

[MANU/CI/0069/2009](#)

CENTRAL INFORMATION COMMISSION

Decided On: 28.10.2009

Appellants: **Shri Nisar Ahmed Shaikh and Ors.**
Vs.
Respondent: **LIC Housing Finance Limited**

AND

Appellants: **Shri Pradeep Kumar Sharma and Shri Ravi Raj**
Vs.
Respondent: **LIC Mutual Fund Asset Management Co. Ltd.**

AND

Appellants: **Shri V. Shekhar Awasthy**
Vs.
Respondent: **G.I. Housing Finance Ltd.**

Coram:

W. Habibullah, C.I.C., M.M. Ansari and A.N. Tiwari, I.Cs.

Subject: Right to information

DECISION

1. The Commission has received 10 Complaint Petitions and 4 Appeal Petitions seeking information from three organizations, namely, LIC Housing Finance Limited, LIC Mutual Fund Asset Management Co. Ltd. And GIC Housing Finance Limited. The nature of information sought was almost similar as the appellants and complainants in all these cases sought certain information, which information was denied by these organizations on the ground that they were not Public Authorities under Section 2(h) of the Right to Information Act, 2005 and hence the Right to Information Act is not applicable to them.

2. Since the matter involved an important question of law of general public importance, it was decided that it should be heard and decided by a Full Bench. Hence, all these Complaints and Appeal Petitions were clubbed together and placed before the Full Bench so constituted.

3. The matter pertaining to Complaint Petition of Shri Cherian K. Simon (CIC/AT/C/2007/0216) and Appeal Petition of Shri Nisar Ahmed (CIC/AT/A/2007/ 0735) was partly heard by Full Bench on 25.4.2008. Similarly, matters relating to LIC Mutual Fund Asset Management Co. Limited were partly heard by the Full Bench on 17.10.2008. It was submitted that in a similar case, the High Court of Madras by its judgment dated 5th August, 2008 in Tamil Nadu Road Development Co. Ltd. v. Tamil Nadu Information Commission and Anr. [MANU/TN/0874/2008](#) : (2008) 145 CompCas 248(Mad) has declared the Tamil Nadu Road Development Company Ltd as a Public Authority. Therefore, the same should apply to the respondent also.

4. These matters were again placed before the Full Bench along with other pending complaints and appeal petitions involving similar issues and heard on 17.4.2009. The following were present at the hearing:

Appellants/Complainants:

1. S/Shri v. Shekhar Awasthy

2. Jas Preet Singh

3. Ravi Raj

Respondents

1. S/Shri D.S. Bhanushali, DGM, HR & Legal, LIC HFL

2. N.K. Gupta, Authorized Representative

3. Naveen Koul, Secretary (L)

4. Ashok Singhal, AAO(L)

5. P. Ponpandion, Company Secretary, LIC Mutual Fund

6. Vicky Kapoor, Area In charge, GIC HFL

7. Rajiv Talwar, Advocate for GICHFL

8. Sandeep Khatri, Advocate, for GICHFL

9. Bhupendra Singh Chauhan, Advocate for LIC MFAM

5. The only issue that needs be determined in all these cases is as to whether the respondent organizations are Public Authorities or not within the meaning of Section 2(h) of the RTI Act. It is not necessary to deal with other matters as regards the information asked for and the response, if any, given by the concerned authorities at this stage.

Respondent: LIC Housing Finance Limited

6. The complainant, Shri Cherian K. Simon has made the following submissions concerning his claim that LIC HFL is a Public Authority within the meaning of Section 2(h) of the RTI Act:

(i) That LIC HFL is a public limited (i) company incorporated on 19th June, 1989 under the Companies Act, 1956 and is promoted by LIC of India and went public in the year 1994.

(ii) As on 31st March, 2007, the shareholding pattern of the company is as under: Life Insurance Corporation of India:40.497% General Insurance Corporation of India:1.324% New India Assurance Company Ltd:3.050% United India Insurance Company Ltd:1.047% Total:45.91 8%

(iii) As per Section 2(h)(d)(ii) of the RTI Act, LICHFL can be treated as a Public Authority because it is a non- government organization substantially financed by the LIC of India.

(iv) The words "substantially financed" used in the Act in the context of "Public Authority" does not mean more than fifty per cent financed or majority shareholding by the Appropriate Government;

(v) LICHFL uses logo which is very similar to the logo of Life Insurance Corporation of India thereby exploiting the goodwill of an entity which was formed by an Act of the Parliament in 1956.

(vi) The name of LICHFL itself commences with the word "LIC" which means only one entity and that is "Life Insurance Corporation of India" which is the Appropriate Government in this case.

