

Complaint No. CIC/MP/C/2015/000044

Complaint No. CIC/SH/C/2016/000123

Date of Hearing : 30.11.2016 & 26.12.2016

Date of Decision : 13.11.2017

Shri R K Jain V/S Indian Bank Association (IBA)

Ms. Ita Bose V/S Indian Bank Association (IBA)

In response to the RTI applications filed by the above named complainants, the IBA refused to provide the information stating that they are not a Public Authority as defined under section 2(h) of the RTI Act. Aggrieved with the reply of the IBA , both the complainants filed complaints under section 18 of the RTI Act to the Central Information Commission (CIC) praying that an enquiry be conducted in the matter and the IBA should be declared as public authority. Therefore, the only question before the Commission is whether the IBA is a Public Authority under the provisions of section 2 (h) of the RTI Act, 2005.

2. I have gone through the decision dated 20.10.2017 of the Information Commissioner, Shri M. Sridhar Acharyulu, declaring IBA as public authority under section 2(h) of the RTI Act, 2005 on the two grounds which are direct/indirect financing and the substantial control by the appropriate Government. I entirely agree that IBA is a public authority under section 2(h) of the RTI Act, 2005. However, I do not agree to the extent that IBA is directly or indirectly financed by the appropriate Government. Further, I do not subscribe to the issue of show cause notice to the deemed CPIO as mentioned in para 67 of the order because the status of IBA as public authority is being decided now only. Therefore, show cause notice to the deemed CPIO is of no relevance.

3. Therefore, I proceed to record my decision as follows:

Submissions of Sh R K Jain, Complainant

4. The Managing Committee of the IBA comprises of 29 member banks of which around 18 banks are public sector banks. Thus the IBA is a body which is controlled by the appropriate Government and thereby fall under the definition of public authority as given in section 2(h) (i) of the RTI Act. Further, the IBA acts as an "advisory body" or "think tank" for banks. It tenders its advice on several important matters, such as, award of punishment to the employees of banks, implementation of provisions of statues e.g. RTI Act, Human Resources of the banks etc. It shows that it performs 'public function', thereby satisfying the requirement to be declared as public authority under the RTI Act. He further submitted that the IBA is an 'Agency' or 'instrumentality' of the State (Public Sector Banks in the present case). The IBA also negotiates wage settlements on behalf of its member banks - majority of which are the public sector banks who mandate it to do so, with the Bank Unions / Associations under Industrial Disputes Act, 1947. Besides, being an agency and instrumentality of the State and under the control of the appropriate Government, the IBA is also substantially financed by the appropriate Government. All the expenses of the IBA, which is a non -profit making Association of Banks, are shared by the member banks, majority of which are public sector banks. It receives an annual subscription of nearly 4 crores from more than 100 Indian and foreign banks. Besides this, the IBA collects other funds from its members. As per the information displayed on the official website of the IBA, it has 189 members. Thus, the IBA also meets the criteria of substantial financing by appropriate Government and thereby falls under the definition of public authority as defined in section 2(h) of The RTI ACT.

5. The complainant, Shri R.K. Jain, during the hearing had produced certain documentary evidences in support of his contention that the IBA is a public authority and stated that the IBA performed various activities indirectly as per instructions of the Reserve Bank of India (RBI) and Department of Financial Services (DFS). He produced a letter No. 4/3/2012-SCT(B)/Welfare dated 30.12.2013 from DFS addressed to the Chairman, IBA to issue necessary guidelines to the public sector banks regarding pay fixation of ex-servicemen/Ex-ECOs/SSCOs in a uniform way to avoid disparity in pay



