

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 29th September, 2015**

+ **W.P.(C) 4675/2012**

**THE PUBLIC INFORMATION OFFICER,
GOVT. OF NCT OF DELHI**

..... Petitioner

Through: Mr. Satyakam, Adv.

Versus

SAURABH SHARMA AND ORS

..... Respondents

Through: Mr. Divya Jyoti Jaipuriar, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition impugns the orders dated 29th July, 2011 and 12th March, 2012 of the Central Information Commission (CIC) constituted under the Right to Information Act, 2005 (RTI Act) in a complaint filed by the respondent No.1 Mr. Saurabh Sharma and in a petition filed by the respondents No.1 to 12 herein namely Mr. Saurabh Sharma, Mr. Thomas, Ms. Reena, Ms. Reeta, Ms. Rukhsana, Ms. Shakuntala, Mr. Vinod Singh, Ms. Sushila, Mr. Harvinder Kumar, Mr. Lalit Kumar, Mr. Umapati Kumar and Mr. Banram Kumar respectively.

2. This writ petition was entertained and vide *ex-parte* ad-interim order dated 31st August, 2012 the operation of the impugned orders stayed. The said interim order has continued in force. A counter affidavit has been filed

on behalf of the respondents and to which a rejoinder has been filed by the petitioner. The counsel for the petitioner and the counsel for the respondents have been heard.

3. The respondent No.1 filed a complaint under Section 18 of the RTI Act against the petitioner, the Central Public Information Officer (CPIO) of the Directorate of Education (DoE) of the Govt. of NCT of Delhi (GNCTD), contending that certain categories of documents including the manuals mandated under Section 4(1)(b) of the Act to be available in hardcopy at the various schools in Delhi for inspection *suo moto*, were not being made available and seeking a direction for the following documents to be available for inspection in all schools of the GNCTD:

- “1. *Admission records*
2. *Students’ attendance records*
3. *Teachers’ attendance records*
4. *Budget Allocations, Sanction issued and Expenditure incurred*
5. *Expenditure on Educational Tours, Mid Day Meals, V.K.S. / S.M.C., Sanitation and CEP heads.*
6. *Records of disbursements made to students on account of Scholarships, Uniforms, Books, and all other incentives given under any scheme.*
7. *Copies of Circulars / Notifications / Orders received from Directorate of Education & other Departments / Authorities from time to time.*
8. *Various Registers like inspection Register, Visitor*

Register, Movement Register.”

4. The CIC, vide impugned order dated 29th July, 2011 allowed the said complaint and directed:

(i) that the DoE of GNCTD, while issuing any circular with effect from 1st August, 2011, shall decide if there is a reason why it should not be in public domain and record the said reasons in writing; all other circulars shall by default be placed in public domain;

(ii) that the aforesaid documents be made available, by all Schools of DoE of GNCTD, for inspection by citizens on last working day of each month from 8 AM to 10 AM and 2 PM to 4 PM for the first and second shift of the school respectively w.e.f. the last working day of September, 2011;

(iii) to make the information regarding inspection timings available on the notice board of all the schools;

(iv) to send a report of compliance by 15th September, 2011;

5. The National Commission for Protection of Child Rights (NCPCR) wrote a letter dated 9th March, 2012 to the CIC stating that it is the Monitoring Agency for Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) and requesting the CIC to amend the order aforesaid

dated 29th July, 2011 supra by allowing physical verification of school premises including infrastructure facilities, mid-day meals and compliance of all other provisions of the RTE Act in addition to the inspection of documents and registers as already directed.

6. It was the contention of the NCPCR before the CIC that records of the schools do not even reflect the actual physical reality and thus physical verification of infrastructural facilities by citizens while inspecting the records should also be permitted.

7. The respondents also endorsed the said suggestion of NCPCR and sought a direction to the DoE to allow inspection of infrastructural facilities.

8. CIC vide the impugned order dated 12th March, 2012 noticed / observed / held:

(a) that the decision of the CIC is binding as per Section 19(7) of the RTI Act;

(b) that there is no provision in the RTI Act for review/amendment of an order or a decision of the CIC and thus the question of amending the decision dated 29th July, 2011 did not arise;

(c) directed that inspection of records by NGOs / citizens be allowed in terms of order dated 29th July, 2011 in all government

aided schools in Delhi on the stipulated days;

(d) that physical verification falls within the RTI Act and can be allowed under Section 2(j)(i) of the RTI Act defining “right to information” as a right to “inspection of work, documents, records”;

(e) that the RTI Act therefore gives a right to inspect the works relating to infrastructural facilities provided by schools including water and sanitation facilities, boundary wall, classrooms and teaching facilities within the classrooms and mid-day meals being undertaken / completed by the schools;

(f) that inspection is required to verify that the facilities do exist and adherence to the prescribed norms / specifications and falls within the ambit of right to information;

(g) that therefore such inspection should be allowed to common citizens;

(h) that such physical verification of infrastructural facilities is definitely required to be undertaken in the larger interest of school-going children;

(i) directed the petitioner to issue a fresh circular giving the list of both records and the physical facilities which can be inspected by any

citizen under RTI Act as also the dates / timings when such inspection can be carried out;

(j) clarified that the information seeker would not be free to question the school authorities about inconsistency / infirmities / inadequacy if any found in the inspected records or work, at the time of inspection and would have to approach the public authority for information in that regard.