7.Appellant, Shri Nisar Ahmad Sheikh's submissions are summarized below:

(i) LICHFL was incorporated by LIC of India which in turn was formed by an Act of Parliament. LIC of India is thus the parent organization of LICHFL hence it is logical that LICHFL also gets covered under the said Act.

(ii) That both the companies, i.e. LICHFL and LIC of India, share the same Chairman & Managing Director;

(iii) That some percentage of staff revenue of LICHFL is shouldered by LIC of India;

(iv) LICHFL is advertised as a product of LIC of India in official publications - one of such publication is the New Year Diary.

8. Appellant, Shri Ahmad also produced a profile of LICHFL and, on the basis of that, has submitted as under:

(i) LICHFL is one of the largest Housing Finance companies in India, incorporated on 19.6.1989 under the Companies Act, 1956;

(ii) LICHFL was promoted by LIC of India and went public in 1994;

(iii) it launched its maiden GDR issue in 2004. The GDRs are listed on the Luxembourg Stock Exchange;

(iv) Authorized Capital of the LICHFL is Rs. 100 crores and its paid-up capital is Rs. 85 crores.

(v) It is recognized by National Housing Bank and listed in the NSE & BSE and its shares are traded only in D-mat format.

(vi) LICHFL has also floated a 100% subsidiary in the name of "LICHFL Care Homes Limited" to conduct the business of providing "Assisted Living Community Centres" for senior citizens.

9. Appellant, Shri Avinash Sharma in his written submission stated that the name of LIC used as a prefix, itself shows that it comes in the category of Public Authority.

10. The other appellants and complainants have not submitted specific arguments pertaining to the issue as to whether LICHFL can be treated as a Public Authority within the meaning of Section 2(h) of the RTI Act.

11. Further, as per the Articles of Association of LICHFL, the appellant enumerated the powers of the LIC as under:

(i) As per Article 112(b) of the Articles of Association of LICHFL, so long as LIC holds at least 33% of the issued equity shares of LICHFL, LIC shall be entitled to appoint to the Board 1/3rd of the total number of Directors and LIC will also have the power to remove or replace to that extent. The directors so appointed shall be permanent non-retiring Directors.

(ii) As per Article 133(1) of the Articles of Association of LICHFL, LIC may from time to time appoint one of the LIC Directors as Managing Director of the company for such period as it shall think fit and shall also have the power of removal and appointment of other Directors in his place.

(iii) LICHFL is a company run by Board of Directors and the entire control vests with the Board of Directors only and all decisions are taken by majority decision. (iv) LICHFL is a company registered under the Companies Act, 1956. It is not established or constituted by and under the Constitution, or any other special law made by Parliament/State Legislature or by any Notification issued or order made by the Appropriate Government.

12. The Commission vide notice dated 14.12.2007 communicated its observation that the information was denied by LICHFL on the plea that they are not a public authority under the RTI Act and that LIC is holding 33% of the equity shares and has a right to appoint; 1/3rd of its Directors on the LICHFL Board and LIC can also appoint one of its directors as Managing Director of LICHFL and directed the parties to attend the hearing on 7.2.2008 with all relevant documents.

13. Respondent LICHFL in their reply dated 8.8.2007 stated that the case of the complainant is not that the respondent is a Public Authority within the meaning of Sections 2(h)(a) to (d)(i) of the RTI Act but because the respondent LICHFL is a non-government body and has been substantially financed by funds provided by Appropriate Government, therefore, it is a Public Authority. LICHFL made the following submissions:

(i) This Commission in `Col. P.K. Garg v. Care Homes Ltd - Appeal No. 523/ICPB/2007 - has categorically held that LICHFL is not a Public Authority since LIC does not hold more than 50 per cent share in it and since the matter has already been set at rest by the Commission, it cannot be re-agitated;

(ii) The Ministry of Finance, Department of Economic Affairs, Insurance Division has already considered the matter and conveyed their decision vide No. M-1 8011/14/2007-INS-III dated 12.6.2007 that LICHFL being a company registered under the Companies Act, 1956, provisions of RTI Act are not applicable to it;

(iii) The Cabinet Secretariat in its meeting held on 20th February, 2007 has categorically held that LICHFL is not a Government controlled company;

(iv) The words "substantially financed" in the definition of Public Authority have not been defined in the Act and, therefore, external aid of concoction needs to be applied to know the exact meaning of the word 'substantial' which as per Oxford Dictionary, 9th Ed means "of large size of amount". Hence LICHFL should have been financed at least up to 50 per cent or more from funds provided by Appropriate Government. (This has also been held by the Commission in its decision in `Col. P.K. Garg v. Care Homes Ltd (supra).

