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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 30 March 2026
Pronounced on: 01 July 2026

\+ LPA 315/2010

NATIONAL STOCK EXCHANGE
OF INDIA LTD .....Appellant

Through: Mr. Jayant Mehta, Sr. Adv. Mr. Pranav Sarthi, Ms. Prachi Dhingra, Mr. Ishan Agrawal, Mr. Gandharv Garg, Ms. Jasleen Oberoi, Mr. Anshit Aggarwal, Ms. Mansvini Jain, Mr. Udit Bajpai, Advs.

versus

CENTRAL INFORMATION
COMMISSION & ORS .....Respondents

Through: Mr. Ashish Aggarwal, Mr. O.P Faizi, Mr Anand Aggarwal, Ms Darshana Aggarwal, Ms. Nishtha Verma, Ms. Lisha Arora, Ms. Tanya Jain, Mr. Himanshu Singh, Ms. Ishita, Ms Anjali, Advs for R3
Mr. B.S. Shukla, CGSC with Mr. Dashmesh Tripathi, Advs. for UOI

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% 01.07.2026

C. HARI SHANKAR, J.

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A. Issue involved

1. A pure question of law arises for consideration before us in the present appeal, which is whether the National Stock Exchange of India[1] is a "public authority" within the meaning of Section 2(h) of the Right to Information Act, 2005[2].

2. A learned Single Judge of this Court has, by judgment dated 15 April 2010, answered the issue in the affirmative. The NSEI is in appeal.

3. We have heard Mr. Jayant Mehta, learned Senior Counsel appearing for the NSEI, Mr. Ashish Aggarwal, learned Counsel for the Securities and Exchange Board of India[3] and Mr. B.S. Shukla, learned CGSC for the Union of India.

[1] "NSEI", hereinafter
[2] "RTI Act", hereinafter

B. The provision under consideration

4. Section 2(h) of the RTI Act reads thus:

> "**2. Definitions**. – In this Act, unless the context otherwise requires:
>
> *****
>
> (h) 'public authority' means any authority or body or institution of self-government established or constituted-
>
> (a) by or under the Constitution;
> (b) by any other law made by Parliament;
> (c) by any other law made by State Legislature;
> (d) by notification issued or order made by the appropriate Government,
>
> and includes any –
>
> (i) body owned, controlled or substantially financed;
> (ii) non-government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government:"

C. The impugned judgment

5. The impugned judgment has vivisected Section 2(h) and clinically analysed the various ingredients of the clause, word by word and phrase by phrase. The reasoning of the learned Single Judge would be best understood if it is itemized:

(i) Relying on the judgment of a learned Single Judge of this Court in ***Indian Olympic Association v. Veeresh Malik***[4]**,** it is observed, at the outset, that the second "inclusive" part of

[3] "SEBI", hereinafter
[4] **ILR (2010) 4 Del 1,** hereinafter "**IOA**"

Section 2(h), with clauses (i) and (ii), is not conditioned by the first part of the definition. The "body" envisaged in clause (i) of the second part, and the Non Government Organisation[5] envisaged in clause (ii) of the second part of Section 2(h) do not, therefore, have to be "established by or under any notification or order made by the appropriate government". ***IOA*** also explained the principle of "substantial financing" as employed in both clause (i) and (ii) of the second part of Section 2(h) by holding that the expression was not to be understood as majority financing or to be assessed by working out the percentage of financing in relation to the total budget of the organisation. ***IOA*** further held that it was not necessary for the NGO, covered by Clause (ii), to perform public duties. All that was required was that the object of funding had to be the felt need of a section of the public or for securing larger societal goals.

(ii) It was obvious that Section 2(h) had given a broad meaning to the expression "public authority". The idea was to make information available to citizens in respect of organisations which benefited from, or utilized, substantial public funds. Private organizations which enjoyed the benefit of direct or indirect substantial funding from the Government would also be "public authorities".

(iii) The learned Single Judge, thereafter, adverts to the

[5] "NGO", hereinafter

expressions employed in the first part of Section 2(h).

(iv) The judgment first examines the ambit of the expression "authority". Webster's Comprehensive Dictionary defined "authority" as a "person or persons in whom government or command is vested". Ramanatha Aiyar, in his Advanced Law Lexicon, defined "authority" as a person or persons, in a body, which exercised a power of command. The expression "authority" had also been examined by the Supreme Court in ***Rajasthan State Electricity Board v. Mohan Lal***[6]**,** which defined "authority" as covering all bodies covered by a statute in which powers were conferred to carry out governmental or quasi-governmental functions. In the context of Article 12 of the Constitution of India, the judgment in ***Rajasthan State Electricity Board*** also made reference to the earlier decision of the Supreme Court in ***Ujjam Bai v. State of Uttar Pradesh***[7]**,** which covered, in the ambit of the expression "authority", every type of authority set up under a statute for administering laws enacted by the Parliament or the State, including authorities vested with the duty to make decisions to implement those laws. In the context of Articles 12 and 226 of the Constitution of India, the expression "authority" was accorded a wider meaning by the Supreme Court in ***Praga Tools Corporation v C.A. Imanual***[8]. In ***Ajay Hasia v Khalid Mujib Sehravardi***[9], the Supreme Court held that the expression "authority" would also

[6] **(1967) 3 SCR 377**
[7] **AIR 1962 SC 1621**
[8] **(1969) 1 SCC 585**
[9] **(1981) 1 SCC 722**

include a corporation through whose instrumentality or agency the State carried out its functions.

(v) Section 2(h)(d) expanded the definition of "public authority" to include an authority which was established or constituted by a Notification or order of the appropriate Government.

(vi) In ***Binny Ltd v. V. Sadasivan***[10], the Supreme Court had held, *inter alia*, that stock exchanges performed public functions. The relevant passage from ***Binny*** read thus:

> "Public functions need not be the exclusive domain of the State. Charities, self-regulatory organisations and other nominally private institutions (such as universities, *the Stock Exchange*, Lloyd's of London, churches) may in reality also perform some types of public function. As Sir John Donaldson, M.R. urged, it is important for the courts to 'recognise the realities of executive power' and not allow 'their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted'. Non-governmental bodies such as these are just as capable of abusing their powers as is Government."
>
> (Emphasis supplied)

(vii) The interpretation of the various expressions contained in Section 2(h) had to be undertaken keeping in mind the purpose of the RTI Act, which was to ensure transparency, openness and accountability of authorities, by giving citizens the right to ask for and get information. The Act effectuated and provided a statutory and enforceable legal right to enforce the right to information, which was ingrained in Article 19(1)(a) of the

[10] **(2005) 6 SCC 657**

Constitution of India. The expression "authority" had, therefore, to be understood in the light of these objectives and para 40 of the judgment of the Constitution Bench of the Supreme Court in ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology***[11]**,** which read thus :

> "40. The picture that ultimately emerges is that the tests formulated in ***Ajay Hasia*** are not a rigid set of principles so that if a body falls within any one of them it must, *ex hypothesi*, be considered to be a State within the meaning of Article 12. The question in each case would be – whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

(viii) Proceeding, next, to the expression "institution of self-government", the impugned judgment relies on the definition of "institution" as contained in Black's Law Dictionary and Ramanatha Aiyar's Law Lexicon, both of which identified the expression as meaning an organization or establishment, organised or established for some specific purpose. The expression "self-government" referred to the nature of activities being performed by the institution and encompassed independent, autonomous or self-managed or governed organizations which were allowed, permitted or were performing governmental or public functions. An "institution of self-government" did not necessarily require pervasive or deep

[11] **(2002) 5 SCC 111**

governmental control. Any institution which was performing public functions and was created for discharging public or statutory duties, as distinguished from private functions, would be an institution of self-government.