9. The contention of the counsel for the petitioner is two fold. Firstly, it is contended that the CIC though noticed in the order dated 12th March, 2012 that it is not empowered to review its orders has nevertheless proceeded to review the order dated 29th July, 2011; reliance in this regard is placed on ***H.C. Suman Vs. Rehabilitation Ministry Employees' Cooperative House Building Society Ltd., New Delhi*** (1991) 4 SCC 485 to contend that without a specific provision in the statute, a quasi-judicial order becomes final and cannot be reviewed by the authority passing the same. Secondly, it is argued that allowing physical verification of schools to whosoever may desire, has potential of breach of security and discipline in the schools.

10. Per contra, the counsel for the respondents has sought to justify the impugned orders and insists on allowing such physical verification.

11. Before proceeding to adjudicate the rival contentions, it may be noted that though the impugned order dated 12th March, 2012 came to be passed on the representation of the NCPCR but in the last three years for which the petition is pending, neither did the petitioner implead NCPCR as a respondent to this petition nor did the counsel for the respondents raise any objection in this regard. During the hearing also, the role of NCPCR was not highlighted. It is only while completing the order in the Chamber and going through the file, it has been found that the impugned order dated 12th March, 2012 was on the representation of the NCPCR, though supported by the respondents also. At this late stage, it is not deemed appropriate to re-list the matter and to issue notice to the NCPCR, especially when the counsel for the respondents has ably contested the petition.

12. I am of the opinion that it matters not that the CIC issued the directions as issued in the impugned order dated 12th March, 2012 by modifying / amending the order dated 29th July, 2011, even if in exercise of power of review, which it noticed that it did not have. Just like CIC was empowered to issue directions as issued vide order dated 29th July, 2011 on the complaint of the respondents herein, it could have very well, without advertng to the order dated 29th July, 2011, issued directions as issued in the

impugned order dated 12th March, 2012 on the complaint of the NCPCR.

13. CIC, vide Section 25 of the RTI Act, has been constituted as the Monitoring Agency for implementation of the provisions of the RTI Act and empowered by sub-section (5) thereof to, upon finding the practice of a public authority in relation to the exercise of its functions under the Act to be not in conformity with the provisions or spirit of the Act, to make recommendations to such authority specifying the steps which it ought to take for promoting such conformity. CIC is thus amply empowered, even without exercising the power of review, to issue directions, as issued in the impugned order dated 12th March, 2012, if were to be entitled under the Act to issue such directions. The first ground of challenge by the counsel for the petitioner is thus of no avail.

14. As far as the second ground of challenge by the counsel for the petitioner, of the direction contained in the impugned order dated 12th March, 2012 being inconvenient and hazardous to the security and discipline of the schools and the children studying therein and its opposition by the respondents is concerned, I am of the view that such considerations are totally irrelevant at this stage. The question, whether furnishing the information as directed in the orders dated 29th July, 2011 and 12th March,

2012 poses any hazard, would be required to be considered only if falls in exemptions from disclosure of information provided in Section 8 of the Act; else, such considerations are irrelevant.

15. The moot question which in my opinion arises for adjudication is whether the directions of the CIC in the impugned order are in conformity with the RTI Act. Needless to state that if they are not, CIC being a statutory authority with no inherent power, could not have issued such directions howsoever germane and relevant to the situation and otherwise necessary and essential in public interest, they may be.

16. The RTI Act, besides providing for the right to information, also provides the mode and manner of dissemination of information. Dissemination of information has been provided in two modes.