(v) That share capital of Life Insurance Corporation of India along with other companies in LICHFL is not more than 45.918 per cent, therefore, LICHFL cannot be held to be substantially financed for the purpose of being a Public Authority;

(vi) Moreover, as per the definition of Appropriate Government, Life Insurance Corporation of India or similar other companies are only instrumentalities of the Government created by Central or State Governments. They cannot be construed to be Central or State Government as defined under the Act.

(vii) Similarly, on the basis of use of logo similar to the logo of LIC, LICHFL cannot be held to be a "Public Authority". The commencement of the name of LICHFL with the word "LIC" also cannot make it Public Authority.

14. In their reply dated 14.8.2007, the respondents have further submitted that-

(i) There is no Share Holders Agreement with the LIC nor is there any contract between LICHFL and LIC whereby LIC could have any access to information pertaining to the operations, management and performance of LICHFL;

(ii) Till date, LIC has not asked any such information from LICHFL nor has LICHFL given any such information to LIC.

15. LICHFL accordingly prayed that the appeals and complaints filed against them under the RTI Act are not maintainable and thus liable to be dismissed.

16. Life Insurance Corporation of India in response to the notice of this Commission furnished their comments vide letter dated 4.2.2008 reiterating therein their stand already communicated vide letter dated 20th September, 2007. Complying with the direction of the Commission, LIC of India furnished their comments on the following aspects:

(i) Whether the LIC directors on the Board of LIC HFL who have access to the information sought by the applicant can transmit this information to the applicant.

(ii) Whether LIC as Public Authority under the RTI Act has or can have access to information held by a private entity (i.e. LICHFL) and as to whether it is obliged to provide the same to the applicant.

LIC of India in their letter affirmed that Life Insurance Corporation of India holds 39.04% of shares in LIC HFL. As per the Articles of the Association of LICHFL, LIC is entitled to appoint to the Board one third of the total number of Directors, so long as LIC holds at least 33% of the issued equity shares. As such, LIC does not have any controlling interest in the composition of the Board of the LICHFL, other than its own nominees. The LIC does not have any control over the functioning of the LICHFL except limited to the nominating officials to the Board of LICHFL and hence LIC directors on Board of LICHFL cannot transmit

the information of LIC HFL to the applicant. The LIC submitted that under Section 2(j) of the Act, the information held by the public authority or held by the private entity which is under the control of public authority should be provided to the applicant by the public authority. Hence, LIC provides to the applicant information held by it but it is not in a position to divulge information about LIC HFL which is neither a subsidiary of LIC nor under the control of LIC, as it is beyond the scope of the RTI Act.

Respondent: LIC Mutual Fund Asset Management Company Limited

17. Neither Shri Ravi Raj nor Shri Sharma who are the appellant/complainant have submitted any written submissions covering the aspect that the LIC Mutual Fund Asset Management Company Limited is a Public Authority within the meaning of Section 2(h) of the RTI Act. Shri Ravi Raj who was present at the time of hearing also did not make any specific submissions apart from stating that the LIC Mutual Fund is obligated to provide him the information that he has asked from them under the RTI Act.

18. Complainant Shri Ravi Raj through his RTI application addressed to LIC Mutual Fund Asset Management Co. Limited wanted to know why his application has been returned to him without calling him for interview. He further submitted that he had applied in response to the respondent's advertisement and just to restrict the number of candidates his application has been returned. He requested the respondents to consider his application otherwise he will be forced to take appropriate legal action against them.

19. The complainant received a reply on 30.5.2007 to the effect that Right to Information Act, 2005 is not applicable to LIC Mutual Fund Asset Management Co. Limited and that the reason for rejecting the application was already given in the advertisement according to which the organization reserves the right to raise the minimum eligibility standard in order to restrict the number of candidates to be called for interview commensurate with the number of vacancies.

20. The complainant not being satisfied with this reply submitted a complaint before this Commission on 3.7.2007 and requested for a direction to the respondent to provide him the information about fixing the criteria for calling for interview to candidates. The said petition was registered as Complaint Petition No. CIC/AT/C/2007/00511 under Section 18 (1)(b) of the Right to Information Act, 2005.

21. The respondent LIC Mutual Fund Asset Management Company Limited (hereinafter referred to as 'LIC Mutual Fund' on the other hand submitted as follows:

(i) LIC Mutual Fund is a company incorporated under the Companies Act and it commenced business on 29.4.1994 in the name and style of Jeevan Beema Sahyog Asset Management Company Limited. The name of the company was subsequently changed on 21.8.2006 to LIC Mutual Fund Asset Management Company Ltd.