fixation across public sector banks. He stated that the RBI entrusted the IBA with the following tasks: (i) drafting a Master Joint Lenders' Forum (JLF) agreement between all lenders in respect of Special Mention Accounts (SMA) with an aggregate exposure (AE) exceeding Rs. 100 crores; (ii) constituting an Independent Evaluation Committee (IEC) to carry out evaluation of Techno-Economic Viability study and the proposed restructured packages for AE exceeding Rs. 500 crores; and (iii) put a database on the IBA's website in respect of delinquent third party service providers such as Advocates, Chartered Accountants and Valuers reported by the lender banks. The IBA took a decision to implement the task assigned by the RBI. So the IBA has to work in consultation with Ministry of Finance and RBI for achieving common objectives. He further stated that the IBA is a major stake holder and part of the administrative structure for monitoring Mission Document of Pradhan Mantri Jan Dhan Yojana (PMJDY). Under the PMJDY, the Government had assigned the job to the IBA to have a monitoring committee to review the progress on weekly basis. The information for monitoring was to be extracted from the DFS portal and adequate publicity needed to be carried out in structured manner based on different tiers at Central level, State level and Districts/Local level structure. The mechanism for public was to be devised by the IBA and NABARD in coordination with banks and other stake holders. A common fund had to be contributed by the banks for publicity in States. State level Bankers Committees would coordinate based on broad guidelines of the IBA/NABARD. Under the heading of roles of major stakeholders of the scheme the IBA was assigned the role of coordination in financial inclusion efforts with all banks, key monitoring role in financial literacy campaign; coordination in publicity and campaign, coordination in centralized handling of customers' grievances/issues through toll free numbers in coordination with banks; a dedicated desk to be set up for monitoring of implementation of the scheme. The Finance Ministry had directed LIC to immediately operationalize the benefit of live cover under PMJDY and the LIC had been asked to expeditiously enter into a memorandum of understanding with the IBA. He further stated that the Department of Financial Services vide letter No. 7/07/2016-P&C dated 22.01.2016 addressed a letter to the Chairman, IBA along with heads of public sector banks issuing guidelines regarding the study visit of the Select Committee of Rajya Sabha on



Prevention of Corruption (Amendment) Bill, 2013 to Mumbai and Kolkata from 12th to 18th February, 2016. He added that the IBA functions on the principle of 'mutuality' where 'members' of the 'association' are one and the same.

Submissions of Ms Ita Bose, Complainant

6. As on 01.06.2015, the Managing Committee of the IBA consisted of 31 members out of which 19 members are Chairman cum Managing Directors of public sector banks or public authorities under RTI Act. Thus 61.29 % of members of managing committee are public servants or belong to public authorities . Therefore, the IBA is a body which is being managed and controlled by public servants of Govt. of India, since Chairman and Managing Directors (CMDs) are employees of Central Govt.

6.1 The Reserve Bank of India has been quoted in Economic Times of 15.06.2015 stating that Public Sector Banks had 73.2 % and 73.9% market share in loans and deposits respectively as of 31.03.2014. Since all 27 public sector banks contribute to funds of the IBA based on working fund of individual bank as at the end of previous financial year, the total inflow of funds to the IBA from public sector banks (PSBs)/ public authorities (PAs) would be substantial when compared to total inflow of funds from all the bank-members (which include public sector, private sector, foreign and cooperative banks). Thus, major share of operational and capital expenses of the IBA are provided by PSBs/PAs. The IBA recovers annual subscription, expenses for bipartite wage revisions, consultation and advice, legal charges and contribution for acquiring immovable properties, like office etc. from member banks based on working fund of each bank. Since PSBs/ PAs control 73% of working funds of all banks, hence inflow of funds to the IBA from PSBs/PAs would be near about 70 % of total inflow. Thus, the IBA is substantially funded by PSBs/PAs.



6.2 The IBA is a society or voluntary organization and it provides expertise to member banks in host of matters relating to service conditions of employees, periodical wage revision, formulation of policies for banks, execution of govt. directives/schemes/policies, legal issues of member banks, customer service defending banks in courts by being party to litigation, technology for banks, recovery of loans, approval of transport companies, security printers, couriers for banks including PSB etc. Thus, the IBA has substantial contribution in functioning of public sector banks. The advice of the IBA is followed by public sector banks in toto by getting formal approval of Board of Directors and/or Central Govt. The IBA provides expertise to Government of India in the matter of banking industry and execution of govt. policies and schemes. The IBA is associated with Pradhan Mantri Jandhan Yojana (PMJDY) and other social schemes. The IBA plays a public role in the matter of banking industry of the country and its working, advice, decisions affect large number of employees of banks and customers of banks including trade, industry, common citizens, marginalized segment of society, etc. Hence, there is need for transparency in its working in view of legislative intent and preamble of RTI Act.

Submissions of the IBA - Respondent

7. The IBA is an unregistered, voluntary association of banks or of likeminded people. The IBA is not a statutory body nor has it been incorporated under any law. The IBA was formed on 26th September 1946 by 22 banks coming together to discuss issues of common interest. It may be noted that all these banks were private banks at that time. Over the years, the membership grew. It was just a turn of events that some of these banks were nationalized in the year 1970. However, the working of the IBA has continued in the same manner over the years. Currently, the IBA has Public Sector Banks, Private Sector Banks, Foreign Banks, Urban Co-operative Banks, Asset Reconstruction Companies, Credit Rating Companies, Credit Guarantee Funds, Financial Services Companies, Credit Bureaus and others as Members. As on 30th September 2016, the membership of the IBA stood at 239 of which 137 were Ordinary