A. Section 4(1) vide Clause (a) thereof obliges every public authority to ensure that, subject to availability of resources, all its records are computerised; vide Clause (b) thereof requires every public authority to publish the information as mentioned in sub-clauses (i) to (xvii) thereof; vide Clause (c) requires every public authority to publish all relevant facts while formulating important policies or announcing the decisions which affect public; and, vide

Clause (d) requires every public authority to provide reasons for its administrative or quasi judicial decisions to affected persons. Section 4(2) of the RTI Act requires every public authority to (i) endeavour to take steps at regular intervals (ii) to *suo moto* provide as much information (as possible) to the general public (iii) through various means of communications, including the internet (iv) so that public have minimum resort to the use of the Act to obtain information. Section 4(3) requires every information to be disseminated widely in such form and manner which is easily accessible to the public and Section 4(4) provides that such dissemination shall be taking into consideration the cost effectiveness and the most effective method of communication in the local area and that information should be made accessible to the extent possible in electronic format with the Central Public Information Officer (CPIO) free of cost or at such cost of the medium or the print cost price, as may be prescribed. The explanation thereto provides that dissemination means making known or communicate the information to the public through notice boards, newspapers, public announcements, media broadcasts, internet or any other means,

including inspection of offices of any public authority.

B. Section 6 provides for making of request for obtaining information, which has *suo moto* not been made available under Section 4. Such request has to be made to the CPIO of the concerned public authority specifying the particulars of the information sought. Section 7 of the Act provides the manner of disposal of such request.

Thus, it is not as if dissemination of information, *suo moto*, by public authorities can be in any form or to any extent as the CIC may deem appropriate or information can be sought in whatsoever manner the information seeker may desire. The procedure thereof is provided under the Act. Designation of CPIOs to whom the request for information is to be made is provided for under Section 5 of the Act. Section 5 requires a public authority to designate as many officers as may be necessary as CPIOs in all administrative units or offices under it, to provide information to persons requesting for information under the Act. A “public authority” is defined under Section 2(h) of the Act as any authority or body or institution of self-government established or constituted by the Constitution or by any law made by the Parliament or by any law made by State Legislature or by notification issued by the Appropriate Government etc.

17. The public authority in the present case is the DoE, GNCTD and which public authority is entrusted with the management and control of the schools run by the GNCTD.

18. The impugned order dated 29th July, 2011 requires every school of the GNCTD to make available in its premises the records as mentioned therein and as recorded hereinabove.

19. The said direction came to be made on a complaint under Section 18, of non-compliance with Section 4(1)(b) of the Act and has been issued by CIC in exercise of power under Section 19(8)(a) of the Act and under Section 25(5) as observed above.

20. Moreover, from the tenor of the impugned order dated 29th July, 2011, it appears that the direction enables all and sundry to enter the school premises on the specified days and specified times, to inspect the said records, even without making any request therefor. The direction thus appears to be of *suo moto* dissemination of information under Section 4 of the Act.

21. However, the obligation under Section 4 is of a public authority. I have wondered whether each of the schools of GNCTD can be said to be a public authority. I am unable to hold so.

22. Supreme Court in *Thalappalam Ser. Coop. Bank Ltd. Vs. State of Kerala* (2013) 16 SCC 82 has held the definition of public authority in Section 2(h) to be an exhaustive one. It was held that the RTI Act deals with bodies which are owned, controlled or substantially financed, directly or indirectly by funds provided by appropriate government and also non-governmental organisations substantially financed by funds provided by Government. It was held that a body, institution or organisation which is neither State within the meaning of Article 12 may still answer the description of public authority. Control, it was held has to be substantial, over the management and affairs of the body and mere supervision or regulation by a statute of the body was held not to amount to control to qualify the body as a public authority. Thus, a cooperative society registered under the Kerala Cooperative Societies Act, 1963, over which Registrar Cooperative Societies exercised control under the statute was not held to be a public authority.

23. Schools under the domain and control of the DoE fall into several categories. They can either be schools of GNCTD itself or schools established by a society and having their own Managing Committee but aided by GNCTD or schools established by a society and though recognised

by the DoE and bound by the Rules and Regulations of the DoE but not drawing any aid from the DoE. The order dated 29th July, 2011 uses the expressions “Education Department and Govt. of Delhi run and maintain a large number of schools in Delhi” and “All schools of the Department”. Unaided schools at least are not a State merely because they are governed by the Delhi School Education Act and Rules framed thereunder. A comprehensive discussion on the subject is found in the judgment of Full Bench of Allahabad High Court in ***M.K. Gandhi Vs. Director of Education (Secondary)*** MANU/UP/1070/2005. They, as per ***Thalappalam Ser. Cooperative Bank Ltd.*** would not be a public authority also under the RTI Act.

24. That leaves the aided schools i.e. 95% of running expenses whereof are met by the GNCTD even though they have their own Management Committee and the schools established and owned by GNCTD. It has been held in ***Municipal Corporation of Delhi Vs. Children Book Trust*** AIR 1992 SC 1456 that under the Delhi School Education Act, 1973, a school does not have a specific juristic entity. Thus each school of the GNCTD, whether established and owned or aided, in my view would not be a public authority. The public authority is DoE only.

