

CENTRAL INFORMATION COMMISSION
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Decision No. CIC/SG/C/2011/001273/17356
Complaint No. CIC/SG/C/2011/001273

Complainant : Mr. Kishan Lal,
1305 Dhruv Ashok Van,
Borivali East, Mumbai-400066

Respondent : Mr. Rohit Prasad,
Director (Development & Strategy)
Public Health Foundation of India
ISID Campus, 4 Institutional Area,
Vasant Kunj, New Delhi-110070

RTI application filed on : 06/09/2011
PIO replied on : 03/10/2011
Complaint filed on : 20/10/2011
Complaint notice issued on : 25/10/2011

Information Sought

- (a) Kindly provide details of legal status of PHFI, its incorporation & registration documents. Kindly provide the details of its promoters/settlers and seed capital provided by the promoters.
- (b) Kindly provide the details of funding received from Government of India for its various projects.
- (c) Kindly provide details of institutions runs by PHFI. Kindly provide details of the capital expenses on setting these institutions and the funding pattern of meeting the capital expenses. Kindly also provide the details cost of purchase of land for each of these institutions and copy of registration certification of land.
- (d) Kindly provide details of consultancy assignments for various state governments and/or their agencies, Govt. of India and or its agencies.
- (e) Kindly provide copies of statement of audited accounts of PHFI for last 5 years.
- (f) Kindly provide details of accredited courses run by PHFI institutions. Kindly provide their curriculum.
- (g) Kindly provide details of students sponsored by Govt of India/state governments. Kindly provide details of documents provided by PHFI to Govt. of India/state governments for approval of its courses.
- (h) Does PHFI conduct any merit-based tests for the admission of students to its courses? If not, then how does PHFI admits students for its courses?
- (i) Kindly provide details of appointments of PHFI board of governors with file noting.

Reply of PHFI

PHFI replied that *“The Public Health Foundation of India (PHFI) is an autonomous body duly registered under the provisions of the Societies Registration Act of 1860. Please note that as a public-private partnership, PHFI is not a ‘public authority’ as defined under the Right to Information Act, 2005 and is a completely autonomous institution. PHFI is therefore not covered under the provisions of the said Act.*

However, in the interest of transparency, PHFI is desirous of sharing information and we are hereby attaching the response to your questions. The most recent Progress Report of PHFI is being attached for your reference. Details 01: PHFI’s inception; along with progress details are also placed on the website (<http://www.Phfi.org/>)”

Grounds for Complaint:

Non-receipt of information from the Board.

Submission received from the Senior Administrator (PHFI):

“At the outset, we would like to mention that Public Health Foundation of India (PHFI) is an independent institution duly registered under the provisions of Societies Registration Act of 1860 and is not a ‘public authority’ as defined under the Right to information Act, 2005. As such, PHFI is not covered under the provisions of the RTI Act.

However in the interest of transparency, PHFI has been consistently sharing information with public whenever sought. Keeping in line with this philosophy, we had responded to the communication dated 6th September 2011 received from Shri Kishan Lal sent through speed post on 8th September 2011. The response was sent vide our letter dated 3rd Oct. 2011 with a copy to the CIC through courier as well as Speed Post. A copy of our response dated 3rd Oct, 2011 together with PoDs of courier, Speed Post receipts and Track Result indicating delivery of our letter dated 31st Oct. 2011 on 7th Oct. 2011 to Shri Kishan Lal & on 8th Oct. 2011 to CIC at JNU are attached for your information and ready reference. We would like to bring to your notice that all the responses were provided and delivered within 30 days of its receipt.

Further, as desired by you in the above referred letter, response to Shri Kishan Lal letter dated 6th September 2011 has been resent to him on his email ID Kishaplal.rti@gmail.com

We would also like to bring it to your notice that your above referred letter is addressed to Public information officer of Ministry of Health and Family Welfare whose office is located at Nirman Bhavan. As mentioned above, PHEI is an independent Institution not covered under the At Act and as such it does not have a designated Public Information Officer. Moreover most of our information is in public domain on our website www.phfi.org and any additional information can be sought through our contact mail contact@phfi.org mentioned on our website.”

