

**STATE INFORMATION COMMISSION, PUNJAB**  
**Red Cross Building, Sector 16, Madhya Marg, Chandigarh**  
**Tele No. 0172-4630071, FAX No. 0172-4630888, Visit us @ [www.infocommpunjab.com](http://www.infocommpunjab.com)**

Sh. Sadhu Ram Kusla,  
S/o Ram Chand Bansal,  
House No.138, Indira Lodge,  
Veer Colony, Maharaja Aggarsain Road,  
Bathinda.

Complainant

Versus

Public Information Officer,  
O/o Max Super Specialty Hospital,  
Nh 64, Near District Hospital,  
Bathinda.

Respondent

**COMPLAINT CASE NO.1031/2016**

<b>Date of RTI Application</b>	:	<b>26.04.2016</b>
<b>Reply of PIO</b>	:	<b>28.04.2016</b>
<b>Complaint filed on</b>	:	<b>26.11.2016</b>

**Present :** Sh. Sadhu Ram Kusla, Complainant in person.  
None on behalf of the Respondent.

**ORDER**

The order was reserved on 11.07.2017 for pronouncement.

The factual matrix of this case is traced hereunder.

The complainant having failed to procure the following information sought by him vide his application dated 24.04.2016 from the respondent, has filed a complaint with the Commission on 11.05.2016 to take the appropriate action under Section 18 of the RTI Act:-

- (a) Copy of MoU/Agreement signed by authorized person of MAX Hospital, Bathinda and Representative of Punjab Govt. for setting up and running MAX Hospital in the premises of Civil Hospital, Bathinda.
- (b) Copy of site plan of Building of MAX Hospital, Bathinda got approved from the Municipal Committee/Municipal Corporation, Bathinda.
- (c) Details of doctors showing their names and qualification, experience etc. presently working/remained worked with MAX Hospital Bathinda from 01.04.2014 to date.

- (d) List of patients/persons to whom free treatment has been given by the MAX Hospital, Bathinda from 01.01.2011 to date.
- (e) Copy of orders on the basis of which room rents and other services such as cardiology services, consultations, radiology services etc.etc. are charged from the patient.
- (f) Copy of orders vide which doctors/staff employed in MAX Hospital have been allowed for further education during service in MAX Hospital, Bathinda.

The respondent while responding to the aforesaid application pleaded that the respondent is not a Public Authority within the meaning of Section 2(h) of the said Act and refused to part with the information. In the written reply filed on 26.11.2016 before the Commission the respondent submitted that:

- i. Respondent Hospital – Max Super Specialty Hospital, Bathinda is a unit of Hometrail Buildtech Private Limited, a company registered under the Companies Act, 1956.
- ii. Respondent Hospital is an out-come of a concession agreeemtn dated 05.08.2009 (“Agreement”) entered between the Government of Punjab (GoP), Hometrail Buildtech Private Limited (“HBPL”) and Max Healthcare Institute Limited (Bidder”) (GoP, HBPL and Bidder referred as “Parties” when referred all three together) on Public-Private Partnership (PPP) basis; broadly on the following terms :-
  - (a) GoP to grant and authorize HBPL to develop, finance, design, construct, operate, maintain and manage a Greenfield super specialty Hospital on a land admeasuring 4.80 acres, situated at District Civil Hospital, Bathinda (“Project Facility”) and all activities incidental thereto such as engineering, testing, commissioning, insurance
  - (b) provision of super specialty hospital healthcare services and all activities and services incidental thereto,

(c) demanding, charging and collecting, retaining and appropriating of tariff by the HBPL,

(d) transfer of the Project Facility/Hospital to the GoP or its nominated agency by HBPL at the end of the concession period of 50 years by efflux of time or prior termination.