(ix) The expression "body" was wide and would, if allowed its full scope, encompass any conceivable organization with more than two persons. The words "authority" and "institution of self-government" were included in the expression "body". Unless a purposive interpretation was given to the expression "body", the expression would include every organization or concern of more than two persons which may have been performing purely private functions. However, every private body could not be treated as a public authority. Accordingly, the expression "body" had to be read down in view of the legislative intention and language of Section 2(h), including the second part thereof. The word "body" was required to complement the expression "authority" and "institution of self-government" and had to be read with clause (i) of the second part of Section 2(h). The expression could not be understood by applying the *noscitur a sociis* principle.

(x) Para 60 of the judgment of the learned Single Judge in ***IOA*** ruled that clause (i) of the second part of Section 2(h) applied to all bodies which were owned, controlled or substantially financed by the Government. Bodies and NGOs, which fell within the second part of Section 2(h), were not

required to satisfy conditions (a) to (d) of the first part thereof.

(xi) The expressions "owned", "controlled" and "substantially funded" were to be read disjunctively. Satisfaction of any one of these three criteria would suffice for clause (i) of the second part of Section 2(h) to apply. The activity and functions undertaken by the body were immaterial.

(xii) Reverting to the first part of Section 2(h), the words "established" and "constituted" were required to be interpreted in the context in which they were used. The word "establish" was defined in Webster's Third New International Dictionary as "to found or base squarely, to make firm or stable, to bring into existence, create, make start, originate" and in the Shorter Oxford English Dictionary as "to ratify, confirm, settle, to found", to create". Bouvier's Law Dictionary (Third Edition) gave five meanings to the expression "establish", namely "(i) to settle firmly to fix unalterably, to establish justice; (ii) to make or form: as to establish a uniform rule of naturalization; (iii) to found, to create, to regulate: as, Congress shall have power to establish post officers; (iv) to found, recognize, confirm or admit: as, Congress shall make no law respecting an establishment of religion; and (v) to create, to ratify, or confirm, as We, the people, etc., do ordain and establish the Constitution". Thus, the expression "establish" did not merely refer to the initial foundation of the organization or institution but included its creation, confirmation and recognition.

(xiii) The word "constituted" was wider than the word "established". It would also include subsequent acts which conferred, on the organization or body, a special status so as to render it an "authority" or "institution of self-government" within the meaning of the first part of Section 2(h). This principle would apply even in respect of private institutions or bodies which were initially formed by acts of private persons.

(xiv) Proceeding, next, to the expression "by or under", the expression "by" was narrower than the expression "by or under" and the expression "under" was wider than the expression "by". The expression "by" implied direct establishment and constitution of the authority, body or institution of self-government, as a result of legislation, notification or order, whereas "under" included establishment or Constitution under the authority or power conferred on a body by enactment, notification or order. Section 2(h)(d) did not envisage any specific type or nature of the order or information in question.

(xv) It was difficult to conceive of any authority or institution of self-government which could be established or constituted by a mode or manner other than those envisaged in clauses (a) to (d) of the first part of Section 2(h).

(xvi) Proceeding, next, to the second part of Section 2(h), the

expression "appropriate government" stood defined in Section 2(a)[12] of the RTI Act.

(xvii) The aspect of whether the NSEI was or was not a "public authority" had, therefore, to be examined and assessed in the light of the aforenoted understanding of the various expressions contained in Section 2(h).

(xviii)NSEI was a limited company, incorporated on 27 November 1992. The Memorandum and Articles of Associations[13] of NSEI stated that its object was to facilitate, promote, assess, regulate and manage, in public interest, dealings in securities of all kind as defined in the Securities (Contracts) Regulations Act, 1956[14], and to provide advanced and modern facilities for trading, clearing and settlement of securities in a transparent, fair and open manner.

(xix) Given the objects of the NSEI, which was for establishing stock exchanges, it was necessary for NSEI to be registered and/or recognized under Section 4[15] of the SCRA.

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[12] (*a*) "appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly—
(*i*) by the Central Government or the Union Territory administration, the Central Government;
(*ii*) by the State Government, the State Government;

[13] "the MOA" hereinafter

[14] "SCRA", hereinafter

[15] **4. Grant of recognition to stock exchanges**.—
(1) If the Central Government is satisfied, after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require—
(*a*) that the rules and bye-laws of a stock exchange applying for registration are in conformity with such conditions as may be prescribed with a view to ensure fair dealing and to protect investors;
(*b*) that the stock exchange is willing to comply with any other conditions (including conditions as to the number of members) which the Central Government, after

Registration or recognition of the stock exchange under Section 4(3) resulted in the stock exchange being constituted and established as an "authority" or "institution of self-government". In the case of the NSEI, the requisite Order under Section 4(3) stood issued by the SEBI, recognizing the NSEI as a stock exchange. NSEI thereby became an "authority" or "institution of self-government" within the meaning of the first part of Section 2(h) of the RTI Act.

(xx) The NSEI had sought to contend that the order issued by the SEBI under Section 4(3) of the SCRA was not a notification or an order issued by the appropriate Government as required by Section 2(h)(d). This argument was unacceptable, as, under Section 4, the order of registration or recognition was required to be passed by the Central Government. The Central

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consultation with the governing body of the stock exchange and having regard to the area served by the stock exchange and its standing and the nature of the securities dealt with by it, may impose for the purpose of carrying out the objects of this Act; and

(*c*) that it would be in the interest of the trade and also in the public interest to grant recognition to the stock exchange;

it may grant recognition to the stock exchange subject to the conditions imposed upon it as aforesaid and in such form as may be prescribed.

(2) The conditions which the Central Government may prescribe under clause (*a*) of sub-section (1) for the grant of recognition to the stock exchanges may include, among other matters, conditions relating to—

(*i*) the qualifications for membership of stock exchanges;

(*ii*) the manner in which contracts shall be entered into and enforced as between members;

(*iii*) the representation of the Central Government on each of the stock exchanges by such number of persons not exceeding three as the Central Government may nominate in this behalf; and

(*iv*) the maintenance of accounts of members and their audit by chartered accountants whenever such audit is required by the Central Government.

(3) Every grant of recognition to a stock exchange under this section shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office as of the stock exchange is situate, and such recognition shall have effect as from the date of its publication in the Gazette of India.

(4) No application for the grant of recognition shall be refused except after giving an opportunity to the stock exchange concerned to be heard in the matter; and the reasons for such refusal shall be communicated to the stock exchange in writing.

(5) No rules of a recognised stock exchange relating to any of the matters specified in sub-section (2) of Section 3 shall be amended except with the approval of the Central Government.

Government had delegated this power to the SEBI under Section 29A[16] of the SCRA. In issuing the order of registration or recognition, therefore, the SEBI acted as a delegatee of the Central Government. The order was, therefore, deemed to be regarded as an order issued by the Central Government under Section 4(3). The recognition of the Stock Exchange by virtue of such order had, therefore, to be treated as an act of the Central Government for the purposes of the applicability of the first part of Section 2(h).

(xxi) Thus, the NSEI qualified as a "public authority" under the first part of Section 2(h).

