
(2010) 02 UK CK 0014
In the Uttarakhand High Court

Asian Education Charitable Society and Others

APPELLANT

Vs

State of Uttarakhand and Others
 Shivalik
International School Society and Others Vs Public Information
Officer and Others
 Jaycees Public School Vs Chief
Information Commissioner and Others
 Aryan School
Malsi Dehradun Vs State Information Commission and Others

RESPONDENT

Date of Decision : 09-02-2010

Acts Referred:

Right to Information Act, 2005 — Section 11, 18, 19, 2, 6

Citation : AIR 2010 Utt 72 : (2011) 1 RCR(Civil) 514 : (2010) 1 UD 368

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Judgement

Sudhanshu Dhulia, J.—Heard Mr. Ramji Srivastava, Mr. T.S. Bindra, Mr. V.K. Kohli, Senior Advocate and Mr. Arvind Vashisth, Advocate for the petitioners and Mr. Vipul Sharma and Mr. K.P. Upadhyay, Addl. Chief Standing Counsel for respondents.

2. A common question of law is involved in all these petitions. All the petitioners before this Court are Societies or schools run by societies. Each claims that the School is entirely private funded and since they are not "public authority" as defined u/s 2(h) of the Right to Information Act, 2005 (from hereinafter referred to as the Act), cognizance cannot be taken against them by Public Information Officers as well as by the State Information Commission, under the Act. Section 2(h) of the Act, which defines "public authority" reads as follows:

(h) "public authority" means any authority or body or institution or 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;

Section 2(f) of the Act, which defines "information" reads as follows:

(f) information means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

Section 2(i) of the Act, which defines "record" reads as follows:

(i) "record" includes--

(i) any document, manuscript and file;

(ii) any microfilm, microfiche and facsimile copy of a document;

(iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and

(iv) any other material produced by a computer or any other advice;

Section 2(j) of the Act, which defines "right to information" reads as follows:

(j) right to information means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to--

(i) inspection of work, documents, records;

(ii) taking notes, extracts, or certified copies of documents or records;

(iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

3. The petitioners would contend that they are neither a body constituted under the Constitution or Parliament or State Legislature. They are also not a body, which has been constituted vide any notification issued or order made by the appropriate Government. They are also not owned, controlled or even substantially financed directly or indirectly by funds provided by the appropriate Government. Hence they are not "public authorities".

4. For the petitioners to come within the purview of Section 2(h) of the Act, what

is necessary is that the body should be formed vide a notification issued or an order made by the appropriate government and either it should be owned, controlled or substantially financed by funds provided by the appropriate government. Three things are, therefore, necessary. First the body itself should be formed by a notification or an order made by the appropriate government. Secondly, it should be either owned or controlled by the Government and if it is not owned or controlled, then it should at least be "substantially financed", from government funds.

5. The petitioners contend that the Schools never came into existence vide any notification or order made by the government, nor is it owned or controlled by the government or even financed, leave aside "substantially financed", by the government, as it receives no funds or financial aid of any kind from the government. There cannot be any dispute about the fact that the private body, which is not created by any notification or order of the Government, nor is it owned or controlled by the government or substantially financed by it cannot come within the definition of a "public authority" as defined under the Act. None of these petitioner own their existence to a notification of the government, nor are they owned or controlled by the government and here even the "control" exercised by the Government should be "deep and pervasive" control inasmuch as the management committee of the School should be controlled by and large by government nominees or by government authorities, which is not the case at present and therefore, there is no ownership or control by the Government on these schools as all these schools are self-financed institution and do not receive any amount of aid from the Government. During the pendency of these writ petitions before this Court the State Information Commission, in other similar matters pending before it in Appeal has passed a detail order dated 3.11.2009 (which has been placed on record by the petitioners and has been examined by the Court), by which the present controversy is by and large settled, only some of the edges remain to be smoothened. In fact, vide its order dated 3.11.2009 the Commission has rightly held that the institutions, such as the petitioners, cannot be called a "public authority" as defined u/s 2(h) of the Act and therefore, this grievance of the petitioners stands redressed by the order of the Information Commission itself. This is also the view of this Court that these institutions are not "public authorities" as they are not owned or controlled or financed by the Government, nor they do own their existence by a notification or order of the Government, therefore, so far as this part, as to whether the petitioners are "public authorities" is concerned, the same stands settled and it is held that institutions, such as the petitioners are not "public authorities", under the Right to Information Act, for reasons already stated above.