Members and 102 Associate Members. Of the 137 Ordinary Members, only 27 i.e. less than 20% are Public Sector Banks. Of the total 239 banks, public sector members are 27 PSB and 38 RRBs which is just 27% of total membership. The key Officers of the IBA such as Chairman, Deputy Chairman and Honorary Secretary of the IBA are elected by the Members of the Managing Committee and rules of the Association do not specify that only Public Sector Bank Chairman can become Chairman /Deputy Chairman/ Honorary Secretary. Further, funding of the IBA is by way of Basic Annual Subscription collected from all members of the Association in terms of their working fund and is not sectoral specific i.e. private or public . Further, the IBA's vision is "To work proactively for the growth of a healthy, professional and forward looking banking and financial services industry, in a manner consistent with Public Good". However, working for public good alone does not make an institution a Public Agency. The IBA is a premier service organization representing all banks in India. Therefore, the Government, the Reserve Bank of India or any other trade or industry body /association find it convenient to use the IBA as a single point of contact while interacting with the banking industry. The IBA provides certain pooled services to its members. The pooled service can be anything - wage negotiation, contribution to publicity under Pradhan Mantri Jan Dhan Yojana / Pradhan Mantri Mudra Loan Yojana, representing cases in Courts of industry interest, price discovery of technological investments and so on, and the service may cover all sectors of banks or some specific sector as the case may be. In PMJDY and PMMLY initiatives, Public Sector Member Banks and Private Sector Member Banks including Foreign Banks with more than 20 branches participated.

7.1 It is evident based on all the facts brought out that the IBA is purely a voluntary Association of Banks or of likeminded people, working in common interest, using collective wisdom to arrive at consensus based decisions for the benefit of its members. The expenses of the association are shared among the members in a fair manner. It is neither substantially owned nor controlled nor financed by the Government nor is it under the control of the Government. Therefore, the IBA does



not fall within the definition of a public authority as defined in Section 2(h) of the RTI Act and accordingly the IBA is not a public authority.

Analysis and Decision

8. Definition of public authority is provided in section 2(h) of the RTI Act, which is reproduced below:

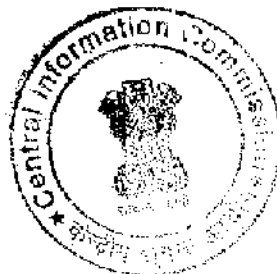
"public authority" means any authority or body or institution of self government established or constituted,-

- (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;*

8.1 It is noted that funding of the IBA is by way of basic annual subscription from all members of the Association. The members of the IBA consist of public sector as well private banks and financial institutions. There is no direct or indirect flow of funds from the Central Government or the State Government.

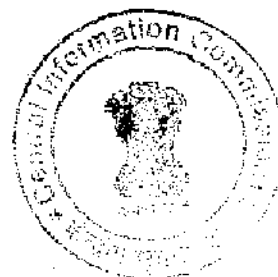


8.2 In the above context, the Delhi High Court, in the case of Hardicon V/S Madan Lal (W. P. (C) No. 6946/2011 decided on 12.03.2015), had observed that flow of funds from banks to contribute to shareholding of Hardicon Ltd. cannot be said to be direct or indirect funding by the Government. The operative paras are reproduced below:

"15. The CIC held that as 61.5% of equity of the petitioner was subscribed by government owned entities and the same would meet the criteria of substantial financing by an appropriate Government. I find it difficult to agree with the said conclusion. Admittedly, the Government - whether it be State Government or Central Government - has not provided any direct funding to the petitioner. The question whether the entity has been indirectly financed is to be determined on the facts of each case. In this case, there is no material to indicate any flow of funds from any government to the petitioner. In order to hold that an entity has been indirectly financed by an appropriate Government, first of all, it is necessary to find that the Central Government has parted with some funds for financing the authority/body; and secondly, the said funds have found their way to the authority/body in question. The link between the financing received by an entity and an appropriate Government must be clearly established.

16. In this case, there is no material to indicate that any of the funds received by the petitioner owed their source to either the Central Government or the State Government. The constituent shareholders of the petitioner are independent entities and whose source of funds are not limited to the Central Government/State Government. Although, substantial part of equity of nationalized banks is held by the Government, the sources of funds available to the bank are not limited to the Government alone. Banks receives substantial deposits as a part of their business. In addition, the banks also generate substantial income from their commercial activities. Such funds are also deployed by banks by lending and investing in other entries. Since the funds received by the petitioner by way of subscription to its equity cannot be traced to any Government. The conclusion that the government has indirectly provided substantial finance to the petitioner is not sustainable."

8.3 In view of the above observations of the Delhi High Court, the IBA cannot be said to have been directly or indirectly financed by appropriate Government.



