

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 423 OF 2015
WITH
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Parshuram Education Society,
Chiplun, through its Principal
Secretary Sudhakar V. Bhagwat .. Petitioner
vs.
Avinash S. Joshi & Anr. .. Respondents

Mr. Bakul Bhosale for Petitioner.
Mr. H. Salgaonkar i/b. Mr. Harshad Bhadbhade for Respondent
No. 1.

CORAM : M. S. SONAK, J.
DATE : 22 FEBRUARY 2016

P.C :

1] The challenge in all these three petitions is to the order dated 21 October 2014 made by the Maharashtra State Information Commission (Konkan Bench), directing the petitioner to furnish certain information to the respondent no. 1.

2] Mr. Bhosale, the learned counsel for the petitioner has submitted that the petitioner does not answer the definition of '*public authority*' under Section 2(h)(d)(i) of the Right to Information Act, 2005 (RTI Act). Mr. Bhosale submitted that in this case, the petitioner has established four Marathi medium schools and one

English medium school. He submits that the English medium school receives no aid whatsoever from the State Government. In so far as Marathi medium schools are concerned, only the salaries are paid directly by the State Government to the teachers. However, in so far as the infrastructure is concerned, the petitioner, is in receipt of no aid. Mr. Bhosale submitted that the information applied for by the respondent no. 1 basically relates to the computer section and the auditorium. He submits that both these pertain to the English medium school. He further submits that in respect of both of this, there is no aid which is received by the petitioner from the State Government. Relying upon the decision of the Hon'ble Apex Court in the case of *Thalappalam Ser. Co-op. Bank Ltd. vs. State of Kerala & Ors.*¹, Mr. Bhosale submitted that the petitioner institution is neither a body owned, controlled or substantially financed by the State Government and therefore, is excluded from the definition of '*public authority*'. Mr. Bhosale also submitted that the auditorium was constructed by utilising donation made from the MP and the MLA funds. Mr. Bhosale also submitted that in this case two appeals were instituted beyond the prescribed period of limitation. For all these reasons, Mr. Bhosale submitted that the impugned orders suffer from jurisdictional defects and are liable to be set aside.

1 Civil Appeal No. 9017 of 2013 decided on 7 October 2013.

3] Mr. Salgaonkar, the learned Advocate for the respondent no. 1 has defended the impugned orders by pointing out that the petitioner society, is indeed a '*public authority*' in terms of Section 2(h) of the RTI Act. He submitted that information cannot be denied on basis of artificial distinctions, once it is clear that the petitioner society answers definition of '*public authority*'. He submitted that second appeal was indeed instituted within period of limitation and there is no jurisdictional error in the making of the impugned orders.

4] Having heard the learned counsel for the parties and perused the record, in my judgment, there is no case made out to interfere with the impugned orders in the present petitions.

5] Section 2(h) of the RTI Act defines the expression '*public authority*' *inter alia* includes a body owned, controlled or substantially financed directly or indirectly by the funds provided by the appropriate government. In case of *Thalappalam Ser. Co-op. Bank Ltd.*, the Hon'ble Supreme Court in the context of the expression "*substantially funded*", has, at paragraph 38 observed thus:

"38. Merely providing subsidiaries, grants, exemptions, privileges etc., as such, cannot be said to be providing funding to a substantial extent, unless the record shows that

the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist. The State may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD etc., but those facilities or assistance cannot be termed as substantially financed by the State Government to bring the body within the fold of public authority under Section 2(h)(d)(i) of the Act. But, there are instances, where private educational institutions getting ninety five per cent grant-in-aid from the appropriate government, may answer the definition of public authority under Section 2(h)(d)(i)."

6] In the present case, as submitted by the petitioner itself, the petitioner is a body which has established five schools i.e. four Marathi medium schools and one English medium school. At least in so far as the four Marathi medium schools are concerned, there is no dispute that the salaries of the teachers, in their entirety, are paid out of the grant received from the State Government. There is no material placed on record by the petitioner to indicate that the petitioner, as a body, could have continued to function and operate its five schools, without, any such salary grant from the State Government. In fact, the record shows that the funding even by way of salary grants was quite substantial and in absence of such grants, the petitioner institution would not be in a position to operate its educational institutions. Applying therefore, the principles laid

down by the Hon'ble Apex Court in the case of *Thalappalam Ser. Co-op. Bank Ltd.* it is quite clear that the petitioner answer the definition of '*public authority*' under Section 2(h) of the RTI Act.

7] Once, the petitioner answers the definition of '*public authority*', it is not permissible to make further classifications depending upon the nature of activities undertaken by the petitioner society. In this case, there is hardly any material on record to establish that the information applied for related only to the English medium school. However, even if it is assumed that the information related only to the English medium school, nevertheless, once it is clear that the petitioner, as a body, is covered under the definition of '*public authority*', information cannot be denied on the ground that the information relates to the English medium school in respect of which, the petitioner may not be in receipt of salary grants. Ultimately, it is to be appreciated that it is on the basis of grants and the support, which the petitioner institution gets from the State, the petitioner, is in a position to undertake the varied activities, which it states it is undertaking. That apart, the auditorium in the present case is admittedly constructed from out of the MP and MLA's funds, which again, have a public character. The impugned order records that the donation in the present cases, was to the extent of Rupees Four Crores. Clearly, this is substantial public

funding. There is no question of the petitioner institution resisting any transparency in such circumstances.

8] The decision in the case of *The Appellate Authority & Chairman Shikshan Prasarak Mandal & Anr. vs. The State Information Commissioner & Anr.*², which is referred to in the impugned orders upon which again, reliance was placed by the learned counsel for the petitioner, rather than assist the case of the petitioner, squarely assists the case of the respondent. In the said case as well the institutions were receiving salary grants apart from infrastructural grants. The ratio of the said decision is not that an institution of this nature becomes '*public authority*' only where it receives infrastructures grants. In fact, the ratio of the decision is that the trust, which has established, administered and manages educational institutions which receives grants from the State Government, cannot, resist an application of the RTI Act. The decision, is an authority for the proposition that segregation of the trust and its activities is impermissible, once the establishment, management and administration of the educational institutions is exclusively by the public trust concerned.

9] There is no merit in the contention of the petitioner that the appeals before the State Information Commission were barred by

² 2013(1) ALL MR 318

limitation. There is no material produced on record to substantiate this aspect.

10] For all the aforesaid reasons, these petitions are dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka