THE PUNJAB INFORMATION COMMISSION
64 Nursery Lane, Near China Chowk, Lahore, Punjab.
042-99205794

1. Abdullah Malik vs Lahore Gymkhana Club;
2. Ch Khalid Qayyum vs Lahore Gymkhana Club;
3. Syed Usman vs Lahore Gymkhana Club;

Subject: **RTI Appeals (Complaints) Regarding Non-Disclosure of Public Information under Article 19/A of the Constitution and the Punjab Transparency and Right to Information Act, 2013**

Order
08.11.2022 *Mahboob Qadir Shah*.....

The above-captioned three RTI Complaints arising out of refusal of Secretary Lahore Gymkhana Club, hereinafter called as LGC, to make disclosure of certain information involve common questions of law and facts hence being decided through this single order.

2. It has been argued by Complainants that 117.07 acres of nazul / state land of commercial nature worth billions of rupees was leased out to LGC vide Deed of Lease dated 12.06.1996 for 50 years from March 2000 to March 2050 at a token rent of Rs. 5000/- per annum which amounts to "substantially financed" by Govt., that the agreement of lease entails only transfer of possession to lessee for use of land for certain period subject to regular payment of rent to lessor, that ownership still vests with Colonization Department/BOR on behalf of public at large as real owners, that LGC is deemed as public body by implication of Sect. 2(h) (iv & vii) of RTI Act 2013 which include those non-governmental organizations which are "substantially financed" by govt/public funds as such citizens can have access to information held by such public bodies. Complainants have prayed this Commission to overturn the refusal of Secretary LGC and to direct the disclosure of requisite information relating to terms of lease and management of club.

3. Mr. M. Shakeel Learned Senior Counsel Supreme Court of Pakistan (SCP) has raised some important questions of law and facts

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to defend the refusal of Secretary LGC, each of it is reproduced, analyzed and decided as under;

Argument of Learned Counsel for LGC

4. It is argued that LGC being registered under Companies Act 2017 is by all means a private entity. Even by implication of Sect. 2 (h) (vii) of RTI Act 2013, it cannot be deemed as a public body as it never received any grant from any government hence cannot be taken as "substantially financed" by the government. In support of his argument, he relied upon Sec-9 of Auditor Generals' (Functions Powers and Terms & Conditions of Service) Ordinance 2001 whereby only such authority or body is deemed as "substantiality financed" if it avails of loan or grant up-to Rs. 5 Million from consolidated funds of Federal or Provincial Govts and only in such case Auditor General can initiate the audit.

Analysis

5. "Substantially financed" is certainly not defined in the Punjab Transparency & RTI Act, 2013 but the spirit of RTI law is "public oversight" or "public audit" of use of public funds either availed of by government bodies defined at sub clauses (i)(ii)(iii)(iv)(v)&(vi) of Sect. 2(h) of RTI Act 2013 or by private bodies substantially financed from public funds as defined at sub clauses (iv) and (vii) of the same Section. The sweeping definition of "public body" which includes private bodies which are beneficiary of public funds for the purpose of RTI law is based on the concept that citizens being real owners of public assets/funds have fundamental right to information held by such bodies.

6. RTI is a new and revolutionary concept akin to the values of a progressive society where people have fundamental right to know about any order / policy passed in the discharge of public functions. The resistance against such law in a regressive society where "government is of the elites, by the elites, for the elites" is quite obvious. The mindset dating back to the colonial rule and old legal treatise from said era give ample discretionary power to the

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administrative authorities to dole out grants to powerful and elite segments of society.

7. It was considered in 18th century that all elements of modern democracy including parliamentary oversight, judicial review, constitutionalism etc. which emerged as a result of *magna-carta* were not fully delivering to provide level playing governance in respect of public assets / funds for all strata of society. In this background the idea of "fundamental right to information" also known as "freedom of information" or "access to information" emerged empowering each citizen, high or low, to know the use of even a single penny of public funds. It is a paradigm shift in law but it shall certainly take time to be digested by those who are at the helm of affairs. Complete transparency of public functions through effective implementation of RTI law has potential to gradually transform elite captured governance into responsible governance ensuring rule of law.

8. LGC was originally registered with the Registrar of Joint Stock Company Punjab on 11.01.1908, u/s 26 of the Indian Companies Act, 1822, the predecessor enactment of present Companies Act 2017 hence governed u/s 42 of the later Act as such admittedly a private entity. Article 19/A, the mother provision of RTI, was inserted in the Constitution in the year 2010 and later the Punjab Transparency & Right to Information Act was legislated and enforced in the year 2013. These laws brought a major shift in the secrecy of data or information of not only government bodies but also private entities which are substantially financed by public funds. It is however not much publicized and not fully comprehended as yet. An Association registered under Companies Act shall remain a private entity for all intent and purposes except the application of RTI law, if it is beneficiary of "substantial financing" by govt. consequently deemed as public bodies by implication of sub clause (iv) & (vii) of Sect. 2(h) of RTI Act 2013. The registration of a body as a private entity becomes irrelevant for the purpose of disclosure of public information if qualifies as public body under afore-mentioned provision of law.

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Since LGC is prima facie beneficiary of valuable land which is considered a capital asset with potential of accrual of benefits hence a public body being "substantially financed" by the govt. However, a professional analysis is made in next paras.

9. It is a salutary principle of interpretation of law that where intention of the parliament is in question, a judge or any adjudicator must prefer a moral, positive and progressive version of the Act. The preamble of the PT&RTI Act 2013 underlines "to make the government more accountable to citizens". The use of word more speaks volumes about the intention of legislature i.e. to make proactive rather aggressive interpretation to maximum widen the scope of public accountability or public audit to ensure increased transparency wherever public assets / funds are involved.

10. In **Blacks' Law Dictionary** the word "Substantial" is defined as "of real worth and important or of considerable value". In **Oxford English Dictionary** the word "substantial" means "of ample or considerable amount of size, sizeable, fairly large, having solid worth or value, of real significance, weighty, important, worthwhile so on and so forth". LGC is in possession of the most valuable commercial land measuring 117.07 Acre (1130 Kanals, 1 Marla and 80 Sq ft) as lessee under a token rate of rent Rs. 5000/- per annum. The minimum market value of said land is more then 15 billion rupees, reflecting an arrangement based on a special privilege at the cost of public asset owned by public at large. It is also observed that golf course and all other sports grounds are so substantial to the recreational package offered by LGC that it would struggle to exist without 117.07 acres of land which is subject of lease agreement. The contribution of leased out land is so important for the existence of LGC that it is certainly of that "substantial level" which is envisaged under law as "substantially financed".

11. RTI laws of Indian and Pakistan are replica of each other. The High Court of Delhi in Jamia Millia Islamia vs Akram-ud-din WP (C) No. 5677/2011 dated 22.11.2011 held that entering into agreement with any person or private entity by a public authority is by itself a

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public activity, involving public funds and public interest, therefore, every citizen is entitled to know the terms of agreement/settlement reached between public authority and other entity or individual. In case of LGC the land underneath is admittedly "nazul" or state land, the lease agreement was executed by the Colony Department / BOR with the permission of GOP hence undisputedly a public activity. This fact alone renders the questioned disclosure a subject of public audit or accountability as envisaged in the preamble of PT&RTI Act, 2013.

12. Sect. 9 of Auditor Generals' (Functions Powers and Terms & Conditions of Service) Ordinance 2001 employed the construction "Substantially Finance" only to determine the limit or jurisdiction of Auditor General to conduct audit and it has no bearing upon fundamental right to information guaranteed under the Constitution nor said provision with limited scope can undo Article 19-A which is part of supreme law of the land. Further Section 24 of RTI Act 2013 provides that this law shall take precedence over all other laws to implement "access to information" in a pro-active manner (reference use of word more in preamble) as such the same construction used in above mentioned ordinance is neither relevant here nor has any legal force to influence or alter express provision of law and constitution.

13. The paramount consideration for a decision by this Commission is "public interest" vide Sect. 6 (1)(b) read with Sect. 13 (2) of RTI Act, 2013. Commission can direct disclosure of information overturning an order of refusal of disclosure by PIO in-spite of the fact of covered under any of 8 exemptions provided vide Sect. 13 (1) of the Act, if Commission finds the disclosure in "public interest". We are of the view that disclosure of information of terms of lease of public property underneath LGC is in "public interest" in consonance with the spirit of Article 19/A and PT & RTI Act, 2013.

Decision

14. It is held that LGC is substantially financed by Govt and as such it a public body as envisaged U/S 2 (h) (iv) & (vii) hence amenable to the Punjab Transparency & Right to Information Act 2013 for disclosure of any information held by it.

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Argument of Learned Counsel for LGC

15. That the information of legal status of LGC, terms of lease granted by GOP through Colonies Department, revenues of LGC, policy of membership with details of members and minutes of AGM are never "matters of public importance", that such information do not affect the legal rights or liabilities of public or community at large and the interest in said information is restricted only to some individuals / Complainants as against public at large. It is also added that no public funds are involved for day-to-day administration or expenditures of LGC, therefore, RTI Complaints be dismissed.

Analysis

16. We are thankful to learned Counsel for LGC to enlighten us with three salutary judgments of Hon'ble Supreme Court of Pakistan reported at PLD 2021 SC-01, 2013 SCMR 1880 and PLD 2012 SC 292. We have carefully scanned these judgements and our faith in RTI law has further strengthened as panacea for bad governance, elite capture and uneven application of law in a society still governed with feudal and colonial values. The judgments passed by eminent judges endorse the view for maximum disclosure of public information than to curb it. Learned Counsel for LGC is mistaken to take the exercise of right to information by complainants as individual act conveniently forgetting the involvement of stakes of 120 million people of the Province of Punjab who are real owners of 117.07 acre of state land worth billions of rupees. The complainants are in-fact exercising their fundamental right to information on behalf of 120million people of Punjab hence the matter does encompass an issue affecting the legal rights or liabilities of public at large as held by Hon'ble Justice Qazi Faiz Isa in *dharna case*. Like-wise Hon'ble SCP held in case of Hamid Mir etc. vs Federation of Pakistan that information relating to money spent from the public exchequer was a matter of public importance. This finding is pertinent to address the huge financial implication of valuable land leased out to LGC at token rate of rent Rs 5000 per annum. Hon'ble SCP in case of Wattan Party etc. vs Federation of Pakistan like the ruling at PLD 2021 SC 01 held that a matter which

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effects the entire community certainly acquires public importance. There remains no doubt for a progressive mind by evaluating the case of lease in favour of LGC on the touchstone of all time worthwhile judgements of Hon'ble SCP that this RTI complaint does involve a matter of "public importance".

17. Article 19/A embodies a constitutional ideal leading to "govt. of the people, by the people, for the people". All Federal & Provincial legislatures of Pakistan subsequently framed Information Laws defining important terms and providing procedure for implementation of constitutional ideal of fundamental right to information. The construction of "matters of public importance" employed in Article 19/A has been similarly interpreted in all Information Laws as provided u/s 2(f) of the Punjab Transparency & RTI Act, 2013 that "any information held by a public body" shall be amenable to RTI law. This definition presupposes any information held by a public body to be a matter of public importance as referred in Article 19/A. Likewise, eight exemptions are also uniform feature of all Information Laws which constitute practical manifestation of reasonable restrictions imposed by law as referred in Article 19/A. Though, the information falling under any of 8 exceptions is also public information but its disclosure can be refused by respective PIO on the ground of expediency in the wisdom of legislature. In this view of matter the constitutional concepts of "matters of public importance" and "reasonable restriction imposed by law" are defined under Information Laws and no longer vague concepts.

18. Last but not the least some significant elements characterize the affairs of LGC more of public than private functions. Governor of the Punjab being symbolic head of state at provincial level is the ex-officio President of LGC and may preside AGM at his will. Memorandum of Association of LGC declares the main objective of the association for providing social and intellectual recreation for the residents of Lahore or Lahore Cant, necessarily creating the interest of public at large. More importantly, LGC as lessee covenanted with govt. in the Deed of Lease to establish Gymkhana Club on the land

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got on lease to provide facilities in public sector. These features contribute to render the status of LGC as a public body than mere a private body.

Decision

19. As a sequel to above discussion the status of LGC for the intent & purpose of RTI law is public body and the requisite information held by it is certainly matter of public importance as envisaged under Article 19-A of the Constitution of Pakistan.

Argument of Learned Counsel for LGC

20. Learned Senior Counsel LGC argues that GOP took possession of the original premises of LGC at Lawrence Garden on expiry of lease in 70's and leased out present premises lastly vide Deed of Lease dated 12.06.1996 up till the year 2050, that LGC subject to regular payment of lease money can enjoy its possession during the lease period in consideration of lease money, that Colonies Department BOR is fully empowered u/s 10 of Colonization of Govt. Lands (Punjab) Act 1912 to grant colony land to any person on such conditions as it thinks fit. That Sec. 2 of the Govt Grants Act 1895 immunes the application of provisions of Transfer of Property Act 1882 to such grants therefore, nobody can raise any question as to the terms & conditions of grant of lease nor the vested rights accrued to LGC thereunder can be abrogated.

Analysis

21. The above-mentioned provisions are vestiges of legal treatise from colonial era where under the colony land could be granted to anyone to advance the colonial interests. Such unfettered prerogative of BOR is still part of statutory law. It appears from the emphasis on said provisions that the respondent is suffering under illusion that mere disclosure of information might lead to striking down the lease or grant in favour of LGC. It is nothing but a misconception. The disclosure of information cannot abrogate rights accrued to LGC under questioned lease deed read with Section 2 of the Govt. Grants Act 1895 and Section 10 of Colonization of Govt. Lands (Punjab) Act 1912 nor the Commission is empowered to pass

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any declaration or any writ which is the prerogative of Hon'ble Superior Courts of Pakistan. The purview of RTI law and of Information Commission as a regulator is limited only to the extent of disclosure of public information held by a public body, either a purely govt. body or a non-governmental body substantially financed by the govt. with public funds.

Decision

22. The provisions of the Punjab Colonization of Land (Punjab) Act 1912, the Govt. Grants Act 1895 and the Transfer of Property Act 1882 cannot operate as bar for the disclosure of public information held by any govt. body or any private entity which is substantially financed by govt.

True Spirit of RTI Law

23. *Access to information* was acknowledged as fundamental right and inserted under Article 19/A of the Constitution in the year 2010. Earlier anything official was considered as secret unless disclosure was allowed by the authority dating back to the Official Secrets Act 1923. It was a colonial piece of legislation which conformed with colonial interests to keep the loot and plunder of raw material secret and also the consumption of public assets / funds to create a crony class of feudal politicians. RTI law introduced through Article 19/A of the Constitution and the Punjab Transparency and Right to Information Act, 2013 is a paradigm shift replacing "secrecy" with "transparency" of public information or public affairs of public bodies to deter to dol-out public assets/funds to individuals and groups with political clout. Sect. 24 of the Act practically annulled the Official Secrets Act 1923 declaring that RTI Act shall prevail upon any other rule, regulation or law in respect of "access to information". This law is based on the premise that public at large is the owner of public funds / assets and has fundamental right to any information held by any public body. Such disclosure by itself cannot review or recall any order passed by any authority except bringing the matter into public knowledge leading to critical public opinion which is indispensable for a genuine and participatory democracy and nothing else.