9. So far as control part of appropriate Government is concerned it is noted that the IBA is an agency or instrumentality of the State. The appropriate Government controls it as majority of Managing Committee members are Managing Directors of Public sector Banks, who in turn are Government of India employees. As on 6.5.2017 total Managing Committee members are 28 out of which 15 are from Public Sector Bank i.e. more than 50 %.

COMPOSITION OF THE MANAGING COMMITTEE FOR THE YEAR 2016-17 (w.e.f 6th May 2017) as per the website of the IBA:

CHAIRMAN

Shri Rajeev Rishi : Central Bank of India

DEPUTY CHAIRMEN

Smt. Arundhati Bhattacharya : State Bank of India

Smt. Chanda Kochhar : ICICI Bank Ltd.

Shri Arun Tiwari : Union Bank of India

HONORARY SECRETARY

Shri Jatinderbir Singh : Punjab & Sind Bank

MEMBERS REPRESENTING PUBLIC SECTOR BANKS

Shri Ashwani Kumar : Dena Bank

Smt. Usha Ananthasubramanian : Allahabad Bank

Shri Animesh Chauhan : Oriental Bank of Commerce

Shri Kishore Kumar Sansi : Vijaya Bank

Shri Arun Shrivastava : Syndicate Bank

Shri Kishor Kharat : Indian Bank

Shri Rakesh Sharma : Canara Bank

Shri P S Jayakumar : Bank of Baroda

Shri Suresh N Patel : Andhra Bank

Shri R K Takkar: UCO Bank

Shri Mahesh Kumar Jain: IDBI Bank Ltd.



MEMBERS REPRESENTING PRIVATE SECTOR BANKS

Shri Aditya Puri : HDFC Bank Ltd.

Smt. Shikha Sharma : AXIS Bank Ltd. (Co-Opted)

Shri Shyam Srinivasan : The Federal Bank Ltd.

Dr. N Kamakodi : City Union Bank Ltd.

Shri Chandra Shekhar Ghosh : Bandhan Bank Ltd. (Co-Opted)

MEMBERS REPRESENTING FOREIGN SECTOR BANKS

Shri Pramit Jhaveri : Citibank N.A.

Shri Ravneetsingh Gill : Deutsche Bank AG.

Ms. Kaku Nakhate : Bank of America, N. A.

Shri Madhav Nair : Mashreq Bank PSC

MEMBERS REPRESENTING CO-OPERATIVE BANKS

Shri Chintamani Nadkarni : N K GSB Co-operative Bank Ltd.

Shri Vinod G Dadlani : The Kalupur Commercial Co-op. Bank Ltd.

Smt. S.M. Sandhane : The Saraswat Co-operative Bank Ltd.

10. We also note that IBA performs various activities, which are entrusted to them by the Government or the Reserve bank of India. The functions performed by the IBA are mentioned in para 5 above in the submissions of the IBA, which are the important public functions. In our view, the IBA works as an instrumentality of the State. For determining whether an organization is an agency or instrumentality of the 'State', Mathew, J. in *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi* (1975) 111 J 399 SC propounded following indicia:

"...(2) Another factor which might be considered is whether the operation is an important public function.

(3) The combination of State aid and furnishing of an important public service may result in a conclusion that the operation should be classified as State agency. If a given function is of such public importance and so closely related to governmental agency, then even the presence or absence



of State financial aid might be irrelevant in making a finding of state action.

(4) The ultimate question which is relevant for our purpose is whether such a corporation is an agency or instrumentality of the government for carrying on a business for the benefit of the public."

The court further highlighted the test give in the Ramana Dayaram Shetty 1979 SC R (3)1014 which were stated in following terms:

"... (3) It may also be a relevant factor... whether the corporation enjoys monopoly status which is state conferred or state protected.

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a state agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of the Government.


(6) Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of government."

11. Taking into account that the IBA performs functions as State agency and its majority control vests in Government of India appointed Managing Directors of Public Sector Banks, the IBA qualifies to be a public authority under the RTI Act, 2005. The Commission, therefore, directs the IBA to designate an official of the IBA as the CPIO at the earliest as per provisions of Section 5 of the RTI Act, 2005 and also to comply with Section 4 of the RTI Act, 2005 within four weeks of the receipt of the order of the Commission.

Sd/-

(Manjula Prasher)
Information Commissioner

Authenticated true copy.


Registrar



Address of the parties:

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New Delhi-110003.

Ms. Ita Bose,
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Shri V. Ramachandran,
Officer on Special Duty,
Legal & Operations,
Indian Banks' Association (IBA),
World Trade Centre Complex,
Centre-1, 6th Floor, Cuffe Parade,
Mumbai-400005.