(ii) LIC Mutual Fund is set up with the objective to carry on the business as Investment Manager to LIC Mutual Fund and, therefore, cannot be termed either as "Non-Government Organization" or a "Public Authority" or an "Appropriate Government".

(iii) The Madras High Court held in Mrs. Annie Besant v. Government of Madras AIR 1918 Mad 1210 that "Government" denotes an established authority entitled and able to administer the public affairs of the country.

(iv) The term "Appropriate Government" or "State Government" cannot be considered as identical at all times, because different Government, at different times, will constitute the Appropriate Government. This was held in *G.C. Janardchanan v. Joseph* [MANU/KE/0066/1958](#) : AIR 1958 Ker 169.

(v) Section 80 of the Code of Civil Procedure is not applicable to LIC Mutual Fund Asset Management Company. As per Section 80, no suit shall be instituted against the Government or against the public officer in respect of any act purporting to be done by such public officer in his official capacity until expiration of two months next after notice in writing. Section 80 is applicable to Governments (Central and/or State), Corporations created by an act of Parliament, municipalities, departments of Government, Government companies but this proviso is not applicable to any entity like proprietorship, partnership or a company incorporated under the Companies Act.

(vi) LIC Mutual Fund is not a "State" as defined under Article 12 of the Constitution of India.

(vii) LIC Mutual Fund is not a Government company as defined under Section 617 of the Companies Act.

(viii) LIC Mutual Fund is purely a business/commercial entity and the same is evident from its Articles and Memorandum of Association.

(ix) Life Insurance Corporation of India (LIC) is a public authority created by an Act of Parliament. It has invested into the LIC Mutual Fund and the investment is less than 50% and, therefore, the same cannot be termed as substantial investment.

(x) Moreover, Section 2(h) of the RTI Act says investment directly or indirectly by Appropriate Government. LIC is a Public Authority under the RTI Act but not a Government by itself. Therefore, investment by LIC which is a Public Authority cannot be construed as an indirect investment by appropriate Government.

(xi) The control of the respondent company is not with the Appropriate Government. There is no ex-officio director of the company who is director by virtue of his or her holding a particular position with the Appropriate Government. The Chairman of the respondent company is elected by the Board of Directors of the company in accordance with the Companies Act and Memorandum and Articles of Association of the Company.

(xii) LIC Mutual Fund is investment manager of LIC Mutual Fund (a Trust created and registered under Indian Trusts Act 1882, in the year 1989) as per SEBI norms. Respondent company receives management and advisory fee as per SEBI norms for the services rendered by it.

(xiii) The Board of LIC Mutual Fund comprises of seven directors out of which only two are nominated by LIC and rest are outsiders. Further, Regulation 21(1)(d) of SEBI (Mutual Funds) Regulations, 1996 requires that at least 50% of the directors of LIC Mutual Fund shall comprise of independent directors.

(xiv) No notification was issued or orders made by any Appropriate Government to declare the Respondent company as an entity to which the RTI Act is applicable.

(xv) Respondent company is not a body owned, controlled or substantially financed by the fund provided by Appropriate Government.

(xvi) Judgment of Madras High Court in Tamilnadu Road Development Company Ltd is not applicable in the present case

22. Respondents further submitted as under:

(i) The share of LIC in LIC Mutual Fund Assets Management Co. Limited (LICMFAM) is not even 50% as is the case in Tamil Nadu Road Development Company Ltd which is a wholly owned subsidiary of TIDCO, whereas Life Insurance Corporation itself is not an Appropriate Government.

(ii) In the case of LICMFAM, there are seven directors out of which two are nominated by the LC but the other five are independent directors from outside. No official from the Appropriate Government is on the Board of Directors of LICMFAM. As such, LICMFAM is not under the control of Appropriate Government whereas Tamil Nadu Road Development Company Ltd is under the control of the Appropriate Government inasmuch as the Secretary to the Government of Tamil Nadu is the Chairman and other IAS ex-officio members are on the board of Tamil Nadu Road Development Company Ltd.

(iii) There is no duty cast upon the Government by the Constitution to run or manage the affairs of a Mutual Fund for the public whereas Tamil Nadu Road Development Company Ltd has been formed to carry out the functions of the State within the meaning of Article 12 of the Constitution as it has to create and maintain in good condition the necessary infrastructure including roads, bridges and highways for transportation of people and cargo. Therefore, the ratio of High Court judgment in Tamil Nadu Road Development Company Ltd does not apply to LIC MFAM.