6. There is, however, another aspect to these writ petitions, which is that though the petitioners may not be a "public authority" as defined u/s 2(h) of the Act yet whether the Education Department of the Government or any other Government Department, being a public authority, through its Information Officer or the appellate authority under the Act can compel the petitioners to furnish

information, which is being sought from these public authorities. For example in case Public Information Officer in the Department of Secondary Education of Government of Uttarakhand is requested with an information which pertains to any of the petitioner school, the question would be, can the Public Information Officer of such a public authority compel the petitioners to furnish this information to that public authority? The answer to this is also to be found in the Act itself. Petitioners here would fall under the category of the "third party" and the "third party" has been defined u/s 2(n) of the Act, which reads as follows:

(n) "third party" means a person other than the citizen making a request for information and includes a public authority.

7. Third party information has been defined u/s 11 of the Act, which reads as follows:

11. Third party information.--(1) Where a Central Public Information Officer or the State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under Sub-section (1) to a third party in respect of any information on record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in Section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request u/s 6, if the third party has been given an opportunity to make representation under Sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under Sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal u/s 19 against

the decision.

8. This Section 11 of the Act would apply where petitioners have already given certain information to a public authority, let us say the Department of Education or any other State department. In case the petitioners attach any confidentiality to such an information, they must inform the public authority of their intentions and the public authority thereafter, whenever it wants to disclose such an information to any citizen, must give a prior notice u/s 11(1) of the Act to the "third party", which is the petitioners in the present case and u/s 11(1) of the Act, when this notice has been given, the petitioners shall have an opportunity to represent before the public authority. In case the public authority still decides to go ahead and furnish such an information u/s 11(3) of the Act, this decision must be communicated to the third party who then has a right to file an appeal against this decision u/s 19 of the Act read with Section 11(4) and then a right to file a second appeal. Apart from this, the "third party" also has a remedy to directly approach the State Information Commission u/s 18(1)(f) of the Act.

9. There is another aspect to this. Section 8 lays down certain exception where the public authority is not obliged to give information to a citizen. Section 8(1) (j), which is presently being considered, reads as follows:

8. Exemption from disclosure of information.--

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,--

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...

(h) ...

(i) ...

(j) information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.

Provided that the information, which cannot be denied to the Parliament or a

State Legislature shall not be denied to any person.

(2) ...

(3) ...

10. The above provision states that such information, which is personal in nature or the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual is not liable to be given to the citizens, unless the State Public Information Officer or the Appellate Authority, as the case may be, is satisfied that there is an overwhelming public interest in disclosure of such an information. There is, therefore, only a slight discretion with the State Public Information Officer (or the Central Public Information Officer, as the case may be) while taking a decision on this aspect and the determining factor is "public interest". In case the public interest demands that confidentiality has to be maintained, the information should not be given, on the other hand if the public interest demands that the information must be disclosed, even though the information may be of a private nature, the Public Information Officer must disclose such an information.

However, it would be in the interest of justice that the same procedures be adopted as it is adopted u/s 11 of the Act, which relates to a "third party information" and the Public Authority must serve a prior notice to the individual such as the petitioners before taking a decision on disclosure of such an information.

11. It must also be stated here that in case the petitioners or such similarly situated institutes, are otherwise bound to furnish any information under any law, which is in force in the State of Uttarakhand, then they must do so. In fact, this aspect has also been dealt with by the State Information Commission in its order dated 3.11.2009, where apart from holding these institutes such as the petitioners not a "public authority", they must furnish this information if they are legally bound to furnish such information, under any other law presently in force. It is also necessary to state at this juncture that institutes such as the petitioners have been established to provide education in the State of Uttarakhand. They are as such performing a public function. Therefore, in case public interest demands that certain information be furnished by these schools to the public authorities, such information, subject to the limitation prescribed in the Act itself, and as stated above, must be furnished.

12. But can the Public Information Officer compel the petitioners to furnish information to citizen or to any other public authority, even though such an information is not already on record of the Public Information Officer?

In other words, can the Public Information Officer compel the petitioners to furnish certain information from the records of the petitioners' office, even though such an information has not been furnished under any provisions of law by the petitioners before this public authority? The answer to this would be in

negative, as it would be an invasion on the privacy of these Institutes, or individual and the Institutes not being a public authority, as it has already been held above, cannot be compelled to furnish information. Moreover, in case such an "information" is not already there with such this Public Authority, it cannot be an information "which is held", by the public authority and therefore, it would not be covered under the definition of "right to information" given u/s 2(j) of the Act. Section 2(j) of the Act reads as under:

(j) right to information means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to--

(i) inspection of work, documents, records;

(ii) taking notes, extracts, or certified copies of documents or records;

(iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

13. Under the aforesaid definition, "right to information" means an information which is accessible under this Act, and "which is held" by or under the control of any public authority. Since such an information is not already "held by" a public authority, the public authority cannot compel the private individual such as the petitioner to furnish such an information under the Act.

14. All these writ petitions are disposed of accordingly. No order as to costs.