(xxii) NSEI also qualified as a "public authority" under the second part of Section 2(h), as it was a body controlled by the Central Government. The submission of NSEI that governmental control over the NSEI was merely regulatory and not deep and pervasive was not acceptable, in view of the judgment of the Division Bench of this Court in ***Delhi Stock Exchange v. K C Sharma***[17], which held, albeit in the context of whether the Delhi Stock Exchange[18] was a State within the meaning of Article 12 of the Constitution of India, that the Central Government exercised deep and pervasive control over the DSE. This judgment stood affirmed by the Supreme Court

[16] **29-A. Power to delegate**.—The Central Government may, by order published in the Official Gazette, direct that the powers except the power under Section 30 exercisable by it under any provision of this Act shall, in relation to such matters and subject to such conditions, if any, as may be specified in the order, be exercisable also by the Securities and Exchange Board of India or the Reserve Bank of India constituted under Section 3 of the Reserve Bank of India Act, 1934.

[17] **93 (2002) DLT 233**

in ***K.C. Sharma v Delhi Stock Exchange***[19].

6. Thus, the learned Single Judge has held, in the impugned judgment, that, whether viewed through the lens of the first part or the second part of Section 2(h), NSEI qualified as a "public authority" and was, therefore, amenable to the RTI Act.

D. Rival contentions

I. Submissions of Mr. Jayant Mehta

7. Arguing for the NSEI and contesting the impugned judgment, Mr. Mehta submits that, after the rendition of the impugned judgment, the law stands settled by the Supreme Court in ***Thalappalam Service Cooperative Bank Limited v. State of Kerala***[20]***. Thalappalam***, submits Mr. Mehta, identified six categories of institutions as falling within the definition of "public authority" in Section 2(h) of the RTI Act, in paras 31 and 32, which read thus:

> "31. Section 2(h) exhausts the categories mentioned therein. The former part of Section 2(h) deals with:
>
> (1) an authority or body or institution of self-government established by or under the Constitution,
>
> (2) an authority or body or institution of self-government established or constituted by any other law made by Parliament,
>
> (3) an authority or body or institution of self-government established or constituted by any other law made by the State Legislature, and
>
> (4) an authority or body or institution of self-government established or constituted by notification

[18] "DSE" hereinafter
[19] **(2005) 4 SCC 4**
[20] **(2013) 16 SCC 82**

issued or order made by the appropriate Government.

> 32. The Societies, with which we are concerned, admittedly, do not fall in the abovementioned categories, because none of them is either a body or institution of self-government, established or constituted under the Constitution, by law made by Parliament, by law made by the State Legislature or by way of a notification issued or made by the appropriate Government. Let us now examine whether they fall in the latter part of Section 2(h) of the Act, which embraces within its fold:
>
> (5) a body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate Government,
>
> (6) non-governmental organisations substantially financed directly or indirectly by funds provided by the appropriate Government."

Mr. Mehta submits that the NSEI does not fall within any of the six categories of institutions identified in paras 31 and 32 of ***Thalappalam*** as being "public authorities". He also draws attention to paras 30, 52 and 53 of ***Thalappalam*** which hold that, as the definition of "public authority" in Section 2(h) uses the expression "means" and "includes", it has to be read exhaustively, and could not be subjected to a liberal or purposive interpretation.

8. Adverting to the second part of Section 2(h), Mr. Mehta submits that the body or the NGO which would fall under the "includes" part of Section 2(h) had necessarily to be funded by the appropriate government. Financial support of the appropriate government is, therefore, he submits, the *sine qua non* for the second part of Section 2(h) to apply.

9. The learned Single Judge, submits Mr. Mehta, erred in relying on decisions rendered in the context of the definition of "state" under

Article 12 of the Constitution of India, to arrive at his findings. He submits that decisions on the aspect of the expression "state" in Article 12 of the Constitution of India are inapplicable while interpreting the expression "public authority" as defined in Section 2(h) of the RTI Act. He relies, for this purpose, on paras 21 and 24 of ***Thalappalam,*** paras 11, 18 and 19 of ***Air Force Sports Complex v. Lt. Gen. S.S. Dahiya***[21]***,*** para 15 of ***Indian Railway Welfare Organisation v. D.M. Gautam***[22] and paras 17 and 19 of ***IFCI Ltd v. Ravinder Balwani***[23]***.***

10. Mr. Mehta submits that the learned Single Judge also erred in relying on the judgment of the Supreme Court in ***Binny*** to hold that stock exchanges performed public functions. He submits that this aspect is entirely irrelevant while examining whether a stock exchange would fall within the ambit of Section 2(h) of the RTI Act. Section 2(h), he submits, does not treat the function performed by the institution as a criterion on the basis of which it could be decided whether it was a public authority.

11. Similarly, submits Mr. Mehta, the reliance, by the learned Single Judge, on the judgment of this Court in ***K.C. Sharma*** is also misplaced, as ***K.C. Sharma*** was a service dispute, in the context of which this Court ruled on whether the DSE was a "state" under Article 12 of the Constitution of India. There was no consideration, in that decision, of whether the DSE was a "public authority" under the RTI

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[21] **2024 SCC OnLine Del 6905**
[22] **2010 SCC OnLine Del 1795**
[23] **(2010) 175 DLT 84**

Act.

12. Mr. Mehta submits that the NSEI is not owned, controlled or substantially financed, directly or indirectly, by the appropriate government. It is recognised and regulated by the SEBI, as a delegated authority of the Central Government under the provisions of the SCRA and The Securities and Exchange Board of India Act, 1992[24]. He submits that the learned Single Judge has erroneously conflated the aspect of "control" with recognition and regulation. The legislature, he submits, has employed the expression "control" consciously, instead of "recognition" or "regulation".

13. Paras 44 and 45 of ***Thalappalam***, submits Mr. Mehta, interpreted the expression "control" in Section 2(h) as meaning substantial control over the affairs, day to day functioning, policy and decision making of the concerned body. Para 19 of ***Air Force Sports Complex*** further holds that "control", in the context of Section 2(h) has to go beyond mere regulatory or supervisory oversight. In this context, Mr. Mehta places further reliance on para 19 of ***People Welfare Society v. State Information Commissioner and Ors.[25],*** para 9 of ***Dr. Panjab Rao Deshmukh, Urban Co-Operative Bank Ltd v. State Information Commissioner[26],*** paras 9(3) and 9(6) of ***S. Shobha v. Muthoot Finance Ltd.[27],*** para 32 of ***Federal Bank Ltd. v. Sagar Thomas and Ors.[28]*** and para 40 of ***Pradeep Kumar Biswas***.

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[24] "the SEBI Act" hereinafter
[25] **2024 SCC Online Bom 716**
[26] **2009 SCC OnLine Bom 50**
[27] **2025 SCC OnLine SC 177**
[28] **(2003) 10 SCC 733**

14. Adverting to the various provisions in the SCRA and the SEBI Act by which the SEBI or the Central Government regulate and supervise stock exchanges, Mr. Mehta submits that such regulation and supervision would not amount to control over the management and affairs, or the day to day functioning of the stock exchange. If regulatory control of stock exchanges was to be treated as sufficient for converting a privately incorporated stock exchange into a "public authority" under the RTI Act, all similarly placed private entities such as commercial banks, mutual funds, insurance companies, depositories, non banking financial corporations etc. would all become "public authorities" as they were subject to regulatory control by sectoral regulators. Such an interpretation would be absurd and would defeat the scope and objective of the RTI Act. It could not, therefore, be said that the NSEI was controlled by the appropriate government or even by the SEBI.

15. Further, not being a body constituted or established by the Constitution, an act of Parliament or the State Legislature, clauses (a) (c) of the first part of Section 2(h) would not apply.