Relevant Facts emerging during Hearing held on 24 January 2012:

The following were present:

Complainant: Mr. Kapil Bajaj representing Mr. Kishan Lal;

Respondent: Mr. Mohit Abraham, Mr. Shantanu Jindal, Advocates and Mr. Rohit Prasad, Director (Development & Strategy), Mr. Amit Chaturvedi, Head Finance (PHFI);

Both parties made various arguments in support their contentions. The Commission asked both the parties to send their written submissions in support of their arguments to the Commission and the other party before 30 January 2012. The opposite parties may send their rejoinders to each

other and to the Commission before 10 February 2012 after which the Commission will take a decision.

The decision was reserved at the hearing held on 24/01/2012.

Decision announced on 14 February 2012:

In the instant matter, the main complaint of the Complainant is that PHFI being a public authority has refused to accept his enforceable right to information under the RTI Act. The Supreme Court of India has recognised that the right to information is a fundamental right of the citizens of India under Article 19(1) of the Constitution of India. The RTI Act has codified this fundamental right mandating that every citizen shall have the right to information, subject only to the provisions of the RTI Act. Thus it has made this right legally enforceable, with timelines, provisions of what constitutes information and also identifying which information may be denied. The Act also provides for penalties for violating the Citizen's fundamental right and a proper appellate mechanism for enforcing the right. It follows that once an applicant requests for information from a public authority, it must be provided unless it is exempted under the RTI Act. Therefore, the question which arises for determination in the present case is whether PHFI is a 'public authority' under the RTI Act. It is relevant to mention that PHFI had initially claimed that it was not covered under the provisions of the RTI Act. Hence, there was no scope for the Complainant to use the Appeal procedure mentioned in the RTI Act and the Commission treated the matter as a Complaint under Section 18 of the RTI Act.

Pursuant to the hearing held on 24/01/2012, both parties have sent their submissions, including rejoinders, which have been perused by the Commission. Section 2(h) of the RTI Act, which defines a 'public authority' stipulates as follows:

““public authority” means any authority or body or institution of self-government established or constituted,-

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government, and includes any-

(i) body owned, controlled or substantially financed;

(ii) non-Government Organisation substantially financed,

directly or indirectly by funds provided by the appropriate Government;” (emphasis added)

From a plain reading of the above, it appears that PHFI is not covered under clauses (a), (b), (c), (d) and (ii) of Section 2(h) of the RTI Act. Therefore, the issue which is to be determined is whether PHFI is a body owned, controlled or substantially financed directly or indirectly by funds provided by the appropriate Government.

As per its website-*“The Public Health Foundation of India (PHFI) is a public private initiative that has collaboratively evolved through consultations with multiple constituencies including Indian and international academia, state and central governments, multi & bi-lateral agencies and civil society groups. PHFI is a response to redress the limited institutional capacity in India for strengthening training, research and policy development in the area of Public Health”*. It is

further mentioned that PHFI is an autonomously governed public private initiative. It is managed by a fully empowered, independent, governing board that has representatives from multiple constituencies, which includes senior Government officials, eminent Indian and international academic and scientific leaders, civil society representatives and corporate leaders.

It appears that PHFI is not 'owned' by the appropriate Government. As regards being 'controlled' by the appropriate Government, the said term has not been defined under the RTI Act. There are various forms in which the Government exercises control over an entity, which is relevant in determining whether the latter is a public authority. On perusal of the information about PHFI's governing board, the Commission noted that amongst its 30 Board members are:

1. Dr. Montek Singh Ahluwalia, Deputy Chairman, Planning Commission, Government of India;
2. Mr. P.K. Pradhan, Secretary, Ministry of Health and Family Welfare, Government of India;
3. Mr. Vishwa Mohan Katoch, Secretary, Department of Health Research, Ministry of Health and Family Welfare and Director General, Indian Council of Medical Research;
4. Mr. TKA Nair, Principal Secretary to the Prime Minister of India; and
5. Dr. R.K. Srivastava, Director General Health Services, Ministry of Health and Family Welfare, Government of India.

Thus, at least one-sixth of the members of the governing Board of PHFI consist of senior Public Servants. At the hearing held on 24/01/2012, the Respondent claimed that most of the Government officials on the board of PHFI were occupying such positions in 'private capacity'.

This Bench is of the view that such a claim is untenable. It is difficult to assume that senior Public Servants can be on the board of an organisation like PHFI-which has numerous interactions with the Government, in private capacity. In fact, this would necessarily imply a conflict of interest. The Commission can only assume that such Public Servants must necessarily be acting on behalf of the Government,- when they are required to take executive decisions as members of the board,- in a public-private partnership (PPP) such as PHFI. Any other conclusion would be an improper slur on their integrity. It is not possible that India's leading Public Servants could be acting in any manner, but as representatives of the Government when they are on the board of PHFI. It is also true that significant funding is provided by the Government to PHFI. Hence, it is presumed that the five officials on the board of PHFI are discharging their duties as Public Servants.

