

# STATE INFORMATION COMMISSION, PUNJAB

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**(Regd. Post)** S. S. Chana,  
58/1, Sarabha Nagar,  
Ludhiana

...Complainant

V/s

**(Regd. Post)** Public Information Officer,  
O/o The Hon. Secretary,  
Sutlej Club (Regd.),  
Rakh Bagh,  
Ludhiana

...Respondent

## Complaint Case No. 475 of 2010

### ORDER

1. The only 'limited' question, which is to be decided by the Full Bench in the instant Complaint case, is related with the fact that whether the Sutlej Club (Regd.), Rakh Bagh, Ludhiana, is a Public Authority as per the provisions of Section 2 (h) of the Right To Information Act, 2005 (hereinafter referred as Act only), in view of the Judgement given by Hon'ble Supreme Court in Thalappalam Service Cooperative Bank Limited and others Vs State of Kerala and Others, on 07.10.2013.

2. The above mentioned question arose due to the separate decisions given by different Benches of the State Information Commission (SIC), Punjab, (hereinafter referred as Commission), subsequent decision given by the Hon'ble Single Judge of Hon'ble Punjab and Haryana High Court in Civil Writ Petition (CWP) number 16750 of 2010 and then the decision given by Division Bench of Hon'ble Punjab and Haryana High Court in LPA number 1174 of 2011.

3. The Sutlej Club's L.P.A. No. 1299 of 2011, was disposed of by the Division Bench of the Hon'ble High Court vide Order dated 12.12.2013, whereby the Hon'ble High Court remanded back the present case for fresh adjudication by this Commission in view of the Judgement of the Hon'ble Supreme Court in Thalappalam case Service Co-op. Bank Ltd. vs. State of Kerala in Civil Appeal No. 9017 of 2013.

4. After offering number of opportunities to parties concerned to make their written and oral submissions to substantiate their respective claims, the Judgement in this case was reserved by Full Bench on 29.04.2015.

5. As the proceedings in this case have been going on since long, we deem it fit to reproduce the relevant facts of this case, which are as below :

6. Sh. S. S. Chana, a resident of Ludhiana town, moved an application under Act to PIO/General Secretary, The Sutlej Club (Regd), Ludhiana, on 24.11.2009, seeking information on the following points :

- i) Names of the members who have been admitted under the 'Officer Member' category since the year 2000. Total strength of such officers till date.

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- ii) Names of the officers using various facilities in the Sutlej Club without being member of the Sutlej Club .
- iii) Copies of minutes of General House meeting held since 2000.
- iv) Copies of minutes of Executive C committee meetings since with 2000.
- v) Details of expenses paid out of the Sutlej Club funds on General House and Executive Committee meeting since 2000.

7. Sh. Chana has mentioned in his RTI request that Commission on 16.10.2009, has declared Gymkhana Sutlej Club, Jalandhar, as public authority within the meaning of section 2 (h) of Act. He also mentioned that since the Sutlej Club has a similar status and so the PIO/General Secretary of the Sutlej Club, has been requested to supply the information regarding above mentioned queries.

8. As Sh. Chana was denied the requisite information by the PIO/General Secretary of Sutlej Club, he approached the Commission through a complaint on 08.01.2010, making prayer to take necessary action into the matter.

9. In response to the notice of hearing issued to Sutlej Club, Sh. H. K. Kakkar, the then Administrator of the Sutlej Club, replied in writing that information has been denied to Sh. Chana in view of the ruling given by Commission in a case pertaining to C. C. Number 1160 of 2007.

10. He produced the operative part of the ruling of Commission in C. C. Number 1160 of 2007, which reads as "From the foregoing, it is clear that the Sutlej Club does not satisfy any of the necessary ingredients of a Public Authority as defined under Section 2 (h) of the Act, 2005. In view of this, the Sutlej Club, Ludhiana, is not within the purview of the Act and hence, it is not bound to divulge any information pursuant to an application made under the Act . Resultantly, the instant complaint is disposed of as not maintainable."

11. The matter was taken up by Larger Bench comprising then Learned Chief Information Commissioner (CIC), Sh. R. I. Singh and the then Learned State Information Commissioners Sh. Surinder Singh and Sh. P.K. Grover and the issue, pertaining to the fact that as to whether Sutlej Club is a Public Authority or not, was decided on 08.07.2010.

12. The Larger Bench declared the Sutlej Club as Public Authority as per section 2 (h) of the Act.

13. The order of Larger Bench is reproduced here below :

*"Arguments in this case were heard on 06.07.2010 and the Judgement was reserved.*

- ii) *The complainant, in the instant case, has filed a complaint against PIO of the Sutlej Club, Ludhiana alleging that he has refused to supply the information demanded by the Complainant. The information demanded by the Complainant pertains to the establishment, organizational structure and accounts etc. of the Sutlej Club. The stand taken by the respondent is that it is*

*purely a private body and is not a 'Public Authority' within the meaning of Section 2 (h) of the Right to Information Act, 2005. According to the respondent, the Sutlej Club is a self financed institution through the application fee and subscription charges collected by it from its members. It is further stated that the Sutlej Club is neither owned nor controlled by the State Government nor is it substantially financed by the State Government. In this premise, the respondent has submitted that the Complainant is not entitled to seek information from the respondent under the Right to Information Act, 2005.*

**iii) Public Authority has been defined by Section 2(h) of the Right to Information Act, 2005 as a body or institution established :**

- 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.**

**14. The complainant alleges that the respondent is a Public Authority as it is substantially financed by the State Government as highly valuable land on which the Sutlej Club has been constructed is owned by the Government and that the Respondent Sutlej Club has been allowed its use free of any charge/fees etc.**

*iv) Accordingly, the ownership of the land was got verified through the office of the Deputy Commissioner, Ludhiana. It has emerged through inspection of revenue record that the land is owned by the Provincial Government. It has also come on record that certain funds were provided for the initial construction of this Sutlej Club by the State. These facts leave no doubt that there is substantial financial assistance by the State Government to the Respondent Sutlej Club . The fact that the valuable land upon which the Sutlej Club has been constructed belongs to the Government and no rent/lease is paid by the Sutlej Club to the Government shows that there is substantial financial assistance by the State to the respondent. Funding may be direct or indirect. It may consist of contribution to revenue expenditure or providing the infrastructural facilities. In fact, the cost of providing prime land for the Sutlej Club, as has been done in the case of the Respondent, would be much more than its normal revenue expenditure. Apart from providing the land free of cost for construction of the Sutlej Club building, the government has also incurred a part of expenditure on the construction the Sutlej Club. This militates*

*strongly against the Respondent Sutlej Club being a purely private body. In addition, as per Rule 24 of the Constitution and Bye-laws of the Sutlej Club, "The Deputy Commissioner of Ludhiana shall always be the President in his ex-officio capacity". As the ex-officio President, the Deputy Commissioner, a Public authority within the meaning of Section 2(h) of the Right to Information Act "can" access any information about the affairs of the Sutlej Club. Therefore, information pertaining to the Sutlej Club is accessible under Section 2(f) of the Right to Information Act.*

v) *In view of the foregoing, we are of the considered view that the Respondent Sutlej Club is a Public Authority within the meaning of Section 2(h) of the Right to Information Act, 2005. Accordingly, the requisite information will be provided by 30.07.2010 to the Complainant.*

vi) *The case to come up on 21.9.2010 at 11.30 A.M. for confirmation of compliance of orders.*

vii) *Announced in the hearing. Copies of the order be sent to both the parties."*

The Larger Bench arrived on this decision after considering the submission made by Sh. Jagsir Singh, the Naib Tehsildar, during the hearing made on 06.07.2010.

The Larger Bench in its order, made on 06.07.2010, recorded in para 2 that "Naib Tehsildar, Jagsir Singh has produced a copy of Jamabandi for the year 2005 - 2006 of village Mahalrakh, Hadbast No.165, Tehsil Ludhiana (Purbi) pertaining to Khewat No.1, Khatouni No.9, Khasra No. 135/115/1-3 to 7. As per the Jamabandi, the land in question belongs to Provincial Government. On a specific query to the Naib Tehsildar as to whether the Government is charging any lease or rent money from the Sutlej Club for this land, he replied in negative."