16. Mr. Mehta also disputes the interpretation, by the learned Single Judge, of the expression "established or constituted" as encompassing mere regulation of an institution, after it has come into existence, by a subsequent statutory regulatory mechanism. He submits that there is a difference between a body created by a statute and a body which, after having come into existence independent of any statute, is regulated in accordance with the provisions of the statute, for which purpose he places reliance on para 18 of ***Thalappalam***. He also relies on para 21

of the judgment of the Supreme Court in ***Dalco Engineering Pvt. Ltd. v. Satish Prabhakar***[29]**,** in which the expression "established" was understood as bringing something into existence as opposed to merely being governed by the provisions of a statute after the body had come into existence. Inasmuch as the NSEI was incorporated as a private company on 27 November 1992 under the Companies Act, and was not established or constituted by any government notification, but had merely been recognised by the SEBI under Section 4(3) of the SCRA as a stock exchange, it could not be regarded as having been established or constituted by a notification of the Central Government. Else, all statutorily recognised bodies, including public trusts, registered societies, ordinary companies under the Companies Act, stock brokers, insurers, mutual funds etc., would all be public authorities. For the proposition that mere recognition under a statute does not result in a body becoming a "public authority" under Section 2(h) of the RTI Act, Mr. Mehta places reliance on para 17(ii) of the judgment of the High Court of Jammu and Kashmir in ***Tyndale Biscoe School and Ors v. Union Territory of J & K and Ors.***[30] and para 40 of the judgment of the High Court of Bombay in ***Archbishop Patriarch of Goa, Daman & Diu, Represented in this Act v. State Information Commission & Ors.***[31]**.**

17. Mr. Mehta finally submits that there was no ownership or substantial financing, by the Central Government, of the NSEI and that, therefore, the NSEI could not qualify as a "public authority" on

[29] (2010) 4 SCC 378
[30] 2022 SCC Online J&K 300
[31] 2023 SCC Online Bom 1694

that score either.

18. In these circumstances, Mr. Mehta submits that the impugned judgment is patently erroneous and is contrary to the law later declared by the Supreme Court in ***Thalappalam*** and deserves, therefore, to be set aside.

II. Submissions of learned Counsel for the respondents

19. Learned Counsel for the respondents underscored the limited scope of Letters Patent Appeal[32] jurisdiction and submit that, within that limited scope, the interpretation, placed by the learned Single Judge on Section 2(h) of the RTI Act does not call for any interference.

E. Analysis

20. We do not find this to be a case warranting interference in appeal.

21. Paras 31 and 32 of ***Thalappalam*** clearly identify six categories of institutions which would qualify as "public authorities" under Section 2(h) of the RTI Act. They are

(i) authorities, bodies or institutions of self-government established by or under the Constitution,

(ii) authorities, bodies or institutions of self-government established or constituted by any other law made by Parliament,

(iii) authorities, bodies or institutions of self-government established or constituted by any other law made by the State Legislature,

(iv) authorities, bodies or institutions of self-government established or constituted by notification issued or order made by the appropriate Government,

(v) bodies owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate Government, and

(vi) NGOs substantially financed directly or indirectly by funds provided by the appropriate Government.

22. The learned Single Judge has, in the impugned judgment, held that the NSEI qualifies as a "public authority" under categories (iii) and (iv).

23. We agree.

24. First, addressing the issue of whether the NSEI is a "public authority" falling within category (iv) of the six categories of bodies or institutions identified by ***Thalappalam***.

25. In order to qualify as a "public authority" in category (iv),the body in question has to be owned, controlled or substantially financed by the appropriate Government.

[32] "LPA" hereinafter

26. Inasmuch as the words "owned", "controlled" and "substantially financed" are separated by the conjunction "or", we are in agreement with the learned Single Judge that they had to be read disjunctively. In other words, if the body is owned by the appropriate Government, controlled by the appropriate Government or substantially financed by the appropriate Government, it would qualify as a "public authority".

27. The learned Single Judge holds, in the impugned judgment, that the NSEI is controlled by the appropriate Government, and we agree.

28. ***Thalappalam*** holds that "control", for the purposes of the second part of Section 2(h), implies deep and pervasive control. This is clear from the opening sentence in para 20 of the judgment which, we may note, dealt with a cooperative society and is, therefore, factually clearly distinct from the case before us:

> "20. The societies are, of course, subject to the control of the statutory authorities like Registrar, Joint Registrar, the Government, etc. but it cannot be said that the State exercises any direct or indirect control over the affairs of the society which is deep and all pervasive."

29. The learned Single Judge holds that the aspect of whether there is deep and pervasive governmental control over the NSEI stands concluded by the judgment of the Division Bench of this Court in ***K.C. Sharma***, which stands affirmed by the Supreme Court in appeal. Mr. Mehta has sought to wish away this decision on the sole ground that it was a service matter. We cannot accept this as a ground to

distinguish the judgment. The issue of whether there exists deep and pervasive Governmental control over the NSEI is agnostic of the nature of the *lis* before the Court. It cannot be sought to be contended that there is deep and pervasive governmental control over the NSEI for service matters, but not for any other purpose. Every factual distinction does not erode the precedential value of a judgment.[33]

30. We agree with the learned Single Judge, therefore, that the issue of the extent of governmental control over the NSEI stands concluded by the judgment of the Division Bench of this Court in ***K.C. Sharma,*** especially as there is a specific affirmation thereof, by the Supreme Court.

31. We may reproduce, in this context, the relevant passages from the judgment of the Division Bench of this Court in ***K.C. Sharma***, which also stand quoted by the learned Single Judge in the impugned judgment:

> "15. The fact is the Delhi Stock Exchange is a company incorporated under the Companies Act. It is not created under a statute. According to the appellant, Delhi Stock Exchange would not come within the purview of expression "other authorities" contained in Article 12 of the Constitution of India, having regard to its salient features which are as under.
>
> 16. The salient features of the Delhi Stock Exchange as stated by the petitioner are as under:
>
> (i) Delhi Stock Exchange is incorporated under the Companies Act. It is not created by any statute.
>
> (ii) The entire capital of the Delhi Stock Exchange

[33] Refer **Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai, (1976) 3 SCC 832, State of Orissa v. Sudhansu Sekhar Misra, 1967 SCC OnLine SC 17**

comes from the members and not from the Government/Government agencies.

(iii) The Delhi Stock Exchange receives no financial assistance from the Government/Government agencies.

(iv) The source of revenue/finance of the Delhi Stock Exchange is mainly from listing fees received from the listed companies.

(v) The Delhi Stock Exchange has its own budget for which it does not require the approval of the Ministry of Finance or any other Government agency.

(vi) There is no control of the Government over the expenses of the Delhi Stock Exchange.

(vii) The profits of the Delhi Stock Exchange, if any, are not appropriated by the Government. Rather the Government has no control over it.

(viii) The Delhi Stock Exchange does not have any monopoly status.

(ix) The overall management of affairs of the Delhi Stock Exchange is vested in the Board of Directors.

(x) The Board of Directors of Delhi Stock Exchange comprises of seventeen members. The constitution of the Board of Directors is as follows:

(a) Eight Directors elected from amongst the members.

(b) Three Directors appointed by the Central Government or the Securities and Exchange Board of India.

(c) Five public representatives are nominated by the Securities and Exchange Board of India as Directors. These public representatives are from amongst the persons of integrity having necessary professional competence and experience to the areas related to Securities market.

(d) Executive Director appointed by Board of Directors, subject to prior approval of SEBI.

