

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF NOVEMBER 2022

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE S. VISHWAJITH SHETTY

W.A. NO.900 OF 2010 (GM-RES)

BETWEEN:

BANGALORE INTERNATIONAL AIRPORT LIMITED
A COMPANY INCORPORATED UNDER THE
PROVISIONS OF THE COMPANES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
NO.118, GAYATHRI LAKEFRONT
OUTER RING ROAD, HEBBAL
BANGALORE-560024
AND REPESENTED BY ITS
HEAD - LEGAL & COMPANY
SECRETARY AND AUTHORISED
REPRESENTATIVE
SRI. A.R. RAJARAM.

HAVING ITS NEW OFFICE ADDRESS AT:
ADMINISTRATION BLOCK
BENGALURU INTERNATIONAL AIRPORT
DEVANAHALLI, BENGALURU-560300
NOW REP. BY CHIEF EXECUTIVE OFFICER
& AUTHORISED SIGNATORY
MR. MARCEL HUNGERBUEHLER.

... APPELLANT

(BY MR. K.G. RAGHAVAN, SR. COUNSEL FOR
MR. MANU KULKARNI, ADV.,)

AND:

1. KARNATAKA INFORMATION COMMISSION
REP. BY ITS AUTHORISED REPRESENTATIVE
M.S. BUILDINGS, 3RD STAGE
3RD FLOOR, DR. B.R. AMBEDKAR ROAD
BANGALORE-560001.
2. SRI. BENSON ISSAC
MAJOR, FATHERS NAME NOT KNOWN
NO.427/2, 12TH MAIN, 7TH A CROSS
YELEHANKA NEW TOWN
BANGALORE-560064.
3. THE PUBLIC INFORMATION OFFICER
KARNATAKA STATE INDUSTRIAL INVESTMENT
& DEVELOPMENT CORPORATION LIMITED
NO.49, KHANIJA BHAVAN
EAST WING, 4TH FLOOR, RACE COURSE ROAD
BANGALORE.560001.
4. STATE OF KARNATAKA
REP. BY ITS CHIEF SECRETARY
VIDHANA SOUDHA
BENGALURU-560 001.
(AMENDMENT CARRIED OUT
AS PER ORDER DTD:10.03.2020).

... RESPONDENTS

(BY MR. G.B. SHARATH GOWDA, ADV., FOR R1
MR. VIKRAM A. HUILGOL, SR. COUNSEL A/W
MS. AVANI CHOKSHI, ADV., FOR
MR. CLIFTON D'ROZARIO, ADV., FOR R2
MR. T.P. VIVEKANANDA, ADV., FOR R3
MRS. NAMITHA MAHESH B.G. AGA FOR R4)

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THIS WRIT APPEAL IS FILED U/S 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE
ORDER PASSED IN THE WRIT PETITION 12076/2008 DATED
9/2/2010.

THIS W.A. COMING ON FOR FINAL HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This intra Court appeal arises out of a judgment dated 09.02.2010 passed by the learned Single Judge by which writ petition preferred by the appellant namely Bangalore International Airport Limited (BIAL) has been dismissed and order dated 18.08.2008 passed by the Karnataka Information Commission has been upheld. In order to appreciate the grievance of the appellant, relevant facts need mention which are stated infra.

2. The BIAL is a Company incorporated under the provisions of the Companies Act, 1956 which has been incorporated with an object to develop an international airport with private sector participation at Devanahalli, Bangalore. A share holder's agreement dated 23.01.2002 has been entered into

between Karnataka State Industrial Investment and Development Corporation Ltd. (KSIIDC), Airport Authority of India (AAI), Siemens Project Ventures GmbH, Flughafen Zuerich AG. Larsen and Toubro Limited and BIAL. Under the said agreement, the management of affairs of the Company vests with the Board of Directors.

3. The respondent No.2 made an application under Section 4(1)(b) of the Right to Information Act, 2005 (hereinafter referred to as 'the Act') seeking *suo motu* declaration by the appellant as to the contents provided under Section 4(1)(b) of the Act. The BIAL sent a reply stating that it is not a public authority as defined under Section 2(h) of the Act. The respondent No.2 thereupon moved the Karnataka Information Commission (hereinafter referred to as 'the Commission'). A Full Bench of the Commission by an order dated 18.08.2008, *inter alia*, held that BIAL is a

public authority as defined under Section 2(h) of the Act and directed BIAL to furnish the information to respondent No.2 within one month.

4. The aforesaid order dated 18.08.2008 was subject matter of challenge in a writ petition. The learned Single Judge, by an order dated 09.02.2010, dismissed the writ petition. In the aforesaid factual background, this appeal arises for our consideration.

5. Learned Senior counsel for the appellant - BIAL submitted that the Supreme Court in ***THALAPPALAM SERVICE CO-OP. BANK LTD. AND ORS. Vs. STATE OF KERALA AND ORS***¹, has laid down the criteria to determine whether an authority is a public authority under Section 2(h) of the Act. It is further submitted that aforesaid question of fact has to be determined on the basis of the criteria laid down

¹ (2013) 16 SCC 82

by the Supreme Court in the aforesaid decision and therefore, the order passed by the learned Single Judge as well as the Commission be set aside and the matter be remitted to the Commission for decision afresh.

6. On the other hand, learned Senior counsel for the respondent No.2 submits that the Commission has considered all the relevant aspects and the findings of the Commission are not opposed to the aforesaid decision of the Supreme Court.

7. We have considered the submissions made on both sides and have perused the record. The Commission had passed an order on 18.08.2008. The decision of the Supreme Court in **THALAPPALAM SERVICE CO-OP. BANK LTD. AND ORS.** *supra*, is subsequent in point of time. The Supreme Court, in the aforesaid decision, *inter alia*, has laid down the

criteria for determination of an authority as public authority. The question which arises for consideration is whether BIAL is a body owned, controlled or substantially financed by the funds provided by the appropriate Government. The Supreme Court has dealt with the expression 'substantially financed' used in Section 2(h) of the Act and has held that merely providing subsidies, grants, exemptions, privileges, etc. as such cannot be said to be providing fund to a substantial extent unless the record shows that funding was so substantial to the body which practically runs by such funding but for such funding it would struggle to exist.

8. It has further been held that burden to show that a body is owned, controlled or substantially financed by the funds provided by the appropriate Government is on the applicant who seeks the information. It has further been held that categories

mentioned in Section 2(h) of the Act are exhaustive and therefore, there is no question of adopting a liberal construction to the expression 'public authority'.

9. In our considered opinion, the question whether the BIAL is a public authority within the meaning of Section 2(h) of the Act is required to be adjudicated with reference to decision of Supreme Court in **THALAPPALAM SERVICE CO-OP. BANK LTD. AND ORS. supra.** The aforesaid question requires adjudication of facts. Therefore, we are inclined to remit the matter to the Commission.

10. For the aforementioned reasons, order dated 09.02.2010 passed by the learned Single Judge as well as order dated 18.08.2008 passed by the Karnataka Information Commission are hereby set aside.

The matter is remitted to the Commission. The Commission shall decide the matter afresh within a period of three months, after affording an opportunity of hearing to the parties.

Needless to state that all contentions are kept open which may be agitated by the parties before the Commission.

Accordingly, the appeal is disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

RV