23. As per board note dated 17.3.1989 issued by Life Insurance Corporation of India, the following facts emerged:

(i) the Board at its meeting held on 21.11.1988 has approved formation of a Mutual Fund through subsidiary¹ which needed to be notified by the Government as a "public financial institution" for purposes of exemption Under Section 10(23)(D) of the Income Tax Act, 1961. But since the notification is to be made under Section 4A(2) of the Companies Act, 1956, the proposed subsidiary would not be able to comply with the requirements of the said provision, it would be better if the LIC of India itself floats the Mutual Fund as a Trust to be managed by the Board of Trustees.

(ii) LIC of India is declared as a "public financial institution" , therefore, any Mutual Fund set up by it would lead to tax benefits under relevant sections of the Income Tax Act, subject to appropriate notification being issued by the Central Government.

(iii) Since there is no statutory regulation governing the organization and the administration of a Mutual Fund, there is no bar against the Board of Trustees to act as manger of the Fund as well.

(iv) The Board of Trustee for the LIC Mutual Fund is to be appointed by LIC Board consisting of Executives of LIC and experts/advisers from outside. The Board of Trustees will manage through delegation of necessary powers to Chief Executive who will be one of the Trustees.

(v) LIC of India will float a Mutual Fund under the name and style of "LIC Mutual Fund" and form a Board of Trustees who will also act as Managers. LIC of India would take up the matter with the Government for issue of a notification declaring the eligibility of the proposed Mutual Fund for the various reliefs under the Income Tax Act.

(vi) The Board of Trustees has to be constituted after the Trust is settled. The Board will obtain approval of LIC of India for appointment of Trustees to the Board of Trustees who will manage the LIC Mutual Fund.

(vii) LIC of India shall have power to change the Trustees from time to time.

(viii) The corpus of the Trust amounting to Rs. 10 lakhs shall be contributed by the LIC on such terms and conditions as may be set forth in the Trust Deed.

(ix) A further sum not exceeding Rs. 25 crores shall be made available as initial contribution to the Trust by the Corporation carrying interest at 10% and redeemable at the discretion of the Trust.

(x) The purpose of the LIC of India to float the Mutual Fund will be to mop up the additional savings from the public in rural and semi-urban areas and that LIC itself would be receiving considerable amount of insurance business from the Mutual Fund.

(xi) LIC of India for the above purpose will provide to the Mutual Fund all suitable help and guidance which will include payment of initial corpus of the Trust and financial assistance to the Trust, renting out premises after housing the Mutual Fund, provision of initial office equipments and deputation of suitable employees etc. Necessary administrative decisions in this regard will be taken by Chairman.

(xii) The Board, therefore, recommended that Chairman of LIC will be authorized to taking such administrative decisions as may be required periodically and for authorizing necessary funds/expenditure involved so as to ensure the smooth launching of the LIC Mutual Fund and its successful operation.

Respondent: GIC Housing Finance Limited

24. Appellant, Shri v. Shekhar Awasthy, in his Appeal dated April 17, 2009 made following submission:

(i) while it is correct that the Government Owned companies (GIC of India, the New India Assurance Company Limited, United India Assurance Company Limited, National Insurance Company Limited and Life Insurance Corporation of India Limited hold 47.7% of total shares, it is interesting to note that IFCI holds another 7.8652% taking the collective shareholding of Promoter Group to 50.5369% as is clear from data available at the website of the respondents (Annexure C1). It should be noted that IFCI Limited is promoted by the Government of India as per disclosures at their website (annexure C2) and that the Government still holds majority stake in it. It is also clear from the profile of board members of IFCI Ltd. as available on their website (Annexure C3) that it is completely controlled by the Government of India. As such, in the light of the above, the stake of the Government owned organisations in respondent company exceeds 50%.

(ii) A look at page 23 and 28 of the Annual Report (2007-2008) of respondent (Annexure C4 and C5) makes it clear that the directorship on Board of the respondent company is linked to the tenure of the respective Director with a Government owned or controlled organization.

(iii) A look at page 28 of Annual Report (2007-2008) of the respondent (Annexure C5) and also Page 11 of the same report (Annexure R/5) of the written submissions of the Respondent makes it clear that whenever a director (or Managing Director) retires or resigns, a substitute is appointed by the Board and the decision is simply ratified in the Annual General Meeting or any other meeting of shareholders. As such the names of directors are never proposed by the shareholders - they simply approve and it appears that they may have approval or veto powers, but no powers to propose a name.

(iv) While the RTI Act of 2005 does not qualifies the term 'substantial control', even if it is presumed that Government owned companies have just 47.70% stake in the respondent, it should definitely be treated as substantial stake. More so, in the present case the collective shareholding under the category "Promoter and Promoter Group" in the Respondent company is 50.5369% as is clear from the data available on the website of the respondents.