- iii. The aforesaid Agreement was entered between the Parties, after due transparent competitive bidding process from eligible bidders for implementing the Project Facility on an invitation by the Punjab Infrastructure Development Board ("PIDB") under the provisions of the Punjab Infrastructure (Development & Regulation) Act, 2002 ("PIDR Act"). Thus, the provisions of PIDB govern the actions of the Parties under the said Agreement. The relevant provisions of which are discussed under point "B" of the Preliminary submission (supra).
- iv. That the GoP through PIDB awarded the Project Facility to HBPL, not as a case of providing any concession in the form of subsidy, subvention, grant or other similar financial incentives (either substantially or otherwise), as wrongly perceived and alleged by the complainant; but as a right or interest granted to HBPL in respect to the Project Facility in order to fulfill the overall responsibility of the DoH & FW, in providing healthcare services to the general public on PPP basis. This grant for right or interest to HBPL is purely on the basis of the PIDR Act, the relevant provisions of which are discussed under point "C" of the Preliminary Submission (supra).
- v. That, in lieu of the grant and authorization by GoP over the Project Facility, HBPL has paid the GoP, an Upfront Consideration of Rs.158.55 lakh along with non-refundable, irrevocable amount of Rs.100.00 lakh towards project development fees.
- vi. That, the GoP, in order to satisfy the terms and conditions of the Agreement, vested the Project Facility owned and possessed by DoH&FW to HBPL, by way of a Lease Deed dated 23.09.2009 ("Lease Deed"), under which the HBPL paid advance lease

rental in single-lump sum of Rs.50/- for 50 years (Re.1/year as Lease Rent). This, Re.1/year as Lease Rent is not an act of concession by way of any subsidy, subvention, grant or other similar financial incentive granted by the GoP to HBPL but to maintain its ownership over the Project Facility on which HBPL has been given the right or interest for a specific period of 50 years, in respect to the Project Facility, in order to fulfill the overall responsibility of the Department of Health and Family Welfare ("DoH&FW"), Government of Punjab.

- vii. That, HBPL shall at its cost, expense and risk make such financing arrangement as would be necessary to finance the Project and meet obligations under this Agreement in a timely manner.
- viii. That HBPL pays 5% of the Gross Revenue of each financial year as Consideration Fee to GoP (Ref. Section 1.1. and Section 12.2).

The Respondent further drew the attention of this forum to the definition and submitted that the Respondent Hospital is neither an authority or body or institution established or constituted as per sub-clause (a) to (d) (i) of Section 2(h) of the RTI Act, nor is substantially financed by the appropriate government or directly or indirectly by funds by the appropriate government. Extending the argument the respondent says that they are not receiving even a single penny of grant-in-aid from the government and neither any funding or any concession from any authority including Income Tax, Municipal Authorities, Improvement Trust, State Government etc. and as such the provisions of the Act cannot be made applicable in their case. They admit that the concession granted by the GoP to them on the Project Facility through PIDB is as per the provisions of PIDB Act. Sub-clause 5 of Section 2 of the Act defines the word "concession" and "includes any right or interest granted to a Concessionaire in relation to any aspect of an infrastructure project, as well as any subsidy, subvention, grant or other similar financial incentive granted by the State Government to

secure the viability and commercial efficacy of an infrastructure project". The concession granted by the GoP under the aforesaid Agreement is only in the form of right or interest granted to a Concessionaire in relation to any aspect of an infrastructure project; as enunciated by the first part of the definition and not in any form of subsidy, subvention, grant or other similar financial incentive as enunciated in the second part of the definition.

The respondent further mentions the details of the Agreement reached between them and the PIDB and rights accruing to them by virtue of the Agreement signed by them. The refrain is that the Respondent Hospital is the Greenfield Super Specialty Hospital, developed, financed, designed, constructed, operated, maintained and managed by HBPL and they have full freedom to determine, demand, charge, collect, retain, appropriate from those who avail its services. Since they have paid the Upfront Consideration money to the government no substantial grant or incentive has been received from it and as such they are not the Public Authority within the meaning of the RTI Act.