15. The Respondent Sutlej Club moved to Hon'ble Punjab and Haryana High Court against that order of the Commission.

16. Sh. Karambir Singh Chawla, Advocate, who represented the Respondent Sutlej Club in the Commission on 21.09.2010, stated that he had moved a stay application in the Hon'ble High Court against the order of Commission dated 08.07.2010.

17. The Larger Bench, while considering the fact that as no stay had been granted by the Hon'ble High Court, directed the Respondent PIO to show cause as to why penalty, as per the provisions of Section 20 of the Act, should not be imposed on him for not

providing the information to the complainant and also award suitable compensation.

18. On the next hearing, the Respondent Sutlej Club provided the requisite information vide his letter No. 460 dated 25.09.2010 to the Complainant with a copy to the Commission, which was taken on record. The Respondent also made a written statement vide his letter dated 27.09.2010.

19. In that written statement, Sh. Sanjeev Dhanda, the then Honorary General Secretary of the Sutlej Club, mentioned it categorically in the subject that “ Information in respect of your above noted application, being conditionally provided under peculiar circumstantial compulsion and while not finally accepting the Sutlej Club to be the Public Authority under the Act at this stage, as the Civil Writ Petition filed on behalf of the Sutlej Club, is pending before the Hon’ble Punjab and Haryana High Court.”

20. Sh. Chawla, in the next hearing, made a request that issue of penalty, to be imposed for the delay in providing information and compensation to be awarded to the Complainant for the detriment suffered, be taken up only after decision in C.W.P. 16750 of 2010 filed by it, challenging the order passed by the Commission on 08.07.2010. He reiterated that the requisite information had been supplied.

21. The Larger Bench directed the parties concerned to convey the outcome of C.W.P. No. 16750 of 2010 to the Commission before the next date of hearing, which was fixed for 01.02.2011.

22. On 01.02.2011, the proceedings in the complaint case were adjourned sine-die by the Commission with the direction that any of the parties to the present complaint case may move the Commission for commencing of the hearing, after the matter pending before the Hon’ble High Court is heard/ disposed of.

23. The proceedings were adjourned sine-die after Hon’ble Punjab and Haryana High Court passed the order in C.W.P. 16750 of 2010. The operative part of order is reproduced below :

*“What is not disputed here is that as the petitioner has already supplied the requisite information, in pursuance of impugned order of State Information Commission, Punjab, therefore, further proceedings before the State Information Commission, Punjab is hereby stayed till further orders.”*

24. Subsequently, the Hon’ble High Court dismissed the above C.W.P. 16750 of 2010 along with C.W.P. No.19224/2006 and other connected cases on 09.05.2011.

25. After the dismissal of C.W.P. 16750 of 2010, notices were issued to the parties concerned. The parties concerned made their respective submission on the issue connected with imposing of penalty on the Sutlej Club and awarding of suitable compensation to the complainant.

26. After hearing the parties concerned and examining their written arguments, the Commission decided that issue, raised by the complainant regarding

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imposition of penalty under Section 20 of the Act and also awarding of compensation to the

complainant on the grounds that he had applied for the information to the PIO/Sutlej Club on 24.11.2009 and since the information was not given, he had to pursue the matter on different dates at Chandigarh, causing him loss of time and money.

27. The Larger Bench rejected the claim of the complainant and closed the case on 29.06.2011.

28. The Commission made this decision while the LPA number 1299, filed by the Respondent Sutlej Club for getting the order, of Hon'ble Single Bench of Hon'ble High Court in C.W.P. 16750 of 2010, set aside, was pending in Hon'ble High Court.

29. The Division Bench of Hon'ble High Court while disposing of LPA number 1174 of 2011 also disposed of other LPAs including the LPA number 1299 of 2011 of the Respondent Sutlej Club on 12.12.2013 with the direction that matter shall be decided afresh by the Commission as per Judgement of Hon'ble Supreme Court in Thalappalam Service Co-op. Bank Limited Vs State of Kerala.

30. The matter was again taken up by the Commission after a letter from Sh. Chana was received in the Commission, through diary number 4124 dated 19.02.2014. In that letter, he brought the decision of LPA 1299 to the notice of the Commission and pleaded that he be intimated about the next date of hearing in this case.

31. The case was taken up for hearing on 08.07.2014 by Division Bench of the Commission as per decision of Hon'ble High Court in LPA 1299.

32. The Hon'ble High Court has given the direction that the orders passed by the State Information Commission (SIC) and the Ld. Single Judge in all these appeals are set aside. The matter is remanded to the SIC to decide the same afresh.

- i) The interim order shall continue till the disposal of the appeals by the SIC.
- ii) All the pleas available to the appellants herein shall be allowed to be raised before the SIC. The SIC shall decide the matter afresh keeping in view the Judgement of Apex Court in Thalappalam Service Co-op. Bank Limited's case (Supra) within six months from the date of receipt of certified copy of this order.
- iii) Each case shall be decided separately by referring to the facts involved therein.
- iv) The SIC shall not be influenced by anything which has been observed herein while deciding the matter afresh.

33. After few hearings held by the Division Bench in this case, the matter was taken up by Full Bench of the Commission as per orders of Ld CIC, Sh. S. S. Chaney, made on 10.11.2014.

34. The Bench heard the parties afresh.

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35. Sh. Karambir Singh Chawla, advocate, Respondent Sutlej Club, pleaded that the order, dated 08.07.2010, of the Commission, whereby the Sutlej Club, Ludhiana, was held to be a 'Public Authority' under the Act, is wrong, erroneous, arbitrary and fallacious on law as well as on facts and even in view of the spirit of the Judgement of the Hon'ble Supreme Court in the case of Thalappalam Service Co-Op Bank Ltd. Vs. State of Kerala. Therefore, the said earlier perverse order of the Commission, being wrong, erroneous and arbitrary, deserved to be corrected and reversed by the present Larger Bench of Commission by not holding the Sutlej Club, Ludhiana as Public Authority under the Act, on the following grounds also :

- i) That facts and circumstances of the present case of Sutlej Club, Ludhiana are peculiar and quite different from most of the said other cases. Therefore, the same aspect deserves to be taken care while adjudicating afresh by this Commission.
- ii) That the applicant - complainant Sh. Chana did not file any 1<sup>st</sup> Appeal and rather filed the present complaint u/s 18 of Act before this Commission. Although it is proposition of law that in the complaint u/s 18 Act, this Commission cannot compel for supplying the information, but can decide upon the question of imposing penalty or compensation u/s 20 of Act if there is any willful and illegal delay/ denial of information. It is submitted not only the information was supplied to Sh. Chana, conditionally without finally accepting the Sutlej Club, Ludhiana as Public Authority at that stage, but also even the question of imposing any penalty or compensation u/s 20 of Act has been already finally decided by this Commission vide the well reasoned Order dated 29.06.2011, whereby this Commission had actually closed the present case without imposing any penalty or compensation upon any official of the Sutlej Club, Ludhiana. Therefore, even otherwise, when the said order qua not imposing any penalty or compensation deserves to be maintained even upon fresh adjudication at this stage, the in question complaint deserves to be dismissed / closed again, in the interest of justice.
- iii) That on 08.07.2010, the Commission wrongly and erroneously interpreted the relevant Section 2 (h) of the Act and wrongly held the Sutlej Club, Ludhiana, to be a 'Public Authority' within the meaning of Section 2 (h) of the Act, mainly because the Sutlej Club is functioning on the Government land, but the providing of the land decades back by the then Government, being welfare state, has been wrongly and arbitrarily interpreted by the earlier Bench of this Commission as the implied substantial funding from the Government and by relying upon

the vague, misleading, false allegations of the complainant, the Commission gave the wrong, factually incorrect findings to the effect that:

- *“.....the Government has also incurred a part of the expenditure on the construction of the Sutlej Club ”* ; and also further wrongly held that
- *“..... As the ex-officio President, the Deputy Commissioner, a Public Authority within the meaning of Section 2 ( h) of the Right to Information Act “ can” access any information about the affairs of the Sutlej Club .....”* , whereas actually the Deputy Commissioner, Ludhiana is the Ex-officio President of the Sutlej Club purely in his private, personal and individual capacity only and not in his Government official capacity, as already explained in detail. Therefore, the said findings given by the earlier Bench of this Commission in the order dated 08.07.2010 are wrong and fallacious on law as well as on facts.