The RTI Act does not specify 'complete control' in Section 2(h). As per P.Ramanatha Aiyar's The Law Lexicon (2nd Ed., Reprint 2007 at p. 410), the term 'control' means- "*power to check or restrain; superintendence; management...*". It appears that the presence of senior Government Servants on the board may check or ensure that decisions taken in PHFI are in consonance with the Government's avowed objectives. Therefore, the presence of a fair degree of Government control on the decisions of PHFI cannot be ruled out. It follows that PHFI is 'controlled' by the appropriate Government. This may not be complete control, but five top Public Servants would exercise some degree of control, which would be significant.

The Respondent had also admitted receiving Rs. 65 crores from the Government during the hearing. In this regard, reliance may also be placed on the Complainant's contention that in the 20th Report of the Department-Related Parliamentary Standing Committee on Health and Family Welfare submitted to the Rajya Sabha (2007), it was noted that-"The Government of India is contributing Rs. 65 Crore approximately one-third of the initial seed capital required for kick-starting the PHFI and for establishment of two Schools of Public Health. The remaining amount (approximately Rs.135 crore) is being raised from outside the Government, namely, Melinda & Bill Gates Foundation (Rs.65 cr.) and from high net-worth individuals. PHFI is managed by an independent Governing Board that includes 3 members from the Ministry of Health and Family Welfares viz. Secretary (H&FW); DG ICMR and DGHS. Shri T.K.A. Nair Principal Secretary to Prime Minister, Dr. M.S. Ahluwalia, Vice Chairman, Planning Commission; Smt. Sujata Rao, AS&PD, NACO, Ministry of Health; Dr. Mashelkar, DG CSIR are also members of the Governing Board. The presence of the officials from Government would ensure that the decisions taken in PHFI are in consonance with the objectives for which PHFI has been supported by Government of India. It is expected that all members of the Governing Board would ensure the functioning of the Foundation as a professional organization and with complete transparency." (emphasis added)." Thus,-the Parliamentary Standing Committee also assumed that the Vice Chairman of the Planning Commission, Principal Secretary to the Prime Minister and other Public Servants were ensuring that decisions of PHFI were in consonance with the Government's objectives and complete transparency. PHFI's refusal to accept its coverage by the RTI Act seems at variance with this.

Further, though the term 'financed' is qualified by 'substantial', Section 2(h) of the RTI Act does not lay down what actually constitutes 'substantial financing'. It is akin to "material" or "important" or "of considerable value" and would depend on the facts and circumstances of the case. The funding sources of PHFI are foundations, private donors and the Ministry of Health and Family Welfare, Government of India (MH&FW). At the hearing held on 24/01/2012, the Respondent stated that PHFI was set up in 2006 with an initial fund corpus of Rs. 200 crores (at present Rs. 219 crores), out of which Rs. 65 crores were provided as grant by MH&FW. It follows that Government funding in PHFI is to the tune of 30%, which cannot be considered as insubstantial. Moreover, even if taken on absolute terms, a grant of Rs. 65 crores given by the Government from its corpus of public funds cannot be considered as insignificant and would render PHFI as being 'substantially financed' by funds from the Government.

Citizens have a right to know about the manner, extent and purpose for which public funds are being deployed by the Government. Having said so, not every financing of an entity in the form of a grant by the Government would qualify as 'substantial'-but certainly a grant of over Rs. 1 crore would constitute 'substantial financing' rendering such entity a public authority under the RTI Act.

Furthermore, the Respondent also stated that PHFI is a public-private partnership. It is relevant to mention that PPPs are in the nature of legally enforceable contractual agreements between public authorities and private organisations with clearly laid out terms and conditions, and rights and obligations. PPPs, by their very nature, stipulate certain contributions by the Government such as giving land at a concessional rate, grants, monopoly rights, etc. In cases such as grants, direct funding by the Government can be easily calculated. In cases such as giving monopoly

rights or land at a concessional rate, etc, value(s) must be attached and the same would tantamount to indirect financing by the Government. In other words, PPPs envisage a partnership with public funds,- directly or indirectly,- and therefore citizens have a right to know about the same.

