX relates to Regularisation of the Unauthorised Occupation of Government land. Under Chapter VI which deals with Valuation of land granted/leased, wherein it is stated that the objective of the land is generally to promote a socio-beneficial activity. While promoting this cause, the Government should consider the economic aspects like the valuation of land during its transfer and with reference to Mechanism for

valuation of land granted/leased under Rules 19 to 22 of the Karnataka Land Grant (KLG) Rules, 1969 (Hereinafter referred to as 'Rules, 1969' for short), para:6.1 relates to Concessions in the valuation of land. Rules, 1969 prescribes the extent of concession in the value of land that can be allowed for grant of land for various purposes. The concession depends on the purpose for which the land was granted and the status of the grantee viz., statutory bodies, charitable institutions etc. Rule 27 of Rules, 1969 provides for recording of reasons while extending grant of concession. Para:6.1.2 deals with grant of excess concession which reads as under:

6.1.2 Grant of excess concession

The KLG Rules prescribe the extent of concession in price of land depending on the grantee and the purpose of the grant.

In 51 out of 320 cases, either the concession was in excess of the limits prescribed in KLG Rules or the concessions prescribed were allowed without verifying the conditions to be fulfilled for availing concession. This resulted in grant of extra concession of Rs.176.01crore. These decisions were made under the KG (ToB) Rules and Government Orders issued under Rule 27 of the KLG Rules without recording specific reasons for

the excess concession granted. Details of cases are given in Annexure-VI.

In reply, the Government stated that the concessions were granted by relaxing the provisions of the KLG Rules under Rule 27 but agreed to the audit observation that specific reasons, as required under Rule 27, were not recorded. Further, no specific reply was given to the audit observation on the lack of uniformity in grant of concession.

Para:6.2 relates to Application of Rule 22-A of the Rules, 1969 which reads as under:

6.2 Application of Rule 22A of the Karnataka Land Grant Rules

With effect from 9 June 2015, uniform sets of rates for grant/lease were prescribed for Government lands for different purposes vide insertion of Rule 22A of the KLG Rules through an amendment in 2015. Rent was prescribed at 5 or 10 *per cent* of the GV of the land depending on the category of grantee such as individuals, statutory bodies, educational institutions, religious and charitable institutions, industries, etc. and the purpose of grant, such as for education, charitable, industrial, etc. Further, as per conditions attached in the Office Memoranda/Lease Agreement, lease rent was to be enhanced by 10 *per cent* every two years.

49. Article 39(b) of the Constitution has been taken note of in the case of ***Association of Unified Tele***

Services Providers and others Vs. Union of India and others reported in **(2014) 6 SCC 110** wherein, it is held that spectrum is a natural resource which belongs to the people, and the State, its instrumentalities or the licensee, as the case may be, who deal with the same, hold it on behalf of the people are accountability to the people. Similarly, in the present case, petitions State Largeesse has been extended to the petitioners under lease deeds. Therefore, they are holding lease lands on behalf of the people and are accountability to the people.

50. If these material information is taken into consideration, one has to draw inference that petitioners do fall under the definition of 'public authority' under Act, 2005.

51. The aforementioned information reveals that respective petitioners have been provided lease land at throw away price as is evident from the aforesaid amount in crores. BTCL - petitioners was given concession of Rs.524.70 crores and MRCL was given Rs.105.88 crores

instead of Rs.525.62 crores and Rs.105.96 crores. If the market value of the land is taken on a particular date, in that event huge indirect financial aid has been provided by the State to the petitioners. In respect of the other two petitioners viz., Ladies Club and Institute of Engineer (India), respective parties have not provided the details of the lease amount in terms of the lease deed between aforesaid petitioners and the State.

52. In view of the above analysis of factual aspects of the matter and dictum of law, petitioners have not made out case so as to interfere with the impugned KIC orders Nos.KIC 5129 APL 2014 dated 25.2.2015(W.P.18449/2015), KIC 3498 PTN 2012 dated 1.7.2013 (W.P. 38347/13), KIC3499PTN2012 dated 16.09.2013 (W.P.58192/2013), KIC6920PTN2013 dated 23.01.2015 (W.P.8053/2015) and KIC.6728PTN2013 dated 01.04.2015 (W.P.22774/2015).

53. For the foregoing reasons, the petitions fail and is accordingly dismissed. Interim relief, if any, stands vacated. No order as to costs.

54. Unfortunately there is no assistance on behalf of State-Respondent No.2 in W.P. No.38347/2013. Sri Kiran Kumar, learned HCGP is permitted to file memo of appearance for respondent No.3. Copy of this order be sent to Chief Secretary, Government of Karnataka through Registrar of this Court for reference.

Sd/-
JUDGE

Brn