- iv) That the earlier Order dated 08.07.2010 passed by this Commission, whereby the Sutlej Club, Ludhiana, was held to be a ‘Public Authority’ under the Act, is wrong and erroneous, because the Preamble, basic purpose, aims and objects of the Act have to be kept into focus, while deciding the question of applicability of the Act to the Sutlej Club, Ludhiana, but earlier this Commission had erred by misinterpreting the intentions of the framers of the Act . Even in the case of Thalappalam Service Co-op. Bank Ltd., the Hon’ble Supreme Court has held to the effect that the Co-operative Societies will not fall under the expression "State" or "Instrumentalities of the State " and held that however, there are situations where a body or organisation though not a State or Instrumentality of State, may still satisfy the definition of Public Authority within the meaning of Sec. 2 (h) of the Act and further held that the Private Organizations which are, though not owned or controlled but substantially financed by the appropriate government, will also fall within the definition of Public Authority under Sec. 2 (h) (d) (ii) of the Act . Therefore, the present case is to be now adjudicated afresh by deciding as to whether the private Sutlej Club, Ludhiana is substantially financed by the Government or not.
- v) That as the Sutlej Club, Ludhiana, is a Society registered under the Societies Act and by any stretch of imagination, the Sutlej Club, Ludhiana, neither is the State/Government nor the instrumentality of State/Government. When the Sutlej Club, Ludhiana is a privately



managed Sutlej Club, neither Instrumentality of State, nor owned nor controlled by the Government and nor substantially financed by the Government, therefore, it is not the Public Authority under the Act and is not covered under the ambit of the Act even in view of Thalappalam's Judgment. Therefore, earlier this Commission had erred by wrongly holding the Sutlej Club as a Public Authority under the Act .

The Section 2 (h ) of the Act 2005 reads as under :

- “ Sec 2 ( h ) - “ *public authority* “ means any authority, 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 ”*

- vi) That the Sutlej Club is privately managed and privately funded Non-Governmental Organisation/Society, neither established or Constituted by or under the Constitution of India; nor by any other law made by Parliament; nor by any other law made by State Legislature; nor by notification issued or order made by the appropriate Government and it is neither body owned, controlled or substantially financed by the Government, nor funded directly or indirectly by the Government Therefore, the Sutlej Club is not a 'Public Authority' within the meaning of Sec.2 (h) of the Act . Therefore, the application dated 24.11.2009 under the Act filed by the complainant has been misconceived and not maintainable, but still the information was supplied conditionally to him.
- vii) That as the Sutlej Club is a privately funded and privately managed Sutlej Club, its funds are raised through the membership fees, monthly subscriptions, charges for various facilities from members etc. Even the copies of the Financial Accounts Statements and Balance Sheets for the years 2007-08 and 2008-09 have been earlier submitted on behalf of the Sutlej Club to this State Information Commission to show the independent sources of income and to show that the Sutlej Club is not funded by any Government Therefore, the State Government or the

Central Government has nothing to do with the affairs/management/funding of the 'Sutlej Club' and thereby, it does not fall within the preview of the 'Public Authority' as defined u/s 2 (h) of the Act. Further, there is no financial aid being given by the State Government or the Central Government to the Sutlej Club. The Sutlej Club, Ludhiana, is duly paying the relevant VAT, Service Tax, Excise Tax, EPF, ESI etc. to the Government as per law.

- viii) That the Commission has wrongly held the Sutlej Club as a Public Authority by wrongly interpreting the providing of then very low valued land decades back by the State Government being welfare State, as the implied 'substantial funding' by the State Government. He submitted that earlier Bench of the Commission wrongly held that *"..... as per Rule 24 of the Constitution and Bye-laws of the Sutlej Club, "The Deputy Commissioner of Ludhiana shall always be the President in his ex-officio capacity". As the ex-officio President, the Deputy Commissioner, a Public authority within the meaning of Section 2 (h) of the Right to Information Act 'can' access any information about the affairs of the Sutlej Club . Therefore, information pertaining to the Sutlej Club is accessible under Section 2 (f) of the Right to Information Act....."*
- ix) That in this context, it is stated that the earlier Bench had wrongly given the above said findings as the Sutlej Club, Ludhiana, is a privately managed and privately funded body, not controlled by Government directly or indirectly. By virtue of the Constitution of the Sutlej Club, the Deputy Commissioner, Ludhiana, becomes the President of the Sutlej Club actually in his Ex-Officio capacity. Therefore, actually the honour is given to the person occupying the respectable chair of the Deputy Commissioner, Ludhiana, to become the Ex-Officio President of the Sutlej Club . Therefore, the person occupying the post of the Deputy Commissioner, Ludhiana, becomes the Ex-Officio President as a private individual only in his personal capacity and not in his Government official capacity. Therefore, the Deputy Commissioner in his capacity as the Officer of the Government has no power/authority/control in the functioning, affairs and management of the private Sutlej Club and hence, in his official capacity as the Government Officer/Deputy Commissioner, he cannot access the information about the affairs of the Sutlej Club and the interpretation given by the earlier Bench in this respect, is wrong, fallacious and bad in the eyes of law.

- x) That the duties performed by the President of the Sutlej Club are performed in personal individual capacity and not in his personal official capacity. Moreover, there is no role of the State of Punjab in the activities of the Sutlej Club, Ludhiana. Therefore, being an ex-officio appointment, the discharge of duty in the Sutlej Club by the President is totally in personal individual capacity.
- xi) That there is nothing wrong or unlawful if the persons who are otherwise Government Officials, become the members and the office bearers of the Society/Sutlej Club in their personal/private capacity. Merely because the Government Officials become the members and the office bearers of the Sutlej Club, it cannot be interpreted to mean that the Sutlej Club is controlled by the Government and thereby, it cannot be interpreted to mean that the Sutlej Club is a 'Public Authority' within the meaning of Sec. 2 (h) of the Act .
- xii) That the above contentions of the Sutlej Club, Ludhiana regarding no control of the Government are even supported by the Judgement of Hon'ble Supreme Court in Thalappalam Service Co-op. Bank Ltd's case, as for the purpose of Act , the Hon'ble Supreme Court has given the meaning of the expression "controlled " and has ruled to the effect that the control by the appropriate government must be a control of substantial nature and that the mere 'supervision' or 'regulation' as such by a statute or otherwise of a body would not make that body a "public authority" within the meaning of Section 2(h) (d) (i) of the Act . The Hon'ble Supreme Court has further held that :
- " ..... the control of the body by the appropriate government would also be substantial and not merely supervisory or regulatory. Powers exercised by the Registrar of Cooperative Societies and other under the Cooperative Societies Act are only regulatory or supervisory in nature, which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled. Management and control are statutorily conferred on Management Committee or the Board of Directors of the Society by the respective Cooperative Societies Act and not on the authorities under the Co-operative Societies Act ...."*
- and that :
- " ..... We are, therefore, of the view that the word "controlled" used in Section 2 (h) (d) (i) of the Act has to be understood in the context in which it has been used vis-à-vis a body owned or substantially financed by the appropriate government, that is the control of the body is of such a degree which amounts to substantial control over the management*