Senior Adviser,
Corporate & International Banking,
Indian Banks' Association (IBA),
World Trade Centre Complex,
Centre-1, 6th Floor, Cuffe Parade,
Mumbai-400005.

OTC



IN THE CENTRAL INFORMATION COMMISSION, NEW DELHI

Before the Bench of Shrimati Manjula Prasher & Prof. M. SRIDHAR ACHARYULU
Central Information Commissioners

RK Jain vs. Indian Banks Association
Ita Bose vs Indian Banks Association

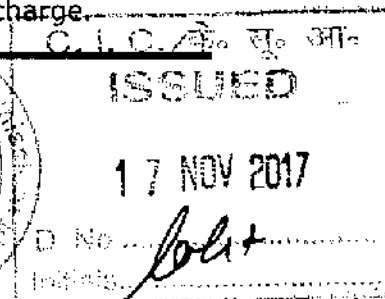
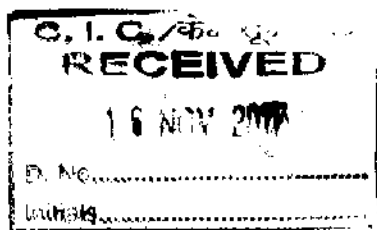
Complaint No.CIC/MP/C/2015/000044
Complaint No.CIC/SH/C/2016/000123

Dates of Hearing: 30.11.2016, 26.12.2016
Date of Submission of documents: 28.02.2017
Date of Decision: 20.10.2017

Decision by M. Sridhar Acharyulu

Brief Facts:

1. Shri R. K. Jain and Shrimati Ita Bose have separately filed RTI applications seeking information from Indian Bank Association (IBA). The IBA refused to provide information to both the applicants claiming that IBA was not a public authority.
2. Shri RK Jain filed a complaint dated 9.2.2015 u/s 18 of RTI Act against Indian Banks Association (IBA) Mumbai for the denial of information on his two RTI applications both dated 16.10.2014. The complainants also requested referring matter to a larger bench and declaring IBA as a public authority under RTI Act and directing them to provide the asked information. RK Jain sought the information from Indian banks Association, Mumbai as follows:
 - a) Certified copy of documents reflecting Legal status of IBA.
 - b) List of present office bearers along with their date of joining.
 - c) Composition of managing committee of IBA for the first year i.e. from when it is formed.
 - d) Date of its formation and name of the founding members.
 - e) Source of funds and contribution received by IBA in the first 5 years since the formation of IBA.
 - f) Address of IBA head office and regional office along with documents reflecting whether premise is rented or granted free of charge.



- g) Name of auditors and PAN of IBA.
 - h) Memorandum of association of IBA.
 - i) Source of funding the IBA and details of donation/contribution received since the date of its inception.
3. Both the complainants contended that rejection of the request by respondent is illegal, arbitrary, malafide and contrary to the provisions of RTI Act, 2005. They claimed that the IBA is a body which is controlled by the appropriate Government and thereby falls under the definition of public authority as given in section 2(h)(i) of the RTI Act, and said "respondent has failed to appreciate this fact moreover, the respondent incorrectly and illegally refused to provide information to the complainant. Hence, the impugned order is liable to be set aside". Shri V. Ramachandran, officer on special duty, Legal & Operations from Indian Banks Association rejected the application by letter dated 7.11.2014 claiming that Indian Banks Association was not a public authority within the meaning of section 2 (h) of RTI Act citing CIC order dated 06.8.2008 in appeal no. 2622/ICPB/2008 in which it was held that IBA was not a public authority under RTI Act as it was neither substantially funded by the Government nor under the control of Government.
4. Shri K Unnikrishnan Deputy Chief Executive of Indian Banks' Association claimed that the Hon'ble Delhi High Court on 19.01.2015 in the case of **Virendra Yadav V. CPIO** held that IBA was not public authority. He has also submitted the following points:
- i) **Legal Status:** IBA is an unregistered, voluntary association of Banks or like-minded organizations. It is neither a statutory body nor has it been incorporated under any law. IBA was formed on 26th September 1946 by 22 banks coming together to discuss issues of common interest. It may be noted that all these banks were private banks at that time. Over the years, the membership grew. It was just a turn of events that some of these banks were nationalized in the year 1970. However, the working of IBA has continued in the same manner over the years.