17. Whereas the respondents, on the other hand, would contend that the Delhi Stock Exchange is an instrumentality of the State within the meaning of Article 12 of the Constitution of India. The respondents contend that the Central Government/SEBI has a deep

and pervasive control over the affairs of the Stock Exchange. It was contended that they have very important functions to perform which have a direct nexus with the development of the economy inasmuch as people's savings are required to be and can be harmonized only through the Stock Exchange. It was pointed out that a small shareholder needing money can transfer his shares only through Stock Exchange and as such, having regard to the provisions contained in Securities Contract and Regulation Act, 1956 (hereinafter referred to as "the 1956 Act), the Stock Exchanges are required to build confidence in the small investors. It was further submitted that although it does not have any statutory monopoly, it has a *de facto* monopoly.

18. *Let us consider as to whether the control of the Central Government/SEBI in terms of the provisions of the 1956 Act, is so deep and pervasive so as to bring it within the authority contained in Article 12 of the Constitution of India.*

19. The 1956 Act was enacted to prevent undesirable transactions in securities *by regulating* the business of dealing therein by providing for certain other matters connected therewith. Stock Exchange has been defined in Section 2(j) to mean "any body of individuals, whether incorporated or not, constituted for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities." Section 3 provides for an application for recognition of stock exchanges. Section 4 empowers the Central Government to grant recognition to stock exchanges subject to the conditions imposed upon it upon satisfying itself that it ulfils the criteria thereof. Sub-section (2) of Section 4 lays down the conditions "for the grant of recognition to the Stock Exchange may include, among other matters, conditions relating to—

(i) the qualifications for membership of Stock Exchanges;

(ii) the manner in which contracts shall be entered into and enforced as between members;

(iii) the representation of the Central Government on each of the Stock Exchanges by such number of persons not exceeding three as the Central Government may nominate in this behalf; and

(iv) the maintenance of accounts of members and their audit by chartered accountants whenever such audit is required by the Central Government."

20. *Recognition of the Stock Exchange under the section is required to be published in the Gazette of India. The rules of the recognized Stock Exchanges can be amended only upon approval of the Central Government. Section 5 provides for withdrawal of*

recognition. Section 6 empowers the Central Government to call for periodical returns or direct enquiries to be made. Section 7 provides for annual reports to be furnished to the Central Government. Section 9 empowers the Stock Exchange to make bye-laws. Section 10, however, also empowers the Central Government to make or amend bye-laws of recognized Stock Exchange. Section 11 empowers the Central Government to supersede governing body of a recognized Stock Exchange. Section 12 empowers the Central Government to suspend business of recognized Stock Exchanges. Section 13 empowers the Central Government to declare contracts in notified areas illegal by notification in the Official Gazette. Section 19 prohibits any person to organize or assist in organizing or be a member of any Stock Exchange other than a recognized Stock Exchange for the purpose of assisting in, entering into or performing any contracts in securities. Section 21 provides that where securities are listed on the application of any person in any recognized Stock Exchange, such person shall comply with the conditions of the listing agreement with that Stock Exchange. Under Section 22, an appeal is maintainable against an order passed by the Stock Exchange to list securities of public companies. Section 23 provides for penalties in relation to the matters specified therein. Section 29 of the Act is in the following terms:

> "*Protection of action taken in good faith.*—No suit, prosecution or other legal proceeding whatsoever shall lie in any Court against the governing body or any member, office-bearer or servant of any recognized stock exchange or against any person or persons appointed under Sub-section (1) of Section 11 for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or bye-laws made thereunder."

21. *The provisions above-mentioned clearly go to show that not only Stock Exchanges perform an important function, its control by the Central Government/SEBI are deep and invasive*. So invasive is control of the SEBI that even the writ petitioner against the impugned order preferred an appeal before SEBI and filed a representation before SEBI which was entertained. The appellant herein submitted itself to the jurisdiction of SEBI without any demur whatsoever. The SEBI constituted an independent Committee and despite pendency of the writ petition before this Court arrived at its own finding. *This also goes to show that not only the Central Government but also a statutory authority exercises deep and pervasive control over the Stock Exchange. It may be that it does not receive any financial assistance. But receiving the financial assistance is not the only criteria for holding that an instrumentality of the State would come within the*

purview of the definition of "other authorities".

*****

24. *The Stock Exchanges, although statutorily do not enjoy a monopoly status, having regard to the provisions of the Act, as noticed hereinbefore, it factually does so inasmuch as unless and until a Stock Exchange is recognized by the Central Government in terms of Section 4 of the Act, no other Stock Exchange can perform the said function*. The State had been taking on more and more commercial activities and thus Courts have examined the purport and ambit of activities of such bodies keeping in view a wider and wider range of measures the executive and the Central Government adopt. In ***Ramana Dayaram Shetty v. The International Airport Authority of India***[34], it was held:

> "Today with tremendous expansion of welfare and social service functions, increasing control of material and economic resources and large-scale assumption of industrial and commercial activities by the State, the power of the executive Government to affect the lives of the people is steadily growing. The attainment of socio-economic justice being a conscious end of State policy, there is a vast and inevitable increase in the frequency with which ordinary citizens come into relationship of direct encounter with State power-holders. This renders it necessary to structure and restrict the power of the executive Government so as to prevent its arbitrary application or exercise."

*****

26. *The functions of the appellant are such that it has also been granted exemption from payment of Income-tax. Its functions are so important that for granting withdrawal and supersession of recognition, the orders are required to be published in the Official Gazette which is not done in cases of private organizations.*

*****

29. *Following are some of the important sections of SEBI Act which support the assertion that Central Government has deep and all pervasive close control on the functioning <u>of all RSEs (Recognised Stock Exchanges)</u>*:

(1) Preamble of the SEBI Act which *inter alia* reads,

[34] **(1979) 3 SCC 489**

> "An Act to provide for the establishment of a Board to protect the interest of investors in securities and to promote the development of and to regulate the securities market and for matters connected therewith or incidental thereto".
>
> (2) Section 11(1), which casts a duty upon SEBI to protect the interest of the investors and promote the development of and regulate the securities market.
>
> (3) Section 11(2)(a), specifically casts a duty upon SEBI to regulate, even the business (means regulation of even day-to-day business) and that is why it is under this section SEBI from time to time issues directions to RSEs about the nature, type, extent and percentage of margin money to be taken from the members of RSEs; Capital Adequacy Norms to be observed by the said members; nature, organization structure and duties of Market Surveillance department etc.
>
> (4) Section 11(2)(j) requires SEBI to perform such functions and exercise such powers under SCRA, 1956, which may be delegated to it by the Central Government."
>
> (Emphasis supplied)

32. The Supreme Court, in appeal[35], specifically approved the finding, by the Division Bench of this Court, regarding amenability of the DSE to Article 226 of the Constitution of India. In para 5 of its judgment, the Supreme Court notes the first issue flagged by this Court as arising for consideration, as being whether the DSE is "State" under Article 12 of the Constitution and is, therefore, amenable to writ jurisdiction. Thereafter, in para 6, the Supreme Court notes:

> "6. Answering Question 1, the Division Bench held that Delhi Stock Exchange satisfied the conditions laid down by this Court in ***Ramana Dayaram Shetty v. International Airport Authority of India*** and therefore, the first respondent was "State" within the meaning of Article 12 and amenable to the writ jurisdiction of the

[35] **K.C. Sharma v. Delhi Stock Exchange**

High Court."

In para 13 of its judgment, the Supreme Court expressly approves the finding, by the Division Bench of this Court, that the DSE is amenable to writ jurisdiction, thus:

> "13. *We are in agreement with the conclusions of the Division Bench that Respondent 1 is amenable to the writ jurisdiction*, that the termination of services of the appellant in purported exercise of powers vested under para (4) of the letter of appointment dated 12-11-1993 is illegal and that, in the facts and circumstances of the case, the removal of the appellant from the service was both mala fide and unjustified."
>
> (Emphasis supplied)

Thereby, the Supreme Court has lent its imprimatur to the observations and findings of the Division Bench of this Court in ***K.C. Sharma***, reproduced *supra*.