*and affairs of the body ...."*

- xiii) That in the context of control of the Government and of the Deputy Commissioner, Ludhiana, being president of the Sutlej Club, Ludhiana in Ex-officio capacity, it is also submitted that the case of the Sutlej Club cannot be equated with the cases of the other co-operative organisations, in which the Civil Service Officers of the State are appointed as the Managing Director/Director in capacity as Government Officers by order of the State Government and in the official capacity of Civil Service Officers. But in the case of the Sutlej Club, Ludhiana, the Deputy Commissioner becomes the ex-officio President purely in his private and individual capacity and is not posted as President of the Sutlej Club by the order of State Government or in his official capacity of Indian Administrative Service Officer.
- xiv) That the Sutlej Club, Ludhiana is a society registered under the Societies Registration Act, 1860 and even as per the Thalappalam's Judgement, a society registered under the Societies Registration Act does not mean that the Government is having control over it for the purpose of Act .
- xv) That actually the State Government does not have any control over the Sutlej Club, Ludhiana, as the societies are required to be registered under the Societies Registration Act, only for the purpose of regulating the formation/creation of the Societies and their registration within the frame of law and not for the objective of the control by the State Government. Moreover, The Societies Registration Act, 1860 does not intend or provide for any control by the State Government over the affairs of the societies registered under the said act. Therefore, the Sutlej Club, Ludhiana cannot be treated as a Public Authority under the Act .
- xvi) That moreover, it is the settled law that just the by virtue of registration under the Societies Registration Act, a registered society cannot be termed as a Public Authority under the Act . It is worth mentioning that even the earlier Bench of this Commission had held the Sutlej Club, Ludhiana as Public Authority on the ground of land having been provided by the Government, but not on the ground of it being a society registered under the Societies Registration Act.
- xvii) That vide the Order dated 08.07.2010, this Commission wrongly held the Sutlej Club to be a 'Public Authority' within the meaning of Section 2 (h) of the Act, mainly because the Sutlej Club is functioning on the

Government Land. But the providing of the then vary low valued land decades back by the then Government, being Welfare State, has been wrongly and arbitrarily interpreted by this as the implied 'substantial funding' from the Government.

- xviii) That as per the land revenue records, the land on which Sutlej Club, Ludhiana, is presently functioning, is shown to be owned by the Provincial Government. The copy of the relevant 'Indraj Jamabandi' for the year 2005-06 was submitted to this Commission during the proceedings. It is submitted that actually earlier the Sutlej Club was functioning from the premises, where later the Guru Nanak Stadium, Ludhiana, was constructed by the Government. around the year 1973 and the Sutlej Club, Ludhiana, was given the alternative land by the then State Government, being the welfare State, where the Sutlej Club is presently functioning since around the year 1973. The official residence of the Deputy Commissioner, Ludhiana, is a compound adjoining the land under lawful possession of Sutlej Club .
- xix) That this Commission had earlier treated the providing of land by the then Government as indirect funding by making the observations that the cost of providing prime land for the Sutlej Club, would be much more than its normal revenue expenditure. It is submitted that the land was initially provided by the then Government during British Regime to the Sutlej Club more than around 60 years back. Over the time the Sutlej Club was shifted to different premises and then around year 1973. When the Sutlej Club was established and when the Sutlej Club was shifted to the present premises many decades back, then at those points of time the market value of the land was not high, but over a period of around 6 decades, since the establishing of the Sutlej Club, if the value of real estate has now become substantially high as per present market value, then nether it is fault of Sutlej Club, nor it had been the intention of the then State Government to substantially fund the Sutlej Club. Therefore, this Commission had earlier erred while holding the Sutlej Club as Public Authority under the Act.
- xx) That as the meaning of the term "*substantially financed*" has not been defined in the Act, therefore, in the said Judgement in Thalappalam's, the Hon'ble Supreme Court has given the meaning of "*substantially financed*" and has held that "substantial" means "in a substantial manner so as to be "substantial" and that the legislature has used the expression "*substantially financed*" in Sec. 2(h) (d) (i) & (ii) indicating

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that the degree of financing must be to a substantial extent, non moderate, ordinary, tolerable etc. The Hon'ble Supreme Court has further held that 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.

- xxi) That therefore, It is submitted that while providing the then very low valued land to the Sotlej Club many decades back, it was not the intention of the then State Government to provide the '*substantial funding*' to the Sotlej Club . Instead, the intention and objective of the Government, being the welfare State, was to facilitate the Social, Physical and Cultural activities for the healthy growth of the people and to provide the space, platform, privilege and facility of land to the Sotlej Club for the same objectives and it cannot be interpreted as the implied '*substantial funding*' for the purpose of the Act. Therefore, this Commission had earlier totally ignored the above aspects and ignored the intention and objective of the welfare Government and wrongly interpreted the providing of land by the Government as indirect '*substantial funding*'. That on behalf of the Sotlej Club, Ludhiana, the letters dated 05.03.2015 (Annexures R/A and R/B) and thereafter, even the reminders dated 13.04.2015 ( Annexures R/C & R/D ) were sent to the offices of the SDM (East), Ludhiana and to the Commissioner, Municipal Corporation, Ludhiana, respectively, with the requests to provide the copies of relevant records pertaining to providing of land/premises by the Government/Municipal Corporation to the Sotlej Club, Ludhiana and about any financial assistance granted directly or indirectly by the Government to Sotlej Club, Ludhiana from time to time. But the replies/documents in respect of the said aspects have not been supplied till date by the said offices to the Sotlej Club, Ludhiana and are still awaited, as the same pertain to very old records and in due course, it would become clear as to whether the same are traceable or not at the said offices.

- xxii) That Commission may also take into consideration the important aspect that in the Thalappalam's Judgement, the Hon'ble Supreme Court has given the meaning of "*substantially financed* " in reference to and by dealing with only the direct and indirect monetary funding / financing by the Government. it is submitted that in the said Judgement, while given the meaning of "*substantially financed*" the Hon'ble Supreme Court has not dealt with the aspect of providing the land by the Government many decades back to the institution/organisation, which is the case of Sutlej Club, Ludhiana. It is important to mention that apart from providing of land, there is no financial aid from the Government to the Sutlej Club . Therefore, even the said Judgement of the Hon'ble Supreme Court cannot be interpreted to mean that providing of land by the Government many decades back to the Sutlej Club amounts to *substantial financing* for the purpose of Sec. 2 (h) of the Act .
- xxiii) That It amounts to providing the privilege and facility of land to the Sutlej Club with the intention to facilitate the Social, Physical and Cultural activities for the healthy growth of the people and therefore, it cannot be interpreted as the implied '*substantial funding*' for the purpose of the Act .
- xxiv) That also, the Hon'ble Supreme Court has held to the effect that such privileges etc., as such, cannot be said to be providing funding to a substantial extent and that the State may also float many schemes generally for the betterment and welfare of the cooperative sector, 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.
- xxv) That therefore, in view of all the above, the interest of justice and the interpretation of the said Judgement of the Hon'ble Supreme Court call for not declaring the Sutlej Club, Ludhiana as the Public Authority under the Act .
- xxvi) That the low valued land had been provided to the Sutlej Club by the then State Government and at that point of time, the Act was not in existent and therefore, if the Sutlej Club is now held to be the Public Authority under the Act due to the said land having been provided by the Government then it would practically amount to the retrospective application of the Act , 2005. Therefore, from this angle also, the Sutlej

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Club, Ludhiana, deserves to be not declared as the Public Authority under the Act .

xxvii) That from an another angle also, if the interpretation earlier taken by this Commission is accepted as correct for a while, then any financially rich and successful organisation/body even entirely private, functioning upon the Government land/premises since long back, when the value of the properties was meager in comparison to its market value today, would become the 'Public Authority' and which cannot be the objective or the intent of the Act. Therefore, the said interpretation earlier taken by this Commission, if accepted to be correct would rather set wrong precedent and the persons with oblique motives would be enabled under the garb of Right to Information Act, to unduly harass the managements of private institutions/organizations functioning upon the Government land/ premises.

xxviii) That during the earlier proceedings before Commission, the complainant even made vague allegations in his written submissions dated 08.03.2010 to the effect that the Government allegedly gave financial assistance of Rs. 1.5 Lacs to the Sutlej Club for construction of the building in year 1971-72. Further, just on the basis of said vague, allegations of the complainant, this Commission through its wrong Order dated 08.07.2010, had given wrong and factually incorrect findings as under :

*".....It has also come on record that certain funds were provided for the initial construction of this Sutlej Club by the State....."*

And

*"..... Apart from providing the land free of cost for construction of the Sutlej Club building, the government has also incurred a part of expenditure on the construction the Sutlej Club . This militates strongly against the Respondent Sutlej Club being a purely private body...."*

xxix) That even when the factual position had been revealed on behalf of the Sutlej Club, then the same was not appreciated and rather, had been ignored by this Commission.