In his counter reply the complainant submit that a prime land measuring 4.8 acres on National Highway 64 has been given by Punjab Government to them at an annual rent of Re.1/- for 50 years. He adds that the GoP, in order to satisfy the terms and conditions of the Agreement, vested the Project Facility owned by DoH&FW to HBPL, by way of a Lease Deed dated 23.09.2009 ("Lease Deed") under which the HBPL paid advance lease rental in single-lump sum of Rs.50/- for 50 years (Re.1/- per year as Lease Rent). This, Re.1/- per year as Lease Rent is not only an act of concession by way of any subsidy, subvention, grant or other similar financial incentive granted by the GoP to HBPL also to ensure its ownership over the Project Facility on which HBPL has been given the right or interest for a specific period of 50 years in order to fulfill the overall responsibility of the Department of Health and Family Welfare ("DoH&FW"), Government of Punjab.

He finally submits that the respondent having been substantially financed by the Government ought to be declared as a Public Authority under the RTI Act and be directed to part with the information asked by him.

The respondent has led us into the technical details of its rights and obligations entailed in a detailed agreement signed between them and the PIDB. Its dissection does not seem called for. The basic issue before us is the determination as to whether the respondent Hospital is a Public Authority within the meaning of Section 2(h) of the Act. **Section 2(h) (d) of the RTI Act** says as under :-

**2. Definitions : ---**

**Xx xx xx xx**

(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;

**xx xx xx xx**

Admittedly Clause a to c and d (i) of Section 2 (h) of the Act are not attracted. However, we shall have to examine if it steers itself clear of the ambit of Section (d) (ii) of the Act reproduced above.

The appropriate Government in the instant case obviously is the Government of Punjab. We have to see if the respondent has been substantially financed by the State Government directly or indirectly. Hon'ble Supreme Court of India in its judgment passed in CIVIL APPEAL NO. 9017 OF 2013 (Arising out of SLP (C) No.24290 of 2012) titled Thalappalam Ser. Coop.Bank Ltd. & ... vs State Of Kerala & Ors on 7 October, 2013 has clinched the issue by giving a ruling on the subject. It shall be desirable to reproduce the relevant portion:

**“SUBSTANTIALLY FINANCED**

36. The words “substantially financed” have been used in [Sections 2\(h\)\(d\)\(i\)](#) & (ii), while defining the expression public authority as well as in [Section 2\(a\)](#) of the Act, while defining the expression “appropriate Government”. A body can be substantially financed, directly or indirectly by funds provided by the appropriate Government. The expression “substantially financed”, as such, has not been defined under the Act. “Substantial” means “in a substantial manner so as to be substantial”. In *Palser v. Grimling* (1948) 1 All ER 1, 11 (HL), while interpreting the provisions of [Section 10\(1\)](#) of the Rent and Mortgage Interest Restrictions Act, 1923, the House of Lords held that “substantial” is not the same as “not unsubstantial” i.e. just enough to avoid the de minimis principle. The word “substantial” literally means solid, massive etc. Legislature has used the expression “substantially financed” in [Sections 2\(h\)\(d\)\(i\)](#) and

(ii) indicating that the degree of financing must be actual, existing, positive and real to a substantial extent, not moderate, ordinary, tolerable etc.

37. We often use the expressions “questions of law” and “substantial questions of law” and explain that any question of law affecting the right of parties would not by itself be a substantial question of

*law. In Black's Law Dictionary (6th Edn.), the word 'substantial' is defined as 'of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real: not seeming or imaginary; not illusive; solid; true; veritable. Something worthwhile as distinguished from something without value or merely nominal. Synonymous with material.' The word 'substantially' has been defined to mean 'essentially; without material qualification; in the main; in substance; materially.' In the Shorter Oxford English Dictionary (5th Edn.), the word 'substantial' means 'of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; sold; weighty; important, worthwhile; of an act, measure etc. having force or effect, effective, thorough.' The word 'substantially' has been defined to mean 'in substance; as a substantial thing or being; essentially, intrinsically.' Therefore the word 'substantial' is not synonymous with 'dominant' or 'majority'. It is closer to 'material' or 'important' or 'of considerable value.' 'Substantially' is closer to 'essentially'. Both words can signify varying degrees depending on the context.*

