(2014) 10 BOM CK 0058

In the Bombay High Court

Case No : Writ Petition No. 590 of 2009

Pravara Medical Trust APPELLANT

Vs

The Union of India RESPONDENT

Date of Decision : 10-10-2014

Acts Referred:

Right to Information Act, 2005 — Section 2(a), 2(h), 2(h)(d)
University Grants Commission Act, 1956 — Section 3

Citation : (2014) 6 ABR 648 : (2016) 1 ALLMR 330 : (2015) 1 BomCR 649 : (2015) 319 ELT 427 : (2015) 2 MhLj 671

Hon'ble Judges : V.K. Jadhav, J;R.M. Borde, J

Bench : Division Bench

Advocate : V.D. Hon, Senior Counsel, Advocate for the Appellant; S.B. Deshpande, Assistant Solicitor General and L.V. Sangeet, Advocate for the Respondent

Judgement

R.M. Borde, J.

1. Petitioner No.1 Pravara Medical Trust is registered under the provisions of Bombay Public Trusts Act, 1950 and is also registered as society under the Societies Registration Act, 1860, on 28.12.1972. Petitioner No. 2 Pravara Institute of Medical Sciences is registered under the Societies Registration Act, 1860 on 10.07.2001 and is also registered as a Trust on 16.12.2003. It is also admitted that petitioner no.2, by virtue of notification issued by the Joint Secretary to the Government of India on 29.09.2003, in exercise of powers conferred under Section 3 of the University Grants Commission Act, 1956, has been declared to be a deemed university. Petitioner no.2 operates Medical College, Dental College, Nursing College and other Health related educational institutions.

2. Petitioners are taking exception to the direction issued by the University Grants Commission to tender information, as requested by Respondent No.3 in his application dated 05.12.2008. The University Grants Commission has

informed that all the deemed universities are covered by Right to Information Act and copy of the communication sent to the deemed universities along with copy of Central Information Commission''s letter has been forwarded to petitioner no.2. The Central Information Commissioner (CIC) has informed the University Grants Commission that the deemed universities are "public authorities" under the provisions of Section 2(h) of the Right to Information Act, 2005 and are bound to observe provisions of Right to Information Act, 2005.

3. It is the contention of petitioners that petitioner no.1 is a separate and independent trust and is not receiving any Government aid, whereas, petitioner no.2 also operates educational institutions on no grant basis. Petitioner no.2 does not receive any financial aid from the State or Central Government and is not a body owned, controlled or substantially financed by the "appropriate Government" nor a body financed directly or indirectly out of the funds provided by the "appropriate Government" and as such, does not come within the definition of public authority. It is the contention of petitioners that they are not bound to furnish information as requested by Respondent No.3. It is further contended that Respondent No.3 is a dismissed employee of petitioner no.2 and application tendered by him, seeking information, is with mala fide intention and does not call for any consideration.

4. Section 2(h) of the Right to Information Act, 2005, provides for definition of "public authority", which 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;

"Appropriate Government" is defined under Section 2(a) of the Act, which reads thus:

2 Definitions: - In this Act, unless the context otherwise requires, -

(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;

5. The communication issued by the University Grants Commission dated 18.12.2008, impugned in this petition, is directed against petitioner no.2. Petitioner no.1 is not at all called upon to furnish any information. According to petitioners, petitioner no.1 and petitioner no.2 are separate entities. The question, as such, falls for determination, in the instant petition, as to whether petitioner no.2, which is a deemed university, answers the parameters laid down under Section 2(h) of the Right to Information Act to bring it within the fold of "public authority".

6. It cannot be disputed that petitioner no.2 has been established by a notification issued or order made by "appropriate Government". The notification declaring petitioner no.2 as deemed university has been issued by the Government of India, Ministry of Human Resources Development, in exercise of powers conferred under Section 3 of the University Grants Commission Act, 1956 and on the advice of University Grants Commission. Thus, petitioner no.2 is established under a notification issued by the "appropriate Government".

7. Section 2(a) of the Right to Information Act defines "appropriate Government" in relation to "public authority", which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly by the Central Government or the Union territory administration, the Central Government. In the instant matter, it has not been disputed that petitioner no.2 has been established under a notification issued by the Central Government and as such, the Central Government falls within the definition of "appropriate Government" under Section 2(a) of the Right to Information Act, 2005.

8. Petitioners contend that the institution for its categorisation as "public authority" shall satisfy the test provided under clauses (i) and (ii) of clause (d) of Section 2(h) of the Act, namely, (i) body owned, controlled or substantially financed; or (ii) non -Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government. It is contended that petitioner no.2 is not controlled or substantially financed either directly or indirectly by the funds provided by the Government and as such, does not come within the purview of "public authority". It is contended that petitioner no.2 operates educational institutions on no grant basis and does not accept any Government aid.

9. The argument advanced by petitioners is not acceptable for the reason that Section 2(h)(d) provides that if the public authority established or constituted by notification issued by the appropriate Government, that itself is good enough and clause (d) of Section 2(h) also includes (i) body owned, controlled or substantially financed; and (ii) non -Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.

If the authority or body or an institution of self -Government is established or constituted by a notification issued by the appropriate Government, it is not necessary that in order to include such institution, body or authority within the definition of "public authority", the same must receive finance from the appropriate Government or shall be owned, controlled by the appropriate Government. The definition of "public authority" falling under Section 2(h)(d) is inclusive of body owned, controlled or substantially financed or non - Government organisation substantially financed directly or indirectly by funds provided by the appropriate Government.

10. The word "includes" when used, enlarges the meaning of expression defined so as to comprehend not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include.

11. "Includes" is very generally used in Interpretation Clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also, those things which the Interpretation clause declares that they shall include. (AIR 1954 Bombay 205).''

12. When the word "includes" is used in the definition, the legislature does not intend to restrict the definition, it makes the definition enumerative and not exhaustive, that is to say, the term defined would retain its ordinary meaning but its scope would be extended to bring within the term certain matters which in its ordinary meaning, it may or may not comprise. Commissioner of Commercial Tax, Indore and Others Vs. T.T.K. Health Care Ltd., .

13. In view of above, argument advanced by learned Counsel for petitioners that petitioner no.2 cannot be included within the ambit of "public authority? as provided under Section 2(h) of the Right to Information Act, 2005, is not acceptable and is devoid of substance.

14. So far as status of petitioner no.1 is concerned, it is contended that petitioner no.1 is a Trust and is not receiving any grant -in -aid or substantial finance from the State and as such, is not the "public authority". The order impugned in this petition is directed against petitioner no.2, which, according to petitioners, is an independent entity, i.e. Trust registered under the Bombay Public Trusts Act and a society, registered under the Societies Registration Act and further has been declared as a deemed university under the notification issued by the Central Government. Since the direction is issued against petitioner no.2 alone, the contentions raised by petitioners in respect of petitioner no.1, need not be answered. We do not propose to deal with the argument advanced concerning status of petitioner no.1 as the question really does not fall for our consideration in the instant petition, since the direction is issued only as against petitioner no.2. The challenge raised in the petition, as such, falls.

15. It would be obligatory on the part of petitioner no.2 to dispose of the request made by Respondent No.3 for tendering information in accordance with provisions of Right to Information Act, 2005.

16. Writ Petition stands dismissed. Rule discharged. There shall be no order as to costs.

17. Learned Senior Counsel, appearing for petitioners, seeks protection for further period of four weeks.

However, for the reasons recorded in the order, we do not deem it appropriate to extend the protection further. Prayer stands rejected.