As a consequence of being a public-private partnership, PHFI has received a substantial grant of Rs. 65 crores from the Government initially. Further, as per the Complainant's contention- PHFI has been receiving free land and handsome financial grants from state governments for setting up 'Indian Institutes of Public Health' (IIPHS) as part of the public-private partnership. For instance, the Andhra Pradesh Government provided PHFI with 43 acres of land in Rajendra Nagar area of Hyderabad free of cost and Rs. 30 crores in financial grant for setting up IIPH. The Gujarat Government provided 50 acres in Gandhinagar and Rs. 25 crores in grant. The Orissa Government provided 40 acres near Bhubaneswar and the Delhi Government spent Rs. 13.82 crore on acquiring 51.19 acres of Gram Sabha land in Kanjhawala village for PHFI to set up IIPH. Hence, there appears to be substantial financing both directly and indirectly by the Government.

It follows from the above that PHFI is controlled and substantially financed by the Government. Therefore, **this Commission rules that PHFI is a public authority under Section 2(h) of the RTI Act.**

It is relevant to mention that the Respondent in its written submissions dated 29/01/2012 (i.e. after the hearing held on 24/01/2012) has now agreed to submit itself to the jurisdiction of the RTI Act. The Respondent has pleaded that it be granted a period of 60 days to comply with the provisions of the RTI Act. The Respondent-public authority has submitted that it believes in transparency and accountability, and has at all times complied with the substance of the RTI Act by responding in a proper and timely manner to all queries put to it under the RTI Act. Further, PHFI has also put up all relevant material and details pertaining to its functioning, activities, funding and finances (including extent of government funding) and details of members on its website. Given the above coupled with the fact that PHFI has already been in existence for six years, the Commission feels that PHFI should comply with the provisions of the RTI Act as expeditiously as possible. Therefore, the Commission is granting PHFI a period of 30 days to comply with the provisions of the RTI Act.

It may not be out of place to mention that in recent years, there has been an emergence of a multitude of public-private partnerships in different sectors. As described above, PPPs envisage an arrangement between the Government and private entities with clearly laid down rights and obligations. By their very nature, PPPs stipulate certain contributions from the Government, which may be monetary as well as non-monetary-to which values can be attributed. Moreover, PPPs envisage a certain degree of Government control in their functioning so that the decisions taken are in accordance with the objectives for which the partnership was set up. Given the above, PPPs would come within the ambit of 'public authorities' as defined in the RTI Act thereby enabling citizens to know/obtain information about them. At present, most PPPs do not even accept the applicability of the RTI Act to them and wait for the issue to be adjudicated upon at the Commission's level. For this some citizen has to pursue this matter. Such practices are required to be brought to a minimum and PPPs must comply with the provisions of the RTI Act.

In this instance the Commission notes with some dismay that the highest levels of Public Servants in India did not accept the Citizen's enforceable Right to Information in PHFI, despite the Government substantially funding it and exercising some control.

This strengthens the plea by the Commission that all Public-Private partnership agreements must have a clause that they are substantially funded by the appropriate Government and hence accept that they are Public authorities as defined in the RTI Act. Without this, even an Institution like PHFI which has a distinguished Board, tries to refuse the Indian Citizen his enforceable fundamental right.

The Complainant has demanded a compensation for the trouble of pursuing this Complaint. If an entity is required to pay income tax, it cannot claim that this must first be established by a citizen before the income tax department. It is not the responsibility of individual citizens to ensure statutory compliance; the Government, its instrumentalities and Public Servants should be performing this task. The Commission appreciates the initiative taken by the citizen in this matter and feels that he has been put to unnecessary harassment in filing a Complaint with the Commission to ensure that PHFI complies with the law. The Commission therefore directs PHFI to pay compensation of Rs.3000/- to the Complainant for the loss and detriment suffered by him in pursuing the Complaint.

The Complaint is allowed.

The Commission rules that PHFI is a public authority under Section 2(h) of the RTI Act.

The Commission directs the Chairman of PHFI to appoint a Public Information Officer and a First Appellate Authority-as mandated under the RTI Act **before 15 March 2012** and also ensure compliance with Section 4 of the RTI Act.

The Commission further directs PHFI to pay compensation of Rs.3000/- to the Complainant for the loss and detriment suffered by him in pursuing the Complaint **before 15 April 2012**.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi
Information Commissioner
14 February 2012

(In any correspondence on this decision, mention the complete decision number.)(SH)