xxx) That it had been clarified on behalf of the Sutlej Club through its reply/written submissions before this Commission that actually the said amount of Rs. 1.5 Lacs was not given to the Sutlej Club by the Government but the same was given as a loan to the Sutlej Club by Guru Nanak Foundation Trust in year 1973 and the same was returned along with the interest by the Sutlej Club in 1996-97 through Cheque No. 431885 dated 17.06.1996 for Rs. 7,71,000 /- only. The relevant part of the minutes of Executive Committee



Meeting dated 29.09.1997, the copy of which was submitted to this Commission and showing the return of the said amount with interest by the Sutlej Club, is reproduced as under :

“.....Sh. Rakshit Khosla, Treasurer informed that there are some objections raised by the Auditors M/s Gupta Sanjeev & Company, on the balance sheet for the year 1996-97. The objections were discussed and decided as follows :

i) an amount of Rs. 7.71 Las paid to Shri Guru Nanak Quaint Centenary Celebration Committee as passed by the Executive Committee in its meeting held on 13-6-96 was debited to the building account whereas the amount should be debited to Sri Guru Nanak Quaint Centenary Celebration Committee.....”

xxxi) That therefore, the factually incorrect position, about the alleged

funding from the Government for the construction, had been wrongly interpreted by this Commission as the implied substantial funding by the Government. Resultantly, the Sutlej Club was wrongly held as a Public Authority within the meaning of Sec. 2 (h) of the Act .

xxxii) That earlier Bench had not properly applied mind to the aspect that

Sutlej Club is even duly paying the House Tax to the Municipal Corporation, Ludhiana. Further, even the Electricity connection and Water connection of the Sutlej Club in its premises are in name of the Sutlej Club /Secretary, Sutlej Club and the Sutlej Club is not having even the said services for free from the Government.

xxxiii) That the earlier order, dated 08.07.2010 of Commission, is even in

total self-contradiction, as this same Commission itself, vide an earlier Order dated 06.12.2007 passed in an earlier case, C. C. No. 1160 of 2007, had correctly held that the same Sutlej Club, Ludhiana, is not a Public Authority within meaning of the Act and the relevant part of the same Order is reproduced as under :

*”.....that the Sutlej Club does not satisfy any of the necessary ingredients of a Public Authority as defined under Section 2 ( h) of the Act , 2005. In view of this, the Sutlej Club, Ludhiana is not within the purview of the Act and hence, it is not bound to divulge any information pursuant to an application made under the Act .... ”*

xxxiv) That therefore, when the Commission had already given the findings

in the said earlier case to the effect that the Sutlej Club is not the Public Authority within the meaning of Sec. 2 (h) of the Act , then the self-contradictory order dated 08.07.2010 passed by the same

Commission, is wrong and deserves to be corrected by the present Larger Bench of this Commission.

xxxv) That in view of above grounds, the order dated 08.07.2010, holding the Sutlej Club, Ludhiana as the Public Authority deserved to be corrected and reversed by holding the Sutlej Club, Ludhiana not to be a Public Authority under the Act and the complaint deserves to be dismissed, otherwise it may lead to miscarriage of justice.

36. Therefore, it is prayed that the present complaint be kindly dismissed/ closed without imposing any penalty or compensation on any official of the Sutlej Club, Ludhiana and the earlier well reasoned Order dated 29.06.2011 passed by this Commission, whereby the complaint was closed without imposing any penalty or compensation, be kindly maintained / reaffirmed, in the interest of justice.

37. In his arguments, Sh. Chana claimed that the Sutlej Club, Ludhiana, was started as an Officers' Sutlej Club, during the British Regime with its Deputy Commissioner as its permanent President in his "Ex-officio" capacity.

38. He added that following two factors of the constitution of the Sutlej Club are basic structure and unalterable. These read as :

"Further, as per the Rule 4 (c) of the Sutlej Club, Constitution and Bye Laws 1996", the Sutlej Club President (Deputy Commissioner) in ex-officio capacity and ex-President, who remained in the office for at least six months, shall always be honorary member and shall not be liable to pay any admission fee, annual or monthly subscription or any other fee." Thus, it is evident that the Deputy Commissioner of Ludhiana is an ex-officio President in the capacity of being public authority as enunciated in section 2 (h) of Act."

39. The word 'Ex-Officio' as per the Oxford Advanced Learner's Dictionary of current English means, "Because of one's office or position". The Concise Oxford dictionary also describes the meaning of "Ex-Officio" as "In virtue of one's office".

40. That, the President of the Sutlej Club enjoys vast powers under the Constitution of the Sutlej Club . The President can admit or refuse to admit any member, without assigning any reason (Rule 6 refers). Further, the President has absolute powers to suspend or remove any member of the Sutlej Club (Rule 19 refers). The Deputy Commissioner in ex-officio capacity is President of the Executive Committee [EC] (Rule 24 refers). He nominates 5 officers, posted in Ludhiana in the Executive Committee. President along with 5 nominated members can form quorum. The Deputy Commissioner as President has full powers of the Executive Committee and the General Body. Further, in an extraordinary situation, all orders passed by the President (Deputy Commissioner) in the Sutlej Club interest shall be valid and he shall exercise all powers of Executive Committee and General

Body (Rule 36 refers). Thus, the President is fully authorized to take independent decision in the day to day functioning of the Sutelj Club . Hence, it can be inferred that such sweeping and blanket powers of the President are 'Semi-jurist' in its meaning and contents. Such powers can only be conferred by the Officer's Sutelj Club on its President. Hence, it is evident that the President of the Sutelj Club cannot exercise these powers in its private capacity.

41. That the Sutelj Club is still popularly known as Officer's Sutelj Club . The Constitution of the Sutelj Club provides, for a distinct category for Officer members and charges almost 25% by of the admission fee charged from the "General Category" (Refer Rule 9). Management of the Sutelj Club is controlled by Government Officers (PCS & IAS) headed by the D. C. and 5 officers nominated by him.

42. That whenever the member wants to meet the President, they are called for a meeting either in D. C.'s office or his camp office.

43. That in all communications from the Sutelj Club, D. C.'s name is suffixed by President cum D. C. The Monthly newsletter issued by the Cub in June 2011 carries the President's message under the name Mr. Rahul Tiwari IAS, President cum-Deputy Commissioner (Annexure P-1). Similarly in the minutes of AGM and meetings of the Executive Committee, the name of D. C. is followed by President cum Deputy Commissioner (Annexure P-2).

44. All the new facilities or constructed rooms are only inaugurated by the D.C. The facts given in foregoing paragraphs show that the Deputy Commissioner, Ludhiana is a President of the Sutelj Club by virtue of his official post and not purely in his private, personal and individual capacity as alleged by the respondent. In that case, he would be required to pay the fee and other charges for availing the services of Sutelj Club as is being done by other officers enrolled as "Officer members ".

45. Most of the general category members were admitted to raise funds for construction of super structure. During April 2003, the then President suspended the General Secretary of the Sutelj Club and there was great resentment amongst general category members. In a press statement appearing in Ludhiana News Live, INDIAN EXPRESS Dated 23.04.2003 [Annexure P-3], D.C Ludhiana stated that "The Sutelj Club is basically an officers' Sutelj Club which opened its membership to the private persons only a few years ago, since officers did not have enough time or human resource to run by officers, they are free to take back their membership fee, after deduction of certain amount of fee for the number of years they have enjoyed the service of the Sutelj Club ." When the land belongs to the Government the Sutelj Club cannot be a private properly nor it is being managed privately as contended by the respondent.

46. That the respondent vide his affidavit dated 27.10.2010 submitted in the High Court has admitted that the Sutelj Club is occupying the land given by the State Government free of any charges. In the written submissions made by the General Secretary of

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the Sutlej Club on 23.03.2010, before the Information Commission, he has admitted that, "The Sutlej Club is located over huge area next to D.C.'s residence. Of course the value of the land, where the Sutlej Club is situated is quite high". The land revenue record submitted by the revenue officials from D. C., Ludhiana's office during the earlier hearing of the complaint, confirms that the said land is owned by the State Government and is in possession of the Ludhiana Municipal Corporation. The present market value of the prime land is more than Rs. 200 Crores as supported by the price obtained by the PUDA in the open auction of similar land in the contiguous area (P-4). This is a very substantial contribution as compared to the annual income of the Sutlej Club which is less than a Crore. But for this prime land it is highly doubtful if the Sutlej Club would have been in a position to attain the premier status it is enjoying in the Northern region.