33. Inasmuch as the said findings have been returned on an analysis of the provisions of the SCRA and the SEBI Act, which also apply to the NSEI, the findings would apply, *mutatis mutandis*, to the present case.

34. Mr. Mehta sought to contend that ***K.C. Sharma*** could not be applied, as the Supreme Court has, in ***Thalappalam***, held that the tests which apply for determining whether a body is an "other authority" or "State" under Article 12 are not applicable while construing Section 2(h) of the RTI Act.

35. We have studied ***Thalappalam*** from the first para to the last, but we find no such observation, much less any finding to that effect.

36. Rather, in para 21 of ***Thalappalam***, *after dealing with the earlier judgments of the Supreme Court in* ***U.P. State Coop. Land Development Bank Ltd v. Chandra Bhan Dubey***[36], ***All India Sainik Schools Employees' Assn v. Sainik Schools Society***[37] and ***Vaish Degree College v. Lakshmi Narain***[38], ***Federal Bank Ltd*** and ***S.S. Rana v. Registrar, Coop. Societies***[39], *all of which dealt with the issue of whether the institution in question qualified as a "State" under Article 12 of the Constitution of India*, it is thus observed, in para 21:

> "21. We have, on facts, found that the cooperative societies, with which we are concerned in these appeals, will not fall within the expression "State" or "instrumentalities of the State" within the meaning of Article 12 of the Constitution and hence not subject to all constitutional limitations as enshrined in Part III of the Constitution. *We may, however, come across situations where a body or organisation though not a State or instrumentality of the State, may still satisfy the definition of public authority within the meaning of Section 2(h) of the Act, an aspect which we may discuss in the later part of this judgment*."
>
> (Emphasis supplied)

Not only does para 21 of the decision in ***Thalappalam*** defeat Mr. Mehta's contention that the issue of whether an institution is "State" or an "other authority" under Article 12 of the Constitution is irrelevant while examining whether the institution is a "public authority" under Section 2(h) of the RTI Act; the concluding sentence in para 21 of ***Thalappalam*** would indicate to the contrary.

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[36] **(1999) 1 SCC 741**
[37] **1989 Supp (1) SCC 205**
[38] **(1976) 2 SCC 58**
[39] **(2006) 11 SCC 634**

37. Para 21 of ***Thalappalam*** says that there may be situations in which, *even if the body is not a State under Article 12*, it may *nonetheless* be a public authority under Section 2(h) of the RTI Act. Meaning, thereby, that, if the body is a State/other authority under Article 12, *it would ordinarily be a public authority under Section 2(h), though there may be situations in which the body is a public authority under Section 2(h) of the RTI Act, though it does not qualify as a "State" under Article 12*. ***Thalappalam***, therefore, in a sense, says exactly the opposite of what Mr. Mehta contends.

38. We, therefore, do not agree with Mr. Mehta in his contention that, in relying on the judgment of the Division Bench of this Court in ***K.C. Sharma***, the learned Single Judge erred. We agree with the learned Single Judge that the aspect of whether there is deep and pervasive government control over the NSEI stands concluded by the said decision.

39. Once this aspect is understood, it is clear that the NSEI qualifies as a "public authority" under clause (i) of the second part of Section 2(h) of the RTI Act.

40. We also agree with the learned Single Judge that the NSEI qualifies as a "public authority" even under the first part of Section 2(h).

41. Apropos the first part, the learned Single Judge holds that

(i) NSEI qualifies as an "authority or body",

(ii) the words "established or constituted", especially the word "constituted", would include a case in which the body, though established by a private party, required recognition for functioning as a stock exchange, and

(iii) the order issued by the SEBI under Section 4(3) of the SCRA, which was essential for NSEI to function, had to be regarded as an order issued by the Central Government in view of Section 29 of the SCRA.

42. The justification provided by the learned Single Judge, in the impugned judgment, for each of these findings, is eloquent and reasoned, and we see no cause to disturb the findings. Indeed, Mr. Mehta, too, did not advance any submission which would suffice for us to disagree with the learned Single Judge.

43. In holding that the NSEI is an "authority" within the meaning of the first part of Section 2(h), the learned Single Judge has reasoned thus:

> "7. Webster's Comprehensive Dictionary (International Edition) defines the term 'authority' as "the person or persons in whom government or command is vested; often in the plural". Meaning to the word "authority" in Webster's Third New International Dictionary is "a public administrative agency or corporation having quasi-governmental powers and authorized to administer a revenue-producing public enterprise". Meaning of 'authority' given in *The Law Lexicon P. Ramanatha Aiyar, Second Edition-1997* is "a person or persons, or a body, exercising power of command; generally in plural : as the civil and military authorities". In ***Rajasthan State Electricity Board v. Mohan Lal***, the Supreme Court referred to the dictionary mean of the term 'authority' and observed;
>
> "5. The meaning of the word "authority" given

in Webster's Third New International Dictionary, which can be applicable, is a public administrative agency or corporation having quasi-governmental powers and authorised to administer a revenue-producing public enterprise. This dictionary meaning of the word "authority" is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi governmental functions. The expression "other authorities" is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India; and we do not see any reason to narrow down this meaning in the context in which the words "other authorities" are used in Article 12 of the Constitution.

6. In ***Smt Ujjam Bai v. State of Uttar Pradesh***, Ayyangar, J., interpreting the words "other authorities" in Article 12, held: "Again, Article 12 winds up the list of authorities falling within the definition by referring to "other authorities" within the territory of India which cannot obviously be read as ejusdem generis with either the Government and the Legislatures or local authorities. The words are of wide amplitude and capable of comprehending every authority created under a statute and functioning within the territory of India or under the control of the Government of India. There is no characterisation of the nature of the 'authority' in this residuary clause and consequently it must include every type of authority set up under a statute for the purpose of administering laws enacted by the Parliament or by the State including those vested with the duty to make decisions in order to implement those laws." In ***K.S. Ramamurthy Reddiar v. Chief Commissioner, Pondicherry***[40], this Court, dealing with Article 12, held: "Further, all local or other authorities within the territory of India include all authorities within the territory of India whether under the control of the Government of India or the Governments of various States and even autonomous authorities which may not be under the control of the Government at all." These decisions of the Court support our view that the expression "other authorities" in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of the powers conferred may be for the purpose of carrying on commercial activities. Under the Constitution, the State is

[40] **AIR 1963 SC 1464**

itself envisaged as having the right to carry on trade or business as mentioned in Article 19(1)(*g*). In Part IV, the State has been given the same meaning as in Article 12 and one of the Directive Principles laid down in Article 46 is that the State shall promote with special care the educational and economic interests of the weaker sections of the people. The State, as defined in Article 12, is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people. The State, as constituted by our Constitution, is further specifically empowered under Article 298 to carry on any trade or business."

