

(2008) 01 P&H CK 0146
In the Punjab And Haryana At Chandigarh

Principal, M.D. Sanatan Dharam Girls College and Another	APPELLANT
Vs	
State Information Commissioner and Another	RESPONDENT

Date of Decision : 14-01-2008

Acts Referred:

Right to Information Act, 2005 — Section 2

Citation : AIR 2008 P&H 101 : (2008) 1 RCR(Civil) 495 : (2008) 1 RCR(Criminal) 717

Hon'ble Judges : T.P.S. Mann, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The short issue raised in the instant petition is whether M.D. Sanatan Dharam Girls College, Ambala City (for brevity "the College") which is receiving 95 percent aid from the State of Haryana is covered by the expression "public authority" as per its definition given in Section 2(h) of the Right to Information Act, 2005 (for brevity "the Act"). The State Information Commissioner-respondent No. 1 (for brevity "the Commission") has held that the College is covered by the expression "public authority" as per definition given in Section 2(h) of the Act and has issued directions to the petitioner to furnish complete information to respondent No. 2 as demanded by her through the application dated 22.8.2007 within a period of ten days of the receipt of the impugned order. The Commission has also sought compliance report.

2. Facts are not in dispute. Ms. Vanita Sood, respondent No. 2, is a Music teacher and has been working in the College. A complaint was filed by a parent against her to the Kurukshetra University alleging that her daughter had been victimized by Vanita Sood in the course of practical music examination. On the directions issued by the University, the Managing Committee of the College ordered a fact finding inquiry. The report of fact finding inquiry was put up before the Managing committee which showed dissatisfaction with Vanita Sood in appointing external examiner by her. Accordingly, the Managing Committee asked its President to

hold a detailed enquiry who alongwith two members framed a questionnaire for Vanita Sood to reply. The questions were duly replied. On that basis the punishment of warning was given to her. She did not file any appeal although the remedy of appeal was available. She, however, requested for information under the Act through a written application dated 22.8.2007 (Annexure P.2) and also sent a reminder on 20.9.2007. The College sent reply dated 19.10.2007 (Annexure P.4) declining the request made by her and claimed that it was not a "public authority" within the meaning of Section 2(h) of the Act. Ms. Vanita Sood, however, filed an appeal to the Commission (Annexure P.5) to which reply was filed by the College on 12.11.2007 (Annexure P.6). The petitioner inter-alia raised the issue that the College had been set up by the Sanatan Dharam Sabha which is a registered society and affiliated to Kurukshetra University. It has further been contended that the College is affiliated to Kurukshetra University and is covered by the Haryana Affiliated Colleges (Security of Service) Rules, 2006. The Commission after considering the arguments framed the following two issues:

1. Whether a non-Governmental institution receiving substantial grants from Government is a "public authority" as defined u/s 2(h) of the RTI Act.
2. Whether the complainant is entitled to have access to information sought by her application dated 22.8.2007.
3. On Issue No. 1, the Commission concluded that the non governmental organisation substantially funded directly or indirectly by the appropriate government though set up by a registered society is covered under the definition of "public authority" as incorporated by Section 2(h)(d)(ii) of the Act. In respect of the 2nd issue the Commission held that Vanita Sood was entitled to have access to the information sought by her. It was further opined that the request was not covered under the exemption provision.
4. Mr. P.K. Mutneja, learned Counsel for the petitioner has submitted that a close scrutiny of expression "public authority" would show that before the question of substantial financing or directly or indirectly funding by the appropriate Government is decided, it is incumbent on the seeker of information to first prove that "public authority" or body has been established or constituted by or under the Constitution or any other law made by the Parliament or State Legislature. According to the learned Counsel any institution, authority or body which is not established or constituted by funds provided by the Government cannot be subjected to the rigors of the Act. He has emphasised that the college or the society which has established the College has not been constituted or established by any of the aforesaid methods and, therefore, the order passed by the Commission directing the petitioner to furnish information to Vanita Sood is liable to be set aside.
5. We have thoughtfully considered the submissions made by the learned Counsel and are of the view that this petition lacks merit. It would be appropriate

to refer to Section 2(h) of the Act which reads thus:

2(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 organization substantially financed, directly or indirectly by funds provided by the appropriate Government.

6. A perusal of the afore-mentioned provision makes it clear that the definition of "public authority" comprises. In the first category those authorities, bodies or institutions of self government which are established or constituted by or under the Constitution or by the law made by the Parliament or the State Legislature or by the notification issued or orders made by the appropriate government. In the second part "public authority" has been defined to include any-body owned, controlled or substantially financed or non government organisation substantially financed directly or indirectly by the funds provided by the appropriate Government. There is no controversy that the petitioner has been receiving 95% aid from the State of Haryana to disburse the salary and to meet the expenses of its employees. Therefore, it is covered by the expression used in Section 2(h)(d) (ii) of the Act namely "non Government organisation substantially financed directly or indirectly by the funds provided by the appropriate government."

7. The use of expression "includes" in Clause (d) of Section 2(h) of the Act clearly indicates that the definition is illustrative and not exhaustive. According to the well known principles of judicial interpretation where the word "defined" is declared to include certain other things, the definition is to be taken as prima facie extensive. In that regard, reliance may be placed on a judgement of Hon'ble the Supreme Court in the case of Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, . Our view is fully supported by the following observations made by their Lordships:

...The word "includes" is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute". When it is so used, those words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include. The word "include" is also susceptible of other constructions which it is unnecessary to go into.

8. The afore-mentioned view has also been taken in the case of Doypack Systems Pvt. Ltd. Vs. Union of India (UOI) and Ors, .

9. We are further of the view that the object of the Act is to promote transparency and accountability in the working of every "public authority" and democracy requires an informed citizenry and transparency of information have been considered vital to the functioning of democracy and also to contain corruption. The long title of the Act reads as under:

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, the constitution of a Central Information Commission and State Information commissions and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India has established democratic Republic;

AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Government, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonize these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.

10. The afore-mentioned title of the Act would highlight the need for liberal interpretation of these provisions which is further supported by the use of the expression "instrumentality of the State". Therefore, we are of the considered opinion that the petitioner is fully covered by the expression "public authority" and as such the order passed by the Commission is unassailable. Accordingly, the writ petition fails and the same is dismissed.