

**(2019) 12 UK CK 0087**

**In the Uttarakhand High Court**

**Case No : Special Appeal No. 1019, 1020 Of 2019**

IMS University

APPELLANT

Vs

State Information Commissioner And Another

RESPONDENT

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**Date of Decision : 13-12-2019**

**Acts Referred:**

Right To Information Act, 2005 — Section 2(h), 2(h)(a), 2(h)(b), 2(h)(c), 2(h)(d), 2(h)(i), 3, 4, 5, 6, 7, 7(1), 19

IMS Unison University Act, 2012 — Section 3, 4

**Citation : (2019) 12 UK CK 0087**

**Hon'ble Judges :** Ramesh Ranganathan, CJ;Alok Kumar Verma, J

**Bench :** Division Bench

**Advocate :** Siddhartha Sah

**Final Decision :** Dismissed

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## **Judgement**

Ramesh Ranganathan, CJ

1. Both these Special Appeals are preferred against the common order passed by the learned Single Judge in Writ Petition (M/S) Nos. 2460 and 2461

of 2017 dated 02.11.2019.

2. The jurisdiction of this Court was invoked by the appellant-writ petitioner to quash the order passed by the State Information Commissioner,

Dehradun, in two Second Appeals, directing them to furnish the information sought for.

3. In the order under appeal, the learned Single Judge held that the appellant-writ petitioner fell under the definition of a "Public Authority" under

Section 2(h)(c) of the 2005 Act; an obligation was cast upon the appellant-writ petitioner to designate a Public Information Officer under Section 5 of

the 2005 Act; other obligations were also cast upon the Public Authority, under

Section 4 of the 2005 Act, as to how to distribute the information; the appellant-writ petitioner had not undertaken any such exercise; since they failed to furnish the information sought for, the private respondent, ultimately, had to approach the State Information Commission under Section 19 of the 2005 Act; and though the State Information Commission had directed the appellant-writ petitioner to furnish the information within a stipulated period, they had, instead of complying with the order, invoked the jurisdiction of this Court. The learned Single Judge, while dismissing the Writ Petitions, imposed costs of Rs. 25,000/- to be paid to the State Information Commission within three weeks from the date of the order. Aggrieved thereby, the present Special Appeals.

4. Mr. Siddhartha Sah, learned counsel for the appellant-writ petitioner, would submit that the provisions of the Right to Information Act, 2005 (for short the "2005 Act") would apply only to a public authority; in terms of Section 2(h)(i) of the 2005 Act, it is only a body, owned, controlled or substantially financed, directly or indirectly, by the funds provided by the appropriate Government, which would be a public authority; since the obligation to provide information, in terms of Section 7 of the 2005 Act, is only on a public authority, the State Information Commission had erred in directing the appellant-writ petitioner to provide the information; the learned Single Judge had erred in holding that the appellant-writ petitioner was a public authority; in any event since the question, whether or not the appellant-writ petitioner is a public authority, is debatable, no cost, much less a huge sum of Rs. 25,000/-, could have been imposed.

5. Before examining these contentions, it is necessary to refer to certain provisions of the 2005 Act. The said Act, as is evident from its Preamble, is an Act to provide for setting out the practical regime of right to information for citizens to secure access to information, under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. Section 2(h) of the 2005 Act defines a "public authority" and reads as under :

"(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.??

6. Section 3 of the 2005 Act stipulates that, subject to the provisions of the Act, all citizens shall have the right to information. Section 4 casts certain obligations on public authorities. Section 5 obligates a ??public authority? to designate a Public Information Officer and, under sub-section (1) thereof, every public authority shall designate as many State Public Information Officers, as the case may be, in all administrative units or offices under it, as may be necessary, to provide information to persons requesting the information under the Act. Section 6 provides for the manner in which information can be sought, and Section 7 provides for the manner in which such a request should be disposed of. In terms of Section 7(1) the request, received under Section 6 of the Act, shall be disposed of expeditiously; and, in any case, within thirty days of receipt of the request.

7. Since the appellant-writ petitioner claims that it is not a public authority under Section 2(h) of the 2005 Act, and is consequently not obligated to comply with the provisions of the 2005 Act including Sections 4 and 5 thereof, it is necessary to examine the validity of this contention urged on behalf of the appellant-writ petitioner.

8. The appellant-writ petitioner herein is a private University established under Sections 3 and 4 of the IMS Unison University Act, 2012. Under Section 2(h)(c) of the 2005 Act a ??public authority? would mean any authority or body or institution of self-government established or constituted by any law made by the State Legislature. Since the IMS Unison University Act, 2012 is a law made by the Uttarakhand State Legislature, the appellant-writ petitioner is, undoubtedly, a public authority under Section 2(h)(c) of the 2005 Act.

9. Mr. Siddhartha Sah, learned counsel for the appellant-writ petitioner, would submit that, in terms of clause (i) in Section 2(h) of the 2005 Act, it is only a body owned, controlled or substantially financed by funds provided by the

appropriate Government, which would be a public authority. This submission of the learned counsel needs only to be noted to be rejected.

10. While a "public authority" is defined under Section 2(h) of the 2005 Act as authorities or bodies or institutions referred to in clauses (a) to (d)

of Section 2(h) of the 2005 Act, Parliament has, by using the word "includes", also brought within the ambit of the definition of a "public

authority" : (i) a body owned, controlled or substantially financed and (ii) a non-Government organisation substantially financed directly or indirectly,

by funds provided by the appropriate Government. The inclusive definition would bring even bodies/non-government organisations referred to in

clauses (i) and (ii) of Section 2(h) within the ambit of a public authority, if they are substantially financed directly or indirectly by funds provided by the

appropriate Government. The mere fact that the appellant-writ petitioner does not fall within the inclusive part of Section 2(h) matters little, since they

clearly fall under Section 2(h)(c) of the 2005 Act.

11. The learned Single Judge was, in our view, justified in holding that the appellant-writ petitioner was a public authority under Section 2(h)(c) of the

2005 Act, and in rejecting the contention urged on behalf of the appellant-writ petitioner to the contrary.

12. In so far as imposition of costs of Rs. 25,000/- is concerned, it is necessary to note that, though the private respondent had sought information

more than two years ago, the said information has not yet been supplied to him, by the appellant-writ petitioner, on the specious plea that the provisions

of the 2005 Act are inapplicable. As the appellant-writ petitioner has violated the provisions of the 2005 Act, an enactment made with the laudable

object of conferring the right of information on all citizens, and to promote transparency and accountability in the working of every public authority, we

see no reason to interfere with the order under appeal.

13. Both the Special Appeals fail and are, accordingly, dismissed. No costs.