25. Section 5 of RTI Act requires only public authority to designate CPIO and the liability to disclose / furnish information is only of public authorities. Once it is found that each school of GNCTD / DoE is not a public authority, the same cannot be directed to disclose / furnish information, as has effectively been done by impugned orders.

26. Thus, even if the records of the various schools under the DoE which have vide the impugned order dated 29th July, 2011 been directed to be kept available for inspection are to be deemed as public records, the manner of seeking information therefrom has to be under Section 6, i.e. by applying to the CPIO of the DoE and not by permitting all information seekers to walk into the schools without any hindrance on the specified day and time. Each individual school being not a public authority is not required to comply with provisions of the Act and CIC has no jurisdiction to direct *suo moto*, disclosure of information by CIC.

27. The same if permitted would make such schools public places open to all at least on the days specified for inspection and which in my opinion is not sanctioned by any provision of the Act. I am unable to read any provision of the Act permitting such access, even to the offices of the public authorities, access whereto is otherwise controlled / regulated. Even if the

CIC is of the view that information as directed to be made available for inspection in the impugned order dated 29th July, 2011 ought to be made accessible, the manner of access thereto, can be by either requiring the DoE to on its website publish all the said records or to make a request for obtaining information therefrom to the CPIO of the DoE and who in turn will seek the same from the concerned school and furnish the same.

28. Section 4 requires the public authority to only endeavour to *suo moto* disseminate as much information as possible to minimise the resort to the use of the Act for obtaining information. However, if the information is not so disseminated, the manner of obtaining the same is, as prescribed in Section 6.

29. I am also of the view that the definition of 'right to information' under Section 2(j) of the RTI Act as including the right to inspection of any work would not include a right to enter into any premises and inspect the same, as has been directed by the CIC vide the impugned order dated 12th March, 2012. The right to information under the RTI Act is the right to only that information accessible under the Act and which is held or under the control of any public authority. I am unable to decipher from the provisions of the Delhi School Education Act anything, wherefrom it can be said that the

records of the schools as mentioned in the impugned order dated 29th July, 2011, even though may be required to be maintained by individual school, can be said to be held by or under the control of the DoE. Merely because a record is required by law to be maintained does not make it a record held by the authority which has prescribed maintenance thereof or under the control of the said authority.

30. Moreover, the definition of ‘information’ in Section 2(f) rules out the possibility of physical inspection of infrastructure etc. within the definition of information. Information has been defined as 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 immovable property can by no stretch of imagination fall within the definition of material. Moreover, the forms of information described in Section 2(f) are indicative of the meaning of the word ‘information’ and no mention is made of physical verification of immovable properties.

31. I have during the hearing enquired from the counsel for the petitioner, whether for obtaining information by physical verification, access under the RTI Act has to be granted say to the hotels or sports complexes maintained

by India Tourism Development Corporation Limited, a public authority, and whether it would be permissible for an information seeker to say that for the purpose of verifying that the swimming pools of the hotel or the sports facilities are as per the requisite infrastructure standard, he should be allowed access thereto. No answer was forthcoming.

32. I am of the view that information, as defined in the RTI act, does not take within its ambit information to be derived from carrying out physical verification of properties and carrying out investigation. A bare reading of Section 7 of the RTI Act providing for disposal of a request for information also does not show the same to be envisaging / providing physical access to immovable properties.

33. I find the CIC also, in order dated 17th December, 2013 in Appeal No:CIC/DS/A/2012/002173 titled *Anil Datt Sharma Vs. MCD*, faced with the question, whether because of the doubts expressed by RTI applicant about the integrity and functioning of officers of MCD, MCD was required to in reply to RTI query allow the RTI applicant the powers of supervision and entry into property under jurisdiction of MCD to have held that (i) CIC, under Section 25(5) of the RTI Act cannot coerce public authority to allow any inspection of immovable property; (ii) CIC, under Section 18 also

cannot direct joint inspection of third party property to RTI applicant; (iii) inspection of 'information' would not include inspection of a 'property'; (iv) only the information with a public authority relating to a property can be accessed.

34. Reference may lastly be made to *CBSE Vs. Aditya Bandhopadhyay* (2011) 8 SCC 497 where it was held that the right under the RTI Act extends to accessing information available and not seek a direction to collect or collate information and then furnish, as has been directed in the impugned orders. Supreme Court, in the said judgment also cautioned that the RTI Act should not be allowed to be misused or abused, to become a tool to destroy the peace, tranquillity and harmony among citizens or to become a tool of oppression or intimidation.

35. The directions of the CIC in the impugned orders dated 29th July, 2011 and 12th March, 2012 are thus found to be beyond the powers of the CIC and are accordingly set aside.

The petition is allowed in above terms.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 29, 2015

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(corrected & released on 18th January, 2016)