47. That the financial support from Punjab Government is much more when one considers the notional lease rent for the extensive and large chunk of Government land the Sutlej Club is occupying, which the Sutlej Club would have paid during the last 40 years, had the land not been given free of any charge.

48. That the financial support is still continuing to the Sutlej Club in form of monthly rent of several lakhs of rupees, which Sutlej Club is not paying because of "free land" provided by the Government.

49. That the respondent in affidavit also stated that Guru Nanak Foundation Trust (GNFT) might have given a loan of Rs.1.5 Lacs to the Sutlej Club on 01.07.1973. In the same breath he claims that the loan amount was paid back with interest by the Sutlej Club vide Cheque No. 431885 dated 17.06.1996 for Rs.7.71 Lacs to Sri Guru Nanak Quaint Centenary Celebration Committee (GNDQCC). How the loan taken from the GNFT could be paid back to GNDQCC. There is no mention of loan in the EC minutes dated 29 September 1997. There is no mention of loan in the "Executive Committee" minutes dated 29.09.1997. Moreover the respondent has not produced any documentary evidence to substantiate his so called loan claim and the existence of GNFT in the year 1973.

50. That the factual position is well known to the old members of the Sutlej Club . In the year 1969, in connection with Guru Nanak Quaint Centenary Celebrations, some districts of the state had been given land and a sum of Rs. 5 lakhs to construct Guru Nanak Dev Bhawan by the President of India. Ludhiana was one of such districts, where the amount was given to Deputy Commissioner, Ludhiana, to execute the project. However, the land allotted for the purpose was utilized to construct "Circuit House". As the amount was lying unused, the then Deputy commissioner allocated Rs 1.5 lacs for the construction of essential structure for the Sutlej Club.

51. Thus, it is evident that the money lying with the then Deputy Commissioner, Ludhiana, who was president of the Centenary Celebration Committee as well as of the Sutlej Club, Ludhiana, had allocated the government funds for construction of

essential super structure for the Sutlej Club . It is pertinent to mention that in the nineteen nineties , the then Deputy Commissioner, Ludhiana had started tracing the funds to construct Guru Nanak Bhawan at an alternative site given for the purpose, adjoining the Punjabi Bhawan. It is because of this reason that the President of Sutlej Club as well as Guru Nanak Centenary Celebration Committee was compelled to return the money and make good the original fund of Rs. 5 lakhs. This is supported by the documentary evidence. A photocopy of the brochure produced by Guru Nanak Dev Bhawan Committee is enclosed as Annexure P-5. The said committee was constituted during 1996 by the D. C., when prominent citizen's pressurised him for the construction of Guru Nanak Dev Bhawan for which the President of India had given Rs.5 Lacs to the D. C. in the year 1969. It is stated in the first page of the brochure that "The eminent people from the Society have come together for the first time to form this society." In the last page, while making an appeal for donations, the said committee had stated that " All donations made to the Guru Nanak Dev Quaternary Celebration Committee will qualify for exemption U/S 80 G of the Income Tax Act 1961 in the hands of the donors." D. C. Ludhiana was the President and S. D. M. (West) was Secretary of the Committee, to whom the donations were to be sent.

52. That the facts given above clearly show that the GNDQCC was formed for the first time when the D.C. was pressed for the construction of the Bhawan. Because he had no hold over the other organisations to whom the balance amount of Rs.3.5 (5-1.5) lacs was given by the then D. C. Being in full control of the management of Sutlej Club as its President, he prevailed upon the Sutlej Club to make good Rs.5 Lacs, the D.C. had received from the Government of India. By then the Sutlej Club had generated sufficient funds by enrolling 'general category 'members'. Thus Rs.7.71 was paid by the Sutlej Club to GNDQCC. Needless to add that though the amount involved was meager as compared to the value of land, had the D. C. not given Rs.1.5 Lacs to the Sutlej Club, out of Rs.5 Lacs, received from the Government of India, it would have been difficult for the Sutlej Club to build the basic Super-Structure on the land given by the Government, because the Sutlej Club had no resources to undertake the construction.

53. That the Respondent has tried to confuse the issue by misinterpretation of Section 2(h) (d) (i), (ii) of Act . Sub clause (i) and (ii) require independent interpretation and not as an off shoot of section 2(h) (d), as claimed by the Respondent. The Sub clause (ii) has been added to cover other institutions/ organizations which are controlled and/or directly or indirectly financed by the Government There are numerous such organizations in different states, which are not covered by any notification or order of the government but are financed by the government. Hence, this is an enabling provision in the rule to cover such cases. For example, Chandigarh Sutlej Club was recently declared Public Authority by the Central Information

Commission vide orders dated 21.01.2011 in Case No. CIC/LS/2010/01184, because it is paying lease rent to the administration for Government Land, it is occupying, at a much lower rate than the market rent.-Sutlej Club is managed by an elected Executive Committee which has no Government Official. Single Bench of Hon'ble High Court, while delivering the Judgement dated 09.05.2011 in case C.W.P. 16750 of 2010, has also examined this provision in the Act at length and has concluded that these two sub-clauses bring an independent and additional category of "Public Authority" within the Act.

54. That the order dated 6th December 2007 in case C. C. 1160 of 2007 issued by this Commission was the result of incomplete information given by the complainant. He failed to provide complete facts before the Information Commissioner especially the use of extensive Government land by the Sutlej Club, as has been highlighted by the complainant in the earlier submission made before the Commission in case 475 of 2010. However, the Full Bench of the commission, in which the Commissioner, who passed the order dated 06th December 2007, was one of the members, announced the verdict dated 08 July 2010 in CC No: 475 of 2010, that the Sutlej Club is "Public Authority" after thorough examination of all the facts.

55. That the parameters of Jalandhar Gymkhana society are vastly different as compared to the Sutlej Club. Unlike the Sutlej Club the former, as per its constitution, is managed by executive committee, elected by the general body. The Commissioners and the Deputy Commissioners Jalandhar become ex-officio president and vice president respectively, if they are members of the Sutlej Club. In the absence of President and VP, one of the members of the Executive Committee chairs the meetings of the Gymkhana Society. The society pays the rent at nominal rates for the government land, it is occupying.

56. That the Full Bench of this Commission has concluded that the Sutlej Club (Regd.), Ludhiana is "Public Authority" under the Act 2005 vide its order dated 08.07.2010. The Sutlej Club filed first appeal vide C.W.P. 16750 of 2010 and the second appeal vide LPA 1299 of 2011. In spite of repeated requests made by the Sutlej Club, Hon'ble High Court refused to grant any stay of the order dated 08.07.2010. The Sutlej Club has failed to appoint PIO and the first Appellate Authority as required under the Act 2005 till today.

57. Lastly it is brought to notice of the Commission that the Complainant has no personal stake in the case. He had to file this complaint, when the management stubbornly refused to divulge the findings of the inquiry committee in to the huge expenditure of over Rs. 42 lakhs on the New Year eve function held on 31.12.2001, (Annexure P- 6). In the AGM held during 2002, majority of members raised objections for incurring such expenditure and wanted an inquiry. After detailed examination of the records, the committee found serious irregularities in the disbursement of various bills/claims.

58. Unfortunately, the management in order to keep the members in the dark has been spending recklessly by hiring senior advocate for defending itself being declared as

"Public Authority" at the cost of the members.

59. The complainant took up this case in the larger public interest. Unwittingly, he has been entrapped in a prolonged litigation at a substantial financial and mental cost.

60. After hearing the parties concerned at length and examining the replies/submission made before the Commission, it emerges that the constitution of the respondent-Sutlej Club is covered by "Constitution and Bye Laws" of Sutlej Club (Registered), Rakh Bagh, Civil Lines, Ludhiana.

61. A perusal of the Constitution and Byelaws, which was placed on record, shows that the respondent Sutlej Club is a registered Sutlej Club with objective to promote and to encourage society, cultural and intellectual activities among the members, apart from providing the facilities for games etc. Membership of the Sutlej Club is open to both ladies/gentlemen by the age of twenty five years, subject to their possessing minimum education qualification of graduation.