- ii) **Ownership:** Currently, IBA has Public Sector Banks, Private Sector Banks, Foreign Banks, Urban Co-operative Banks, Asset Reconstruction Companies, Credit Rating Companies, Credit Guarantee Funds, Financial Services Companies, Credit Bureaus, RRBs and others as Members. As on 30th September 2016, the membership of IBA stood at 239 of which 137 were Ordinary Members and 102 Associate Members. Of the 137 Ordinary Members, only 27 i.e. less than 20% (19.70%) are Public Sector Banks (including Associate Banks of SBI). Of the total 239 banks, public sector members are 27 PSB and 38 RRBS, which is just 27% of total membership.
- iii) Members of the Managing Committee are elected representatives of the member banks and attend the Managing Committee meetings in their individual capacity and their views are not bank specific. No bank is permanently represented on the IBA Managing Committee.
- iv) Key Office Bearers of IBA such as Chairman, Deputy Chairmen and Honorary Secretary of IBA are elected by the Members of the Managing Committee and Rules of the Association do not specify that only the CEO of a Public Sector Bank can become Chairman/Deputy Chairman/ Honorary Secretary.
- v) **Functions of IBA:** The IBA follows a consultative approach, with Standing Committees and Working Groups, constituted to deliberate on current issues and simplify and standardize operational aspects arising out of regulatory guidelines. The IBA also sets up separate Sectoral Committees to represent Public Sector Banks, Private Sector Banks, Foreign banks, Urban Co-operative Banks and Regional Rural Banks (RRBs) to discuss sector specific issues.

All matters in the IBA are decided by consensus approach and not by majority voting - whether in the Meetings of the IBA Managing Committee or Standing Committee or any other Committee/Group. Therefore, there is no control or influence of a single person/bank/sector of banks/sector or members on the decisions of the Association.



Even while decisions are arrived at a consensus, recommendations of the Committees of IBA are only advisory in nature and are not binding to any Members.

- vi) **Funding of IBA:** Funding of IBA is by way of **Basic Annual Subscription (BAS)** collected from all Members of the Association in terms of their Working Fund and is not sector specific.
- vii) In 2015-16, 90% of the revised BAS was collected from every member. Accordingly, IBA received Rs. 88213500 from the 196 institutions who were Members then. Of this, the share of Public Sector Banks was **43%**. In 2015-16, RRBs were not yet the members of IBA.

Proceedings before the Commission:

- 5. The division bench of Commission heard the matter on 30.11.2016 and subsequently on 26.12.2016. In pursuance of directions dated 30.11.2016 of the Bench, additional documents and submissions were made by the parties on 28th February 2017 and on 14.3.2017. Shri R.K. Jain was present. Shri V. K. Khanna represented Shrimati Ita Bose. Shrimati Rama Menon, officer on special duty and Shri Srikant Johari represented IBA. The Bench of CIC heard submissions from both the parties.

Analysis:

- 6. The single most issue before the Commission is "whether Indian Banks' Association (IBA) is a public authority within meaning of section 2(h) of RTI Act", precisely, whether IBA is directly or indirectly funded by Government, and whether there is any nexus between Indian Banks Association and Reserve Bank of India along with Ministry of Finance Union of India.
- 16. The Respondent IBA referred to CIC decision PBC/07/316 in appeal No. ICPB/2008 **Ashok Kumar Gupta vs Indian Banks Association** dated 06-08-2008 (<https://indiankanoon.org/doc/1568911/>) for asserting that IBA is not a public authority under RTI. Countering this contention Ms Ita Bose has argued that "once 'not a public authority' cannot remain as non-public authority for entire life of organization" and due to various factors, a private



entity could become a public authority later. She pleaded that this order would not stop the Bench to consider the IBA as a public authority because the CIC in 2008 order overlooked the fact that majority of members of Managing Committee, including Chairman and Secretary are from PSB/PA who are public servants being Chairmen-Cum-Managing Directors of PSB/PA, thereby resulting into control and management by Government through these members. Funding pattern and source of funds have not been analyzed in depth, especially percentage of share in fund received from the Government through PSB/PA vis-à-vis total funds received by IBA from its members. Composition of managing committee and funding pattern has remained constant over a long period of time since 1969, when banks were nationalized. Hence even in 2008, the IBA was managed and controlled by PSB/PA through Chairmen-cum-Managing Directors as Chairmen, Vice Chairmen and Secretary and majority members of managing committee.