*38. Merely providing subsidiaries, grants, exemptions, privileges etc., as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist. The State may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD etc., but those facilities or assistance cannot be termed as “substantially financed” by the State Government to bring the body within the fold of “public authority” under [Section 2\(h\)\(d\)\(i\)](#) of the Act. But, there are instances, where private educational institutions getting ninety five per cent grant-in-aid from the appropriate government, may answer the definition of public authority under [Section 2\(h\)\(d\)\(i\)](#)”.*

Admittedly a land measuring 4.8 acres situated at the district Civil Hospital, Bathinda has been leased out on 23.09.2009 at the rate of Re.1/- per year for 50 years. The respondent pays 5% of the Gross Revenue of each financial year as Consideration Fee to the Government of Punjab. The main thrust of the argument of the respondent is that the Concession Agreement between the PIDB and them is governed by the PIDB Act which authorizes them to enjoy the rights, powers,



privileges, authorizations and entitlements under the Concession Agreement, including but not limited to the right to charge, demand, collect, retain and appropriate Tariff (collectively the "Concession") from the Project Facility/Hospital and not a concession in the form of subsidy grant or other financial incentives much less substantially as wrongly assumed by the complainant.

This forum would not like to go into the technicalities of the aforesaid submissions. The important issue before the Commission is as to whether the respondent has been substantially financed by the Government directly or indirectly. In order to ascertain the substantiality of the financial assistance this forum called for a report from the Tehsildar, Bathinda to intimate the current value of the land which has been leased to it on a nominal fee of Re.1/- per annum. Vide his memo dated 11.09.2017 the Tehsildar Bathinda has intimated that the commercial value of the land as per the collector rate fixed is assessable at the rate of Rs.8,160/- per sq. yard. Computing at the above rate the value of the land leased to the respondent arrives at Rs.19 crores approximately.

In the aforementioned findings the Hon'ble Supreme Court of India says that the funding has to be substantial to the extent that the body practically runs by such funds. But for the land the hospital's existence cannot be conceived.

Allotment of land is critical to the commissioning of the hospital. It has effectively been allotted gratis. Such an indirect financing is undoubtedly solid, weighty and massive. The allotment of the land effectively is free of charge.

It thus satisfies and conforms to the parameters set forth in the aforesaid explanation of the expression "substantially financed" by the Hon'ble Supreme Court of India.

While deciding a complaint the full bench of this Commission in its order on 12.05.2011 in CC No.3315 of 2010 titled Dr. S.G.Damle Vs PIO Fortis Hospital, Mohali observed:

*“12. There is another important aspect to the case, which should not be ignored. The respondent is a hospital. It is true that it is a private commercial venture, but given the nature of its business, the respondent is discharging an important service to the society. The Punjab and Haryana High Court in a full bench decision in the case of Ravneet Kaur Vs CMC, Ludhiana, (AIR 1998 Punjab and Haryana -1) rejected the argument that a body discharging public duty, merely because it is a private body, would place it beyond the pale of scrutiny. The court observed that what is relevant is the nature of the functions being discharged by an institution, rather than the consideration whether it is a public body or a private institution. “source of power is not important. It is the nature of power that is relevant”.”*

Even the Government of India in its guidelines issued through the Department of Personnel and Training has maintained that all information relating to PPPs must be placed in public domain suo moto as per proviso of Section 4 of the RTI Act, including the details of SPVs. Project report, concession agreement, operation and maintenance manuals and other documents generated as part of implementation of PPP Project should also be proactively disclosed. The very nomenclature of a Public Private Project (PPP) suggests the preponderance of a public interest involved in the project.

Transparency is the buzz word. Every institution which impinges public life in general or carries out the activities which impact the society as a whole has to be transparent in functioning. We must change our practice and mindset moving from a culture of secrecy to one of complete openness and accountability.

For the reasons recorded above, the Commission has no hesitation in holding the MAX Super Specialty Hospital, NH 64, Near District Hospital, Bathinda as a Public Authority within the meaning of 2(h) of the RTI Act and hereby directs it to appoint a Public Information Officer under

Section 5 of the RTI Act and ensure that the original request of the complainant is attended to and suitably responded within a month of the receipt of this order.

**Disposed.**

**Sd/-**

**10.10.2017**

**(Yashvir Mahajan)  
State Information Commissioner**