(v) The fact that 11 of the 12 Directors on Board of the respondent company have clear connection with one or the other Promoters (Annexure C6) - all of whom are clearly controlled by the Government - and the 12th Director too appears to have strong Government roots by virtue of his nomination on boards of other Government controlled organisations (though his detailed profile is not available), clearly suggests that the Government exercises control in appointing or nominating Directors on Board of the respondent company.

(vi) The fact that all the directors resign exactly on the date of resignation or superannuation, as the case may be, from the Promoter Companies again makes the Government control explicit and clear.

25. The Respondent, GIC Housing Finance Limited in their Written Statement has submitted as follows:

(i) That the RTI Act was enacted to bring transparency which is vital to the functioning and to hold "Government and their Instrumentality accountable to the governed". In other words the Right to Information contained under the said Act creates duty and obligation on the government and its instrumentalities. Section 2 (h) cannot be interpreted and stretched to include within its compass any authority or body which is not government or its instrumentality.² The issue with regard to an authority or body being an instrumentality of the government is of immense relevance with regard to Section 2(h) (d) (i) & (ii). The Respondent company has submitted that the expression "Public Authority" ought to be governed and guided by same law which governs the expression "Other Authority" under Article 12 of the Constitution of India.

(ii) That IFCI itself is a Company incorporated under the Companies Act and is not a Government Company. In fact, the aggregate share holding of Government entities in IFCI is about 24.81% which includes LIC, Industrial Development Bank of India, General Insurance Corporation of India, Central Bank of India, Punjab National Bank, Canara Bank, Oriental Insurance Company Ltd. UCO Bank, The New India Assurance Company. In fact, all the Banks holding shares in IFCI are privatised and/or not fully held and controlled by Government of India. Consequently, it cannot be said that IFCI is fully or even substantially

controlled by the Government of India directly or indirectly. The Respondent has submitted that IFCI which itself is not owned, controlled or substantially financed by State cannot be said to be instrumentality of State. In this view of the matter, it is submitted that the holding of IFCI in the Respondent Company cannot be taken into account for the purpose of establishing ownership, control or substantial financing by the State.

(iii) That the Respondent Company was incorporated under Companies Act and is governed by the provisions of Companies Act, including the matters relating to account and audit in accordance with the provisions of the said Act. The expression "Substantially financed" used under Section 2 (h)(d)(i) clearly indicates that a finance simpliciter is not enough for embracing such authority within the ambit of the expression "Public Authority". The finance thus, is required to be "substantial in amount and nature". Applying the principles of "ejusdem generis" it ought to be interpreted along with the expression "owned and controlled". In other words, the finance has to be "substantial enough" to be capable of controlling and owning an authority. In other words, any finance which is not capable of exercising a right of ownership or has a capacity to control the management and/or the decision making process cannot be regarded to come within the scope of the expression "Substantially financed". The facts as set out clearly shows that Respondent Company has not been "Substantially financed" by any Government directly or indirectly.

(iv) It was further submitted that the expression "directly or indirectly" by funds provided by the appropriate Government also need to be given interpretation which is in harmony with the preceding part of the said sub section and the general theme of the Act. An indirect finance by the Government can only cover a situation where Government provides funds to a particular organisation for instance GIC and with a clear directions and guidelines to employ and/or invest those funds in another organisation (say GICHFC). In view of the facts of the present case, the holding of the equity by GIC or LIC or other public Insurance Company without there being a specific direction cannot be covered within the meaning and the scope of expression "financed Indirectly" by funds provided by the Government.

26. The Respondents in their comments dated 23.9.2008 have pleaded that they do not come within the purview of the RTI Act and they are not a Public Authority within the definition of Section 2(h) of the RTI Act. In support of their contention, they cited this Commission's decision passed in Complaint No. CIC/MA/C/2006/00261 dated 9.2.2007 wherein it was held that GIC Housing Finance Limited is not covered under Section 2(h) of the RTI Act .

27. The Respondent also submitted copies of Certificate of incorporation and extract of Memorandum and Article of Association. They contended that theirs is a company incorporated under the Companies Act, 1956. They submitted that they are not a body or Non-Governmental Organization which is owned, controlled or substantially financed, directly or indirectly as envisaged under Section 2(h) of the RTI Act. They further submitted that -

(i) the Respondent is a holding company having been originally promoted by General Insurance Corporation of India. Subsequently, with public offer of equity shares, it became Listed Company with leading Stocks Exchanges.