17. Complainant Shri R.K. Jain contended: "The respondent has erred in relying on the CIC's decision in **Ashok Kumar Gupta vs Indian Banks Association** dated 6-8-2008. The said decision of the CIC (Single Bench) is *per incuriam* as much as it had been passed in ignorance of the provisions of law along with the judicial pronouncements and the factual matrix of the case. However, the respondent has failed to appreciate this fact; hence the impugned order is liable to be set aside. In examining the matter, the learned Single Bench of CIC in note dated 14-5-2008 had recorded that "*I still feel IBA cannot claim that it is not a public authority. In other words, IBA should also be responsible to the citizen for giving information under RTI Act.*" However, later changed its mind on the basis of incomplete and insufficient details/information produced/submitted by IBA before it and delivered the aforesaid decision in ignorance of the provisions of law and judicial pronouncement. Hence, the impugned order of respondent relying on the said verdict of CIC is incorrect and illegal and liable to be set aside". He also contended that a reasoned order of the CIC has persuasive value, though it could not be considered as 'precedent' in strict terms. Exercising the independent discretion, a Commissioner can differ with earlier decision of the CIC, if there are sufficient reasons to differ with. This is because the



Commission is a quasi-judicial tribunal without any hierarchy or appellate powers within. The Constitutional Courts held that no review power is vested in the Commission. The Commission can decide the disputed question between the parties and that shall be final be binding as per Section 19(7).

18. The Complainant Ms. Ita Bose, has cited following CIC decisions in support of her contention:

- i) CIC/SS/C/2013/000275 dated 25-06-2015 of Full Bench
- ii) CIC/SS/A/2013/002956/KY & CIC/SS/A/2013/002846/KY
Dated 09-07-2015-FB
- iii) CIC/LS/C/2011/001107 & CICLS/A/2011/001848 dt 19-06-2014-FB
- iv) CIC/SG/A/2011/003688/17641 dated 12-03-2012
- v) CIC/DS/A/2011/000802 dated 09-01-2012
- vi) CIC/LS/C/2012/000714 dated 13-04-2015
- vii) No. 2623/ICPB/2008-F. No. PBC/07/193 dated 06-08-2008
- viii) CIC/SM/A/2010/000873, CIC/SM/C/2009/000200 dtd 13-01-2012
- ix) CIC/SG/C/2011/001273/17356 dated 14-02-2012
- x) CIC/AD/C/2010/001336 dated 20-09-2011

19. The respondent IBA has heavily depended on the Delhi High Court order in **Virendra Yadav v CIC WP(C) 495/2015** saying that IBA was held not to be a public authority. Applicant sought information from Department of Financial Services, which suggested appellant to approach IBA. Justice Rajiv Shakdar's order did not declare IBA as no public authority. The complainants contended that this decision was not on merits for the following reasons.

- a) the IBA was not a party before the High Court,
- b) the RTI application in that case was not addressed to IBA,
- c) the issue whether IBA was public authority was not pleaded before the High Court,
- d) the order does not mention anywhere section 2(h) of RTI Act,
- e) the issue that IBA has been kept out of bounds of RTI Act was advanced by the Petitioner himself and not decided by the High Court,



- f) the paragraph quoted by the Respondents does not conclusively decide that IBA was not a public authority,
 - g) The High Court just referred to the decision of the Commission without examining the ambit of public authority under Section 2(h), before the High Court no relief was prayed by the Petitioner that IBA may be directed to conform to the provisions of the RTI Act.
20. The RTI Act defines "public authorities" in Section 2(h) -

A "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.**

21. On a reading of Section 2(h), the expression "public authority" can mean:
- a) an authority or a body or an institution of self-government established or constituted by or under the Constitution,
 - b) an authority or a body or an institution of self-government established or constituted by a law made by Parliament,
 - c) an authority or a body or an institution of self-government established or constituted by a law made by the State legislature,
 - d) an authority or a body or an institution of self-government established or constituted by a notification issued or order made by the appropriate government.
22. The Hon'ble Delhi High court in **National Stock Exchange of India Ltd. V. CIC & Ors. W.P.4748 of 2007 dated 15-4-2010** has held that "The three conditions, i.e., owned, controlled and substantially financed are distinct in alternative and not cumulative. The nature and type of activity and functions undertaken by the organization are inconsequential and immaterial. If a body satisfies requirements of Clause (i) or (ii), conditions (a) to (d) need not be



satisfied. Thus, when second part of Section 2(h) applies, satisfaction of conditions mentioned in (a) to (d) need not be examined."

23. The complainants explained: The IBA provides expertise to member banks in service related matters like periodical wage revision, formulation of policies, execution of Government directives/schemes/policies, legal issues of member Banks, customer service, defending banks in courts by being party to litigation, technology for banks, recovery of loans, approval of transport companies, security printers, couriers for banks including PSB, etc. The IBA makes substantial contribution in functioning of entire public sector banks and its advice is followed by public sector banks into getting formal approval of Board of Directors and/or Central Government.
24. They pointed out that the objectives of the IBA explain its association with Government and governance of banking matters, its importance and public nature. The objectives are published on its Website. Some aspects relevant to the present case are:

