

(2010) 08 BOM CK 0160

In the Bombay High Court

Case No : Writ Petition No. 5067 of 2009

Shikshan Prasarak Mandal

APPELLANT

Vs

The State Information Commissioner, Shri Bhushan
Keshaorao Tijare and The Joint Director of Education, Nagpur
Division

RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Right to Information Act, 2005 — Section 2

Citation : (2011) 3 BomCR 463 : (2011) 3 RCR(Civil) 510 : (2011) 3 RCR(Civil) 510

Hon'ble Judges : S.A. Bobde, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : Nilesh Adbe, for the Appellant; A.D. Mohgaonkar, for Respdt. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

A.B. Chaudhari, J.—Heard. Rule. Rule returnable forthwith. Heard finally by consent of learned Counsel for the rival parties.

2. By the present petition, the petitioner has put to challenge the notification issued by respondent No. 3 - Joint Director of Education dated 12.9.2008, Annexure - I, by which Principals and office bearers of Non-Government Colleges receiving grants-in-aid were directed to appoint Public Information Officers in order to comply with the Right to Information Act, 2005.

3. In support of the writ petition, learned Counsel for the petitioners argued that the petitioners are a Education Society registered under the provisions of the Bombay Public Trusts Act, 1950 and it does not receive any grant-in-aid from the Government nor it is funded by the State Government. Therefore, the case of the petitioners is fully covered by the decision of a Single Judge of this Court in the case of Nagar Yuwak Shikshan Sanstha and Yeshwantrao Chavan College of Engineering Vs. Maharashtra State Information Commission, Vidarbha Region

and Rajkumar Shyamrao Bhoyar, Secretary, Yeshwantrao Chavan College of Engineering, Nonteaching Staff Employees Union,

4. Learned Counsel for the petitioners thus argued that the said notification issued by the Joint Director of Higher Education, Nagpur Division, Nagpur is liable to be quashed and set aside by holding that the provisions of Right to Information Act, 2005 are not applicable to the petitioners - Society.

5. We have gone through the notification dated 12.9.2008, issued by the Joint Director of Higher Education, Nagpur Division, Nagpur and the decision rendered by the Single Judge of this Court, cited supra. The decision which is referred by the learned Counsel for the petitioners has no applicability in the instant case. In that case it was not disputed that petitioner No. 1 - Nagar Yuwak Shikshan Sanstha, Nagpur and the Engineering College run by it i.e. petitioner No. 2 were neither directly nor indirectly funded by the appropriate Government. Since petitioner No. 2 in that case admittedly is unaided College and was not provided grants or any other funds by the appropriate Government directly or indirectly and further the question whether schools or colleges receiving grants-in-aid from the Government directly or indirectly would be covered by the definition of public authority did not fall for consideration. In that factual background, the learned Single Judge of this Court held that petitioner No. 1 - Education Society and petitioner No. 2- Engineering College did not fall within the meaning of definition of public authority under the Right to Information Act, 2005.

6. In the instant case, however, we find that the impugned notification dated 12.9.2008, Annexure-I, issued by the Joint Director of Higher Education, Nagpur Division, Nagpur is not at all addressed to the petitioners - Education Society but is addressed and in our opinion, rightly to the Non-Government Colleges receiving grants-in-aid to appoint Public Information Officer under the Right to Information Act. We have no doubt in our mind that all the Colleges receiving grants-in-aid from the Government of Maharashtra or from the Central Government will have to be treated as public authority as defined in Section 2(h) of the Right to Information Act, 2005 because such colleges directly or indirectly receive the grants-in-aid from the Government(s). In the instant case, the petitioners have admitted in paragraph No. 5 that the Colleges and Institutions run by the petitioners are receiving grants-in-aid. We quote relevant extracted portion from paragraph No. 5 of the petition as under.

It is only colleges and institutions run by the petitioner-Trust are receiving grant-in-aid from the State's Exchequer. It is categorically stated that the petitioner-Trust did not receive a single rupee from the State and the aided is provided by the Government to the institutions administered by petitioner-society.

7. In view of the above admitted position, the notification in question is perfectly in order and in accordance with the mandate of the Right to Information Act, 2005. In the instant case, it is seen that the State Information Commissioner has recorded a finding in paragraph No. 3 of its impugned order that respondent No.

2 was informed by the petitioners - Society to ask the information from the concerned College, namely, Seth Kesrimal Porwal College, Kamptee, Tq. Kamptee, District Nagpur and when respondent No. 2 went to the Principal of the said College, he was instructed to ask for the information from the Society. This petition, however, has not been filed by the College for obvious reasons. The State Information Commissioner, therefore, rightly found that the petitioners - Society and its College were guilty of not providing the information and therefore, it found that it was necessary to impose fine in the sum of Rs. 25,000/- and the same was ordered to be recovered from the grants payable to the College. In the instant case, it is not in dispute that the said College run by the petitioners - Society is receiving grants-in-aid and the grants-in-aid received by the College from the Government are managed by the Society and its College. We, therefore, hold that the Non-Government Schools/Colleges/Institutions receiving grants-in-aid either from the State Government or the Central Government are fully covered by the definition of public authority and such Schools/Colleges are covered by the provisions of the Right to Information Act, 2005. We, thus, explain the judgment in the case of Nagar Yuwak Shikshan Sanstha, Nagpur and Anr. v. Maharashtra State information Commission, Vidarbha Region, Nagpur and another, cited supra. We, therefore, uphold the notification dated 12.9.2008 Annexure - I, issued by the Joint Director of Higher Education, Nagpur Division, Nagpur and consequently, we also uphold the judgment and order made by the State Information Commissioner Annexure - VI. In the result, we make the following order.

ORDER

(i) Writ Petition is dismissed with costs of Rs. 5,000/- (Rupees Five Thousand Only) to be paid to the respondent State in Education Department which shall recover the same from the grants payable to petitioners' College.