(ii) Respondents are the holding company of the following Insurance Companies each of whom holds their shares in the following pattern:

(1) GIC of India 15.56%

- 2) New India Assurance Co.Ltd.8.12%
- 3) United India Insurance Co. Ltd.7.34%
- 4) National Insurance Co. Ltd.5.89%
- 5) Oriental Insurance Co. Ltd.5.74%
- 6) Life Insurance Corporation of India5.03%

(iii) The aggregate percentage of shareholding in the Respondent by these Public Authorities thus comes to only 47.68%.

(iv) Thus, as on 31.12.2008, these Public Authorities contribute only Rs. 2,56,91,440 to a total share capital of Rs. 53,85,10,66.

(v) Their equity shares are traded on the stock exchange and the Respondents do not have control on its sale and purchase in the market.

(vi) Respondent is a company for profits and not a company under Section 25 of the Companies Act, 1956.

(vii) The entire shareholding of the respondent is held by private individual share holders, corporate bodies, foreign investors, Insurance Companies, Banks etc. Central or State Government is not a shareholder of the Respondent company.

Decision And Reasons:

28. As has been stated above, the only issue that needs to be determined in all these cases is as to whether the respondent organizations can be termed as "Public Authorities" within the meaning of Section 2(h) of the RTI Act. Before taking the case of each of the respondent organizations, it would be pertinent to reproduce Section 2(h) of the RTI Act which defines the term "Public Authority":

Section 2(h):

"public authority" means any authority or body or institution of self- government established or constituted-

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government,

and includes any-

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

(ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government;

29. From the above definition, there can be no ambiguity that to be treated as Public Authority, an entity will need to come within the definition of "Public Authority" under Section 2(h) of the Right to Information Act, 2005. None of the above respondents are covered by Clause (a) to (c) of Section 2(h) of the Act. The Commission needs, however, to determine as to whether all or any of them can be categorized either as a body owned, controlled or substantially financed directly or indirectly by funds provided by Appropriate Government so as to bring them within the ambit of Section 2(h), d(i) or (ii).

30. We will first take up the LICHFL. During the course of hearing, the LICHFL has submitted that their shareholding pattern will show that the total holding of the public sector undertaking is only to the extent of 45% and as such it cannot be treated as substantial finance by the Government. It has also been submitted that their company is listed in stock exchange and that the Government has no control over trading of their shares. It was also submitted that LICHFL is governed by the Companies Act but has not been constituted under the Companies Act. In their view, since total holding of the LIC in LICHFL is less than 51%, the ownership of LICHFL does not vest in LIC. Since the LIC does not own, it cannot also control. The ownership is virtually synonymous with the extent of shareholding and unless an organization has the shareholding exceeding 50%, it cannot be said that it owns that entity. It was also stated that the LIC may also decide to disinvest their shares in the LICHFL. It was also submitted that LICHFL is not dependent on LIC for financing their requirements.

31. LIC of India while making their submissions stated that they have no control on LICHFL which functions in an autonomous manner as a distinct entity. It was also submitted that LIC can nominate only one-third of the total number of Directors although it was conceded that the Chairman of the LIC is also the Chairman of LICHFL.

32. From the submissions made before us, it appears that the LICHFL was incorporated by LIC of India and both of them share the Chairman and Managing Director. The stake of LIC in the LICHFL is 40.497%. If the share of the LIC is aggregated with other Government Insurance Companies, the total stake in the shareholding of LICHFL comes to 45.918%. As per Article 133(1) of the Articles of Association of LICHFL, the LIC has the authority to appoint one of its Directors and Managing Director of LICHFL.

33. In view of this, it can be inferred that the control of LIC over LICHFL is explicit and effective. The very fact that Chairman of the LIC is also the Chairman of LICHFL further strengthened this inference. The appellant has also submitted that if the shareholding of other Banks is added to the total shareholding of the PSU, the total shareholding will exceed 80%. It is an admitted fact that the total shareholding of the PSU is 45% and this is sufficient enough to bring it within the definition of the term "substantial finance". We may agree that the LICHFL is not owned by LIC of India as the total shareholding of the LIC does not exceed 50% but there can be no doubt that LIC and other insurance companies and banks taken together have financed LICHFL substantially.

34. In this connection, our attention has been drawn to an earlier decision of the Commission in Manoj Kumar Kamra v. IL&FS (CIC/AT/C/2007/000091). In this case, the Commission has made a distinction between funding by Appropriate Government and funding by the other PSUs and it was held that business funding of a Public Authority created by an Appropriate Government will not qualify to be an indirect funding.