To give financial assistance to individuals or bodies, from out of its own funds, or by collection from its members, or from any other source, and for the purpose of such collection, to accept grants, donations, etc. in cash or kind from Government, its members, other organizations, members of the public, etc. and to collect subscriptions, membership and other fees and to levy fees or charges for the use of the facilities and to raise funds in any manner to strengthen the financial position of the Association, from time to time, for the purpose of providing education, training and facilities for imparting basic, advance knowledge and techniques in games, sports, cultural activities, social activities, fine arts, etc. and to give donations, technical and other assistance, sports equipment, sports facilities and expert guidance to organizers for this purpose whether its members or not and to conduct, organize, participate or to associate itself in State-Level, National, International Tournaments and competitions pertaining to sports, cultural activities, social activities, fine arts, held in or outside India.

To act as an agent or a representative of a member or members in respect of matters connected with any of their operators working or administration.

To maintain close co-ordination and liaison with Reserve Bank of India, All Financial Institutions, Chambers of Commerce, Organizations of Banking Industry, Management or Educational Institutes, Universities and such other Organizations for realizing the subject and purposes of the Association.

25. From the website of IBA, their submissions and documents, it appears that the Managing Committee of the IBA consists of 31 members, of which 16 are from PSBs, 3 from the Cooperative Banks and 2 from the Associate State



Banks. The Chairman of IBA has always been a Chairman of a PSB. The Chairmen of PSBs are public servants, being appointed by the GOI. The PSBs and Associated State Banks are undoubtedly Public Authorities under the provisions of the Act.

26. The Chairman, 2 out of 3 Deputy Chairpersons and 14 Managing Committee members are from PSBs. Individually, they are accountable and answerable to the public. It shall be a conflict, contrary and defeat on the object of the RTI Act if these members i.e. Chairmen (public servants appointed by MOF) of Public Authorities are granted immunity from accountability, under the umbrella of IBA.

State and state instrumentality

27. Hon'ble Supreme Court held in ***Bank of India & Anr. V. K Mohandas & Ors. Civil Appeal No. 1942 of 2009; 27-3-2009***, that public sector banks are 'State' within the meaning of Article 12 of the Constitution of India. As the Managing Committee of IBA comprises 29 member banks, of which around 18 banks are public sector banks, it can be reasonably inferred that a body consisting of 18 'state's operates as the 'state.
29. The Punjab & Haryana High Court in ***DAV College Trust and Management Society & Ors Vs The Director of Public Institution & Ors (Civil Writ petition No. 2626 of 2008)*** laid down that a crucial touchstone for determining 'whether an organization qualifies to be a public authority (PA)' is 'whether it performs a public duty'.
30. The IBA performs an important role in the decision making process of banking industry and in that sense performs 'public function', one of the important factors or requirements making a body a public authority under the RTI Act.
31. The IBA thus, is an 'agency' or 'instrumentally' of the State (Public Sector Bank PSB in the present case). One of the objectives of IBA, as displayed on its website, is "to act as an agent or a representative of a member or members in respect of matters connected with any of their operations working or administration." The documents submitted by both the parties



show that Government of India through its Department of Financial Services has entrusted the IBA with the responsibility of issuing guidelines in the matter of employment of public sector banks. This is a public function. The Reserve Bank of India also has entrusted the IBA with several tasks, besides soliciting the advice of IBA in matters concerning the implementation of law (e.g. RTI Act). This establishes that the IBA functions as an agency of the State.

32. Also, the IBA negotiates wage settlements on behalf of its member banks – majority of which are the public sector banks – who mandate it to do so, with the Bank Unions/Associations under Industrial Disputes Act, 1947. Thus, the IBA also functions as an agent/representative of its member banks in order to resolve the industrial disputes arising between employer and workmen. If not resolved it may hamper the public functions which are being discharged by the banks with the workmen resorting to strike. Thus the functioning of the IBA is also of public importance that makes it liable to be accountable to the public.
33. The IBA enters into Bipartite Wage Settlements with the recognized and registered Trade Unions. These settlements are registered under Rule 58 of Industrial Disputes (Central) Rules, 1957 and therefore have a statutory force. Thus the IBA has an onerous responsibility to maintain the sanctity of statutorily enforceable rules.
34. The Annual Report of the IBA spells out the vision of the Association as follows:

"To work proactively for the growth of a healthy, professional and forward looking banking and financial services industry, in a manner consistent with public good" (emphasis supplied).

35. The role and functions of the IBA have been well crystallized in its Annual Report under the head Focus and Priorities. It also admitted its critical role in coordination of project PMJDY. It has been asked by the GOI to issue necessary guidelines in the matter of Pay fixation of Ex-servicemen re-employed in banks. Not only the banks, other ministries, departments e.g.