8. The term 'authority' has been a subject matter of judicial decisions of the Supreme Court while examining Articles 12 and 226 of the Constitution of India and has been given wider meaning. The Supreme Court in ***Praga Tools Corporation v. Shri C.A. Imanual***, had observed:

> "6. In our view the High Court was correct in holding that the writ petition filed under Article 226 claiming against the company mandamus or an order in the nature of mandamus was misconceived and not maintainable. The writ obviously was claimed against the company and not against the conciliation officer in respect of any public or statutory duty imposed on him by the Act as it was not be, but the company who sought to implement the impugned agreement. No doubt, Article 226 provides that every High Court shall have power to issue to any person or authority orders and writs including writs in the nature of habeas corpus, mandamus *etc.* or any of them for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. But it is well understood that a mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest. Thus, an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute. (See ***Sohan Lal v. Union of India***[41]), In ***Regina* v. *Industrial Court***[42] mandamus was refused against the Industrial court though set up under the Industrial courts Act, 1919 on the ground that the reference

[41] **AIR 1957 SC 529**
[42] **(1965) 1 QB 377**

for arbitration made to it by a minister was not one under the Act but a private reference. "This Court has never exercised a general power" said Bruce, J. in ***R. v. Lawisham Union***[43] "to enforce the performance of their statutory duties by public bodies on the application of anybody who chooses to apply for a mandamus. It has always required that the applicant for a mandamus should have a legal and a specific right to enforce the performance of those duties". Therefore, the condition precedent for the issue of mandamus is that there is in one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purposes of fulfilling public responsibilities. [Cf. Halsbury's Laws of England, (3rd ed.), Vol. II, p. 52 and onwards].

7. The company being a non-statutory body and one incorporated under the Companies Act there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a mandamus, nor was there in its workmen any corresponding legal right for enforcement of any such statutory or public duty. The High Court, therefore, was right in holding that no writ petition for a mandamus or an order in the nature of mandamus could lie against the company."

9. In ***Ramana Dayaram Shetty v. The International Airport Authority of India***, the Supreme Court noticed that the power of the executive Government to affect the lives of the people is growing and there has been a tremendous expansion of welfare and social service functions by the State. It was also noticed that this has resulted in greater frequency with which ordinary citizens come into association or encounter with the State policy holders.

[43] **(1897) 1 QB 498**

In ***Ajay Hasia v. Khalid Mujib Sehravardi***, it was observed that there would be considerable erosion of the efficiency of the fundamental rights in case the term 'authority' is interpreted narrowly by allowing the State to adopt stratagem of carrying out their functions through instrumentality of agency of a corporation and excluding the same. It was accordingly observed in paragraph 11 of the judgment as under:—

> "11. We may point out that it is immaterial for this purpose whether the corporation is created *by* a statute or *under* a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a government Company or a Company formed under the Companies Act, 1956 or it may be a society registered under the Societies. Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an "authority" within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a Company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the Company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12."

10. Section 2(h) of the Act does refer to the manner of establishment or constitution in conditions (a) to (d) but condition (d) expands the term to include establishment or constitution by a notification or order by an appropriate government. Legislative enactment is not necessary and 'authority' under condition (d) of the section 2(h) can be established or constituted by an executive action. 'Authority' may be statutory or non statutory. Effect and relevance of conditions (a) to (d) has been examined later on.

11. In ***Ajay Hasia's case*** *(supra)*, the Supreme Court quoted with approval the test laid down in ***International Airport Authority's*** case to decide whether an organization/body is an authority against whom a writ could be issued under Article 226 of the Constitution of India and it was observed:—

> "9. The tests for determining as to when a corporation

can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the ***International Airport Authority*** case. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the ***International Airport Authority*** as follows:

> "(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.
>
> (2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character.
>
> (3) It may also be a relevant factor … whether the corporation enjoys monopoly status which is State conferred or State protected.
>
> (4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.
>
> (5) If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.
>
> (6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government."

If on a consideration of these relevant factors it is found

that the corporation is an instrumentality or agency of Government, it would, as pointed out in the International Airport Authority case, be an "authority" and, therefore, 'State' within the meaning of the expression in Article 12."

12. Conflict between ***Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi***[44] and ***Sabhajit Tewary v. UOI***[45], was examined by seven Judges of the Supreme Court in the case of ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology***[46]. The majority judgment approved of the tests specified in the case of ***Ajay Hasia*** and has observed as under:

> "31. The tests to determine whether a body falls within the definition of "State" in Article 12 laid down in ***Ramana*** with the Constitution Bench imprimatur in ***Ajay Hasia*** form the keystone of the subsequent jurisprudential superstructure judicially crafted on the subject which is apparent from a chronological consideration of the authorities cited.
>
> 40. The picture that ultimately emerges is that the tests formulated in ***Ajay Hasia*** are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesis, be considered to be a State within the meaning of Article 12. The question in each case would be — whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

13. More recently in ***Binny Limited v. V.V. Sadasivan***, the Supreme Court has reiterated that Article 226 of the Constitution is couched in a way that even a Writ can be issued against a body which is discharging public function and the decision sought to be corrected or enforced must be in discharge of a public function. A body is performing a public function when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies, therefore, exercise public functions when they intervene or participate in social or economic affairs of

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[44] **(1975) 1 SCC 421**
[45] **(1975) 1 SCC 485**
[46] **(2002) 5 SCC 111**

public interest. In the said judgment, the Supreme Court quoted the following passage on what are regarded as public functions from De Smith, Woolf and Jowell in the book Judicial Review of Administrative Action, Fifth Edition in Chapter 3, paras 0.24 and 0.25, which reads as under:—

> "A body is performing a 'public function' when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. This may happen in a wide variety of ways. For instance, a body is performing a public function when it provides 'public goods' or other collective services, such as health care, education and personal social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of the criminal and civil courts and tribunal system). They also do so if they regulate commercial and professional activities to ensure compliance with proper standards. For all these purposes, a range of legal and administrative techniques may be deployed, including rule making, adjudication (and other forms of dispute resolution); inspection; and licensing.
>
> Public functions need not be the exclusive domain of the State. Charities, self-regulatory organisations and other nominally private institutions (such as universities, *the Stock Exchange*, Lloyd's of London, churches) may in reality also perform some types of public function. As Sir John Donaldson, M.R. urged, it is important for the courts to 'recognise the realities of executive power' and not allow 'their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted'. Non-governmental bodies such as these are just as capable of abusing their powers as is Government."

14. *The aforesaid passage quoted above specifically holds that stock exchanges perform public functions*. Power of judicial review under Article 226 is designed to prevent cases of abuse of power and neglect of duty by a public authority. The Act ensures transparency, openness and accountability of the authorities by giving rights to citizens to ask for and get information. The Act effectuates and provides statutory and enforceable legal right to enforce the Right to Information ingrained and part of Article 19(1)(a) of the Constitution. The term 'authority' used in Section 2(h) of the Act has to be read in the light of the aforesaid

tests and paragraph 40 of the judgment in the case of ***Pradeep Biswas*** (supra). Whether and when an 'authority' is a 'public authority' in view of conditions (a) to (d) in Section 2(h) of the Act has been examined later on."

(Emphasis supplied)

44. We entirely agree, and wholeheartedly endorse the finding, of the learned Single Judge, that the NSEI is an "authority" within the meaning of the first part of Section 2(h) of the RTI Act. In that view of the matter, it is not necessary for us to examine whether the NSEI would also qualify as an "institution of self-government".

45. We may also note that as, in ***Binny***, the Supreme Court has endorsed the view, expressed by De Smith, Woolf and Jowell in their book Judicial Review of Administrative Action, that a stock exchange performs a public function (as is noted in the impugned judgment in para 14), the submission, to the contrary, of Mr. Mehta, cannot be accepted.

46. Apropos the ambit of the expressions "established" and "constituted", as employed in the first part of Section 2(h) of the RTI Act, the impugned judgment holds, in para 18 to 21, thus:

"18. Learned counsel for the petitioner laid considerable emphasis on the words "established" and "constituted" and the requirements specified in (a) to (d) of part one of the Section 2(h). It was stated that the term "established" means initial establishment or creation of authority, body or institution of self-government by or under the Constitution, by an enactment made by the Parliament or State Legislature or by a notification or order issued by the appropriate Government. The word "constituted" it was submitted refers to constitution of a body with appointment of members as in the Central Coordination Committee by a notification under Section 3(1) Persons with Disability (Equal

Opportunities, Protection of Rights and Full Participation) Act, 1995.