62. There are different categories of members such as general category, honorary members, officer members i.e. persons working as class-I officers in the State and Central Government, professional members such as doctors and engineers members and corporate members etc.

63. There is special provision for enrolling members of Executive Committee from amongst the class-I officers of the Central or State Government working and posted in Ludhiana and general members nominated by the present Deputy Commission.

64. It is relevant to note that there is a prescribed application form as mentioned under Rule 5 of Constitution and Bye Laws of the Sutlej Club, in which a person, desirous of membership, must apply.

65. The president of the Sutlej Club under Rule 5 has to give specific approval and pass a specific order, before an application form can be issued to any person. This authority of the President is absolute and no guidelines have been laid down by Sutlej Club management in the Bye Laws to regulate his discretion.

66. Though there is a screening Committee to process the applications received from fresh memberships, the President has under Rule 6 of "absolute powers" to admit or refuse to admit any application of any category without assigning any reason. "Unless, the president gives his approval, no person can be admitted as member of the Sutlej Club".

67. The Rule 6 states that the President has the powers to admit or refuse to admit any application of any category without assigning any reason.

68. It is relevant to note that though the rules notified by the Sutlej Club laid down the quantum of admission, registration, fee, these rules give absolute powers to the President or the Executive Committee to redetermine the fee structure.

69. Even the temporary member of the Sutlej Club is not able to attain the status of permanent member without the 'expressed approval' of the President of the Sutlej Club . Hence, the President has a power to admit or refuse to admit any applicant of any category for any kind of membership without assigning any reason.

70. Rule 9 of the Constitution and Bye Laws of the Sutlej Club empowers the President to charge any extra amount, in addition to the prescribed fee, from any applicant at the time of giving temporary/permanent membership.

71. Rule 9 reads as "the President may in the interest of Sutlej Club be able to charge any extra amount at the time of temporary/permanent membership over and above the prevailing admission fee".

72. Under Rule 13, the members are liable to pay surcharge of ten percent over their monthly subscription and other dues, if they failed to pay the same on any month by the 15<sup>th</sup> by the following month. However, under the same rule, President has been empowered to waive off that surcharge up to any amount. "The decision of the President shall be final and irrevocable".

73. Under Rule 19, the President can suspend or remove any member of the Sutlej Club from the membership on nine grounds, mentioned in the Bye Laws of the Sutlej Club . This kind of power is enjoyed by Executive Committee, apart from the President, under the same rule.

74. The Sutlej Club has an Executive Committee. However, the composition of the Committee is governed under Rule 24. In this rule, it is clearly mentioned that Deputy Commissioner, Ludhiana, shall always be President in his ex-officio capacity.

75. That five members of the Executive Committee shall be nominated by the President from the Class – 1 Gazetted Officers, belonging to the State and Central Governments. Out of these five officers nominated as members of the Executive Committee by the President, four members must be serving officers. This Rule heavily vests discretionary authority with the President. One retired Class - 1 officer is a member of the Sutlej Club will also be nominated on the Executive Committee.

76. Under the Rule 25, it has also been made clear that General Secretary of the Sutlej Club could call a meeting of the Executive Committee under orders of the President only.

77. Under Rule 27, it is clearly mentioned that in the absence of a regular Executive Committee, due to resignation of the members or removal of the Executive Committee and till general elections, the President is empowered to nominate the Executive Committee.

78. The President shall have full powers of the General Body under this Rule.

79. The president under Rule 19 has the authority to suspend or remove any member of the Sutlej Club from the membership under certain circumstance listed in the rules.



80. It is important to note that Deputy Commissioner of Ludhiana "shall always be the president under his/her ex-officio capacity". It naturally means that no one other than Deputy Commissioner, Ludhiana, appointed by the State Government can ever become the President of the Sutlej Club .

81. Perusal of the Constitution of Sutlej Club shows that the Deputy Commissioner, who is a government official, enjoys "supreme position" in the day to day management and running of the Sutlej Club . Many of his powers are "absolute and not curtailed" by the bye laws. His role is not merely of a supervisory and regulatory but of a real "Functional Executive Committee". Besides, the Deputy Commission-cum-President, apart from nominating 5 members on the Executive Committee from serving class-1 gazetted officers of the State or Central government, can "dictate" his 'Will' when he use his casting vote under Rule 25.

82. If a member of the Executive Committee fails to attend three consecutive meetings of the Executive Committee, without prior permission, he shall be dropped and the vacancy caused shall be filled by nomination by the President.

83. Under Rule 36 of the Bye laws, in an extraordinary situation, all orders passed by the President (Deputy Commissioner) in the Sutlej Club interest shall be valid and he shall exercise all powers of Executive Committee and General Body.

84. Apart from above, another important aspect, which deserves cognizance by this Bench, is related with the fact that in the Preface of the Constitution and Bye Laws of Sutlej Club, Ludhiana, 1996, Sh. A. Venu. Prasad, the then Chairman, Constitution Amendment Committee, Sutlej Club, Ludhiana, mentioned that Sutlej Club, Ludhiana, was started as Officer's Sutlej Club during the British regime with the Deputy Commissioner as permanent President in its ex-officio capacity. He has also mentioned categorically that these two features of the constitution of the Sutlej Club, Ludhiana, are basic features and therefore, remain strictly unalterable.

85. The respondent has pleaded that the Deputy Commissioner, Ludhiana, is the President of the Sutlej Club purely in his personal, private and individual capacity not in his government official capacity. It was argued that the person occupying the post of Deputy Commission becomes the ex-officio President as a private individual in a private capacity and not in his government official capacity. Government has no powers, authority or control in the functioning or management of the Sutlej Club which is especially a private body. The Deputy Commissioner cannot access the information about the affairs of the Sutlej Club and the duties performed by the Deputy Commissioner are not in an official capacity. It was argued that State Government has no role to play and there is nothing wrong and unlawful if a person, otherwise who is a government functionary, becomes a member or office bearer of the Sutlej Club or Society. The fact that the President or some of the government officers are on the Executive Committee does not mean that the Sutlej Club is controlled by the Government.

The Hon'ble Supreme Court in Thalappalam Service Cooperative Bank Ltd.& ... vs. State of Kerala & Ors case, held that the control of the appropriate government must be a control of substantial nature which is not case so in the case of the respondent Sutlej Club.

86. Here, it is relevant to reproduce the following observations of the Hon'ble Supreme Court in Thalappalam's Judgement.

Para 34 of the Judgement reads as :

*"We are of the opinion that when we test the meaning of expression "controlled" which figures in between the words "body owned" and "substantially financed", the control by the appropriate government must be a control of a substantial nature. The mere 'supervision' or 'regulation' as such by a statute or otherwise of a body would not make that body a "public authority" within the meaning of Section 2 (h )(d )(i) of the Act . In other words just like a body owned or body substantially financed by the appropriate government, the control of the body by the appropriate government would also be substantial and not merely supervisory or regulatory. Powers exercised by the Registrar of Cooperative Societies and others under the Cooperative Societies Act are only regulatory or supervisory in nature, which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled. Management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Cooperative Societies Act and not on the authorities under the Co-operative Societies Act.*

Para 35 of that Judgement reads as :

*"We are, therefore, of the view that the word "controlled" used in Section 2(h)(d)(i) of the Act has to be understood in the context in which it has been used vis-à-vis a body owned or substantially financed by the appropriate government, that is the control of the body is of such a degree which amounts to substantial control over the management and affairs of the body.*

Para 36 of Judgement reads as :

*"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.*

Para 37 reads as :

*“ 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 (6<sup>th</sup> 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 (5<sup>th</sup> 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.*

87. From the rules of the Bye Laws discussed in the preceding paragraphs, it is obvious that the Deputy Commissioner in an ex-officio capacity virtually runs and manages the affairs of the respondent Sutlej Club. His functional powers and authorities are “substantial and over powering”. It would be erroneous to state that Deputy Commissioner is President in his personal and private capacity. He/she is President only by virtue of holding the office/post of the Deputy Commissioner, a position, which is solely dependent on the appointment orders issued by the State Government.