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24. The democracy is not mere casting of vote in general elections rather it is participation of citizens in public matters. Citizens cannot play such role effectively by forming public opinion on national issues unless they are well informed of all matters of public importance and information held by public bodies. As such transparency and culture of disclosure of public information is a pre-condition for participatory and genuine democracy. RTI law is practical manifestation of said pre-requisite ensuring the public oversight and public accountability of government and public bodies as fundamental right of citizens.

25. It is believed that "secrecy" breeds nepotism, arbitrary use of power and corruption that is why it prevails in societies on lower side of global index of implementation of RTI law. It is not per chance that top 10 developed countries are on top of global index of implementation of RTI law reflecting a co-relation between economic progress and rule of law with the level of transparency. This Commission while disposing of more than 10,000 RTI Complaints during past 3½ years ensured the disclosure of public information of great public importance e.g. discretionary funds of Chief Minister Punjab, solved papers of PPSC and others Boards after announcement of results, the decisions of Cabinet Meetings, CCTV footages of Police Stations, the orders of Chief Settlement Commissioner and Registered Sale Deeds on the principle of being held in official record though resisted as suspicious documents, orders of Punjab Revenue Authority approving special rebates to big industrial houses enjoying political clout, orders of Governor's Secretariat, Crime d*ata* from IG Police, remissions awarded to prisoners as favour so on and so forth. The information relating to Shaukat Khanam Hospital and Sheikh Zayed Hospital Lahore were got disclosed as public information though both are private entities same as LGC but substantially financed by govt. / public funds.

26. All administrative & financial matters of courts and tribunals also fall in the definition of public body however the matters relating to prevention or detection of crime and administration of justice are exempted u/s 13(1) of PT & RTI Act 2013. Syed Mansoor Ali Shah

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Hon'ble Ex-Chief Justice Lahore High Court Lahore shall always be remembered for leaving shining legacy of voluntarily disclosing personal information of vital nature.

27. RTI is a silent revolution which is a sure recipe for good-governance through participatory democracy and elimination of institutional corruption. Although RTI law is in place on statute books yet the transparency as a state policy is still not very encouraging. The pro-active disclosure (voluntary disclosures) by public bodies of their basic information u/s 4 of PT & RTI Act, 2013 is yet equally revolutionary provision which can be a game changer.

28. The shining example of RTI in Islam was the interception of Friday sermon of Hazrat Umar (R.A.) by a *badoo* to first explain the source of his dress apparently larger than the individual share of cloth distributed from booty. Holy Quran put a seal in favour of an informed society with following words;

> *"Are those who know can be equal to those who do not know? Only people of knowledge and understanding will be remembered."* *(Holy Quran: Surah-al-Zumar 39:9)*

Some other quotes of sages:

> *"Information is a basic human right and the fundamental foundation for the formation of democratic institutions."*
>
> *(Nelson Mandela)*

> *"Information is the currency of democracy."*
>
> *(Thomas Jeffersom)*

> *"Knowledge is power and information is liberating."*
>
> *(Kofi Annan)*

> *"Democracy is built through open societies that share information. When there is information, there is enlightenment and also debates leading to solutions. When there is no sharing of information there can be no rule of law and no*

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accountability except abuse, corruption, subjugation and indignation."

(Atifete Jahjaga)

29. As a sequel to above discussion, we unanimously allow all three RTI Complaints with direction to Secretary LGC to forward certified copies of requisite information at the given addresses of Complainants within 3 days after receipt of this order. The names and identities of members along with children and donors etc. shall not be disclosed on the principle of privacy however total number of each group with break-up of government service members and otherwise will be disclosed along with all other requisite information requested by Complainants vide **Annex-A**. Order accordingly.

(Mahboob Qadir Shah)
Chief Information Commissioner

(Mr. Shaukat Ali)
Information Commissioner

(Dr. Arif Mushtaq Chaudhary)
Information Commissioner

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