19. The words 'established and constituted' used in Section 2(h) of the Act have to be interpreted in the context in which the said words have been used. In Webster's Third New International Dictionary, it has been held that the word 'establish' has been given a number of meanings, namely, to found or base squarely, to make firm or stable, to bring into existence, create, make start, originate. In Shorter Oxford English Dictionary, Third Edition, the word 'establish' has been given in number of meanings, i.e., to ratify, confirm, settle to found, to create. Founding is not the only meaning of the word 'establish' and it includes creation also. In Bouvier's Law Dictionary (Third Edition), Vol. I, it has been said that the word 'establish' occurs frequently in the Constitution of the United States and it is there used in different meanings; and five such meanings have been given, namely -(1) "to settle firmly to fix unalterably, to establish justice; (2) to make or form : as to establish a uniform rule of naturalization; (3) to found, to create, to regulate : as, Congress shall have power to establish post officers; (4) to found, recognize, confirm or admit : as, Congress shall make no law respecting an establishment of religion; (5) to create, to ratify, or confirm, as We, the people, etc., do ordain and establish the Constitution".

20. Thus, it cannot be said that the only meaning of the word 'establish' is to be found in the sense in which an eleemosynary or another institution is founded. *The word 'established' need not mean the initial foundation and it includes creation, confirmation or recognition.*

21. *The word 'constituted' is wider than the word 'established'. The word 'constituted' in section 2(h) of the Act not only refers to the first act/acts by which a body or organization is set up but a subsequent act or acts which will have the effect of conferring on an organization or a body, a special status and constitute a 'body' with status of an 'authority' or 'institution of a self-government' for the purpose of Section 2(h) of the Act. A private institution or a body may be incorporated or formed by acts of private persons but subsequent statutory enactment or an order or notification issued by the appropriate Government can result in constitution and conferring upon the said body, status of an 'authority' or an 'institution of self-government'. For example, a private or a public company upon incorporation may be a body but not an 'authority' or institution of self government' but subsequently a enactment, order or notification can result in its constitution as an 'authority' or 'institution of self government' which was not in existence till the enactment, notification or order*

was made. An organisation in existence can be 'constituted' or 'established' as an 'authority' or 'institution of self government' by a subsequent enactment or order/notification. A private company upon its incorporation or registration does not become an 'authority or institution of self government' as defined above under section 2(h) of the Act, but by a subsequent enactment or order/notification issued can become an 'authority or institution of self government'. Thus, subsequent enactment, order or notification may have the effect of establishing or constituting an 'authority or institution of self government'. The word "constituted", has to be liberally interpreted to include cases where an organization or a body is already set up but by virtue of a notification or order passed by appropriate Government or statutory enactment is conferred and given status of an 'authority' or an 'institution of self-government'. The words 'established' or 'constituted' have to be read in a manner so as to effectuate the legislative intent in Section 2(h) of the Act."

(Emphasis supplied)

47. Yet again, we entirely agree.

48. Mr. Mehta sought to contend that the words "established" and "constituted" could not embrace an institution which was privately established and the functioning of which was merely regulated by some statutory provision. Such regulation, he submits, would not suffice to hold that the institution was established or constituted by any governmental notification or order.

49. In advancing this submission, Mr. Mehta fails to notice that this is *not a case in which the body was established as a private company and was regulated by statute later, which is what* ***Thalappalam*** *referred to. It is a case where, without recognition by the SEBI, the NSEI could not function as a stock exchange at all. We are dealing, here, not with regulation, but with recognition. Section 4(3) of the SCRA does not "regulate" the functioning of stock exchanges; it*

requires recognition of the stock exchange by the government in order for it to function as a stock exchange. The very identity of the stock exchange as a stock exchange is, therefore, conditional upon recognition of the stock exchange under Section 4(3). Section 4(3) is not, therefore, mere "regulatory" provision, it is a prerequisite for a stock exchange to be able to discharge any of its functions.

50. The learned Single Judge has held that, in interpreting the expressions "established" and "constituted" in the first part of Section 2(h), the Court has to adopt a purposive, rather than a literal, construction. With the advancement of the law, the principle of purposive construction has replaced the principle of plain meaning as the golden rule for interpreting a statutory instrument.[47] In view of the fact that Section 4(3) requires governmental recognition for a stock exchange to function as such, we agree with the learned Single Judge that the stock exchange has to be regarded as having been "established" or, at the very least, "constituted" by an order issued by the Government.

51. The judgment in ***Dalco***, cited by Mr. Mehta, was not dealing with the RTI Act and cannot, therefore, apply.

52. We also agree with the learned Single Judge that, though the order under Section 4(3) of the SCRA was issued by the SEBI, it has to be treated as an order of the Central Government, as the SEBI was acting, while issuing the order, as a delegatee of the Central

[47] Refer **Shailesh Dhairyawan v. Mohan Balkrishna Lulla, (2016) 3 SCC 619, Richa Mishra v. State of**

Government under Section 29 of the SCRA.

53. The second and third ingredients, of the three ingredients identified in para 41 *supra* are also, therefore, satisfied.

54. The learned Single Judge is, therefore, correct in his view that the NSEI would qualify as a "public authority" not only under the second part, but also under the first part of Section 2(h) of the RTI Act.

F. Summarizing our findings

55. We may briefly summarise, thus, the reasons for our conclusion that the judgment of the learned Single Judge does not call for interference:

(i) ***Thalappalam*** does not say, anywhere, that the considerations for "other authority" or "state" in Article 12 of the Constitution cannot be imported into Section 2(h) of the RTI Act.

(ii) Rather, para 21 of ***Thalappalam*** says that there may be situations in which, *even if the body is not a State under Article 12*, it may nonetheless be a public authority under Section 2(h). Meaning, thereby, that, if the body is a State/other authority under Article 12, *it would ordinarily be a public authority*

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under Section 2(h). ***Thalappalam***, therefore, says exactly the opposite of what Mr. Mehta contends.

(iii) Regarding the aspect of control, ***K.C. Sharma*** expansively gives reasons for why the Central Government has deep and pervasive control over the DSE. The applicability of the *ratio decidendi* of ***K.C. Sharma*** is not affected by the fact that the case is a service matter. It cannot be said that the Central Government has deep and pervasive control over the DSE for service matters, but not for other cases.

(iv) The aspect of "control" is, therefore, covered by ***K.C. Sharma.***

(v) NSEI is, therefore, a "public authority" under the second part of Section 2(h).

(vi) Apropos the first part, the Single Judge holds that

(a) NSEI qualifies as an "authority or body",

(b) the words "established or constituted", especially the word "constituted", would include a case in which the body, though established by a private party, required recognition for functioning as a stock exchange, and

(c) the order issued by the SEBI under Section 4(3) of the SCRA, which was essential for NSEI to function, had to be regarded as an order issued by the Central Government in view of Section 29 of the SCRA.

(vii) We see no reason to differ. It has to be remembered that this is *not a case in which the body was established as a private company and was regulated by statute later, which is what* ***Thalappalam*** *referred to, it is a case where, without recognition by the SEBI, the NSEI could not function as a stock exchange at all*.

(viii) Therefore, the NSEI also satisfies the first part of the definition of "Public authority".

G. Conclusion

56. We affirm and uphold the judgment of the learned Single Judge.

57. The appeal is dismissed, with no orders as to costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

JULY 01, 2026*/yg/aky*