35. In this context, it would be pertinent to refer to the decision of the High Court of Madras in Tamilnadu Road Development Company Ltd. v. Tamilnadu Information Commission and Anr.. In their decision, the Hon'ble High Court has analysed the ambit and scope of Section 2(h) of the RTI Act and has held that Tamilnadu Road Development Company Ltd which was jointly promoted by IL&FS and Tamil Nadu Industrial Development Corporation (TIDCO) to be a Public Authority within the meaning of Section 2(h) of the RTI Act. In this case, the Hon'ble Court has also analysed the shareholding pattern of IL&FS and have found that a little less than 50% are held by the PSU and statutory corporations like LIC etc. The High Court has also examined the composition of the Board of Directors of Tamil Nadu Road Company and come to the finding that the Managing Director of the appellant company is the nominee of IL&FS and that there are three directors who are nominated by TIDCO along with other directors to be nominated by IL&FS. The High Court found that there is only one director who is not nominated by IL&FS or by TIDCO.

36. On the basis of these findings, the Hon'ble Court has come to the conclusion that the composition of the Board of Directors of the appellant company shows that it is a body which is controlled by Appropriate Government. The High Court, therefore, did not make a distinction between the control exercised directly by Appropriate Government or by one of the PSU owned and created by it. The High Court has given particular emphasis on the inclusive definition of "Public Authority" as defined under Section 2(h) of the RTI Act and has observed that under the well-known covenants of construction of purposive interpretation, the term "Public Authority" under Section 2(h)(d)(i) must be given a liberal interpretation so that the authorities like the appellant company who are owned, controlled and substantially financed directly or indirectly by the Government come within the purview of the RTI Act.

37. In addition, in Tamil Nadu Newsprint & Papers Ltd v. State Information Commission, the Madras High Court has held that it is not necessary that the Government should be the majority shareholder of the Public Authority. The body or institution should be substantially financed by the Government and they should be controlled by the Government. Whether or not the government exercises such control or not is immaterial. In view of these observations, we have no doubt that the respondents are indeed and be declared a "Public Authority" within the meaning of Section 2(h) of the RTI Act.

38. As regards LIC Mutual Fund Assets Management Co. Limited, the respondents have submitted that the ratio of judgment in the case of Tamil Nadu Road Development Company is not applicable to LIC Mutual Fund since LIC Mutual Fund is an independent organization and not substantially financed by appropriate government. The submissions of the respondents fail to convince. The LIC of India is a body established, constituted, owned and controlled by Central Government which is the Appropriate Government for the LIC of India and the funding by LIC of India and their general control over the functioning of the LIC Mutual Fund can be nothing but an indirect funding and control by the Appropriate Government. LIC of India is a public authority having been constituted by an Act of Parliament. LIC of India in turn in order to further carry out their public function have formed LIC Mutual Fund approved for formation "through subsidiary" which has to function under LIC's control. The respondent Mutual Fund is fully financed and administratively controlled by the LIC of India through a Board of Trustees. The trustees of the Board who manage the LIC Mutual Fund are appointed with the approval of LIC of India. LIC of India has the power to change the Trustees from time to time. The corpus of the Trust amounting to Rs. 10 lakhs was contributed by the LIC. The Trust Deed provides that a further sum not exceeding Rs. 25 crores shall be made available as initial contribution to the Trust by the LIC. The LIC has floated the Mutual Fund to mop up the additional savings from the public in

rural and semi-urban areas and it would be receiving considerable amount of insurance business from the Mutual Fund. LIC of India for the above purpose provides to the Mutual Fund all suitable help and guidance which includes payment of initial corpus of the Trust, financial assistance to the Trust, renting out premises after housing the Mutual Fund, provision of initial office equipment and deputation of suitable employees etc. The Chairman of LIC is authorized to take such administrative decisions as may be required periodically so as to ensure the smooth launching of the LIC Mutual Fund and its successful operation.

39. Now coming to G.I.C. Housing Finance Limited, the Commission's finding is not any different. The shareholding of six Public Authorities in GIC Housing Finance is 47.68% and coupled with the control they exercise over the GIC Housing Finance is sufficient to bring them within the ambit of the definition of "Public Authority" as defined in Section 2(h) of the Right to Information Act, 2005.

40. In view of the above observations and findings, we decide that all the three respondents, LIC Housing Finance Limited, LIC Mutual Fund Asset Management Co. Limited and GIC Housing Finance Limited as "Public Authorities" under the RTI Act. All of them are, therefore, obliged to take all necessary steps to carry out their duties and responsibilities assigned by the Act. Insofar as these appeals/complaints are concerned, the Commission directs the respondents to provide the requested information to the concerned applicants within a period of three weeks from the date of receipt of this Decision Notice Announced on this the 28th day of October, 2009. Notice of this decision be given free of cost to the parties.