88. “We are therefore inclined to hold that the control of the Deputy Commissioner, Ludhiana, over the affairs of the Sutlej Club is substantial. Being a government servant, his conduct is subject to government directions/orders and his decision even relating to the Sutlej Club cannot be in his personal or private capacity”.

89. Moreover, the Black' Law Dictionary says Ex officio means “From office ; by virtue of the office ; without any other warrant or appointment than that resulting from the

holding of a particular office. Powers may be exercised by an officer, which are not specifically conferred upon him but are necessarily implied in his office and the Free legal Dictionary describes Ex officio as "By virtue of the characteristics inherent in the holding of a particular office without the need of specific authorization or appointment.

90. The word 'Ex-Officio' as per the Oxford Advanced Learner's Dictionary of current English means, "Because of one's office or position". The Concise Oxford dictionary also describes the meaning of "Ex-Officio" as "In virtue of one's office".

91. In addition to the substantial control of the Deputy Commissioner (holding the post of president of the Sutlej Club in ex officio capacity) over the management of the Sutlej Club by virtue of having vast and unregulated powers given to him under the Constitution and Bye Laws of the Sutlej Club, the Deputy Commissioner also gets support to have 'complete control' over the functioning of the Sutlej Club as he is authorised to nominate five members (from the class 1 gazetted officers), who can form the quorum of the Executive Committee of the Sutlej Club as it is mentioned in the Constitution and Bye Laws that five members will form the quorum of the Executive Committee. Hence, the degree of control over the Sutlej Club by the government functionaries is "absolute, deep and significant."

92. The Para 38 of Thalappalam's Judgement is required to be reproduced below as it is relevant to do so at this stage.

The observation of Apex Court in para 38 is reproduced below:-

*"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). Furthermore the burden to show that a body is owned, controlled or substantially financed or that non-government organization is substantially."*

93. Further the para 40 of the Judgement directs that the burden to show that a body is owned, controlled or substantially financed or that a non-government organization is substantially financed directly or indirectly by the funds provided by the appropriate Government is on the applicant who seeks information or the appropriate Government and can

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be examined by the State Information Commission or the Central Information Commission as the case may be, when the question comes up for consideration. A body or NGO is also free to establish that it is not owned, controlled or substantially financed directly or indirectly by the appropriate Government.

94. The Hon'ble Supreme Court has held that the powers has been conferred on the Information Commission under Section 18 of the Right to Information Act, 2005 to enquire into any complaint received from any person and to the reason for the refusal to access to any information requested from a body owned, controlled or substantially financed or a non-government organization substantially financed directly or indirectly by funds provided by the appropriate Government.

95. In view of the abovementioned observations of Apex Court in para 38 and 40 in Thalappalam's Judgement, the matter regarding the status of Sutlej Club, of course, is to be determined by the Commission.

96. Section 2(h) (d) of the Act , 2005, defines a public authority to mean a body or institution established by notification issued or order made by the appropriate government and includes :

- (i) anybody owned or controlled or specially finance
- (ii) Non-government organization substantially financed directly or indirectly by funds provided by the appropriate government.

97. Flow of funds to non-government organization has to be substantial. These funds may come "directly or indirectly" by funds provided by the appropriate government. Funds may be in kind, they may come directly from the State treasury or through the various arms of the government including its instrumentalities within the meaning of Article 12 of the Constitution of India.

98. From the definition of Public Authority given under Section 2 (h), it is clear that public authority has been given very wide meaning in the act. The public authority has been defined by bringing in its ambit various Constitutional bodies, Statutory bodies or notified bodies covering not only Government owned, Controlled or Substantially financed bodies but also Non-Government Originations, substantially financed by the Government, may be directly or indirectly.

99. The definition of the public authority makes it clear that it incorporate two sets of organisations, which come under the ambit of Right to Information Act.

100. In the first set, those organisations, which are constituted/created by way of any enactment of the Legislature or by notification of the Executive, fall under the ambit of Act.

101. In the second set, all authorities, which are not instrumentality of any Government organisation, but owe their existence to the funds received directly or indirectly from the Government, come under the ambit of public authority.

102. From the above, it has become clear that a body, institution or an organisation, which is neither a State within the meaning of Article 12 of the Constitution or instrumentalities, can still fit into the definition of public authority under section 2 (h) d (i) of (ii) of the Act.

103. The Right to information Act apply to the organisations that come under the ambit and definition of the term of public authority.

104. In fact, the definition of the public authority is wider than the scope of term State as defined in article 12 of the constitution of India.

105. In the case of Sutlej Club, it has become crystal clear, by all accounts, that a piece of land, located in prime area in the heart of city, which is worth to the tune of the crores of rupees, was given to Sutlej Club 'free of cost' without putting any counter obligation on the Sutlej Club Management in lieu of that.

106. The prime and expensive piece of land, given to the Sutlej Club by the government, is nothing but the capital/substantial funding required for kick starting the Sutlej Club and this funding was so substantial to the Sutlej Club which practically runs by such funding and but for such funding, it would struggle to exist.

107. As no or notional rent/lease money is paid by the Sutlej Club management to the government, it further shows that financial assistance, being given to the Sutlej Club by the government, is recurring.

108. To further elaborate the issue, it is needed to mention here that the Hon'ble Supreme Court has recognised that the right to information is a fundamental right of the citizens of India under Article 19(1) of the Constitution of India. The Act has codified this fundamental right mandating that every citizen shall have the right to information, subject only to the provisions of the Act ."

109. The question, which arises for determination in the present case, is whether Sutlej Club is a 'public authority' under the Act.

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

111. From the reasons mentioned in para number 61 to 107, it is clear that Sutlej Club was established and has been in existence for more than past 60 years on the land belonging to the provincial government, given virtually free of cost to it .

112. "Could the Sutlej Club have come into existence or functioned without the facility of land given in the prime area of the city by the government concerned" is the important question, for which a clear cut answer is important and is indispensable as it is needed in this case to arrive at a conclusion as per Thalappalam's Judgement.

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113. The answer is very much clear that Sutlej Club could not have come into existence and functioned had the then government concerned not given land to it, free of cost.

114. The market value of the land, given to Sutlej Club, today is astronomical but even if we accept the plea that the value of the land should be seen at the time it was given, considering its location, it is concluded that even at that time, it must have commanded a much higher market value.

115. Given these circumstances, we have no hesitation in concluding that the respondent Sutlej Club carry 'undisputed and undeniable' elements of being a Public Authority under the Act as it has been given substantial financial assistance. Without such assistance, in the shape of a valuable piece of land free of cost and other assistances for creation of partial infrastructure by the appropriate government, the Sutlej Club could have never come into existence and it would have never been in position to carry on its activities.

116. Therefore, the Sutlej Club is a public authority within the meaning of Section 2 (h) (d) of Act .

117. Hence, in view of above, we declare Sutlej Club, Ludhiana, as Public Authority as defined under Section 2 (h) of the Act and thus the Sutlej Club comes under the ambit of the Act.

118. We also direct to President/ General Secretary, Sutlej Club, Ludhiana, to appoint Public Information Officer (PIO) and First Appellate Authority (FAA) of the Sutlej Club, within 30 days of the receipt of the order. We also direct the Sutlej Club management to implement the provisions made under Section 4 of the Act.

To come up for hearing on **September 16, 2015.**

Copies of the order be sent to the parties through registered post.

(R.S. Nagi )	(H.P.S. Mann )	(Parveen Kumar )	Chander Parkash)	(S.S. Channy)
S.I.C.	S.I.C.	S.I.C.	S.I.C	C.I.C
Punjab	Punjab	Punjab	Punjab	Punjab

**Dated :30.7.2015**

CC

PS/ Dr. S.S. Channy, Hon'ble Chief Information Commissioner  
 PS/ Hon'ble State Information Commissioner- Shri Chander Parkash,  
 PS/ Hon'ble State Information Commissioner- Shri Parveen Kumar,  
 PS/ Hon'ble State Information Commissioner- Shri Harinder Pal Singh Mann and  
 PS/ Hon'ble State Information Commissioner- Shri Ravinder Singh Nagi.