IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22748 of 2016
Decided on : 04.11.2016

Paramjit Singh

... Petitioner

Versus

State Information Commission, Punjab & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.A.P.S.Saini, Advocate, for the petitioner.

G.S. Sandhawalia, J. (Oral)

The present writ petition is directed against the order dated 20.07.2016 (Annexure P16). Vide the said order, the respondent-Commission has come to the conclusion that the respondent-hospital is not a Public Authority, under Section 2(h)(d)(i) & (ii) of the Right to Information Act, 2005. A finding has been recorded that the Government has neither substantial control over it nor there is substantial financing by the appropriate Government. The respondent-hospital has, thus, not been held liable to provide the information to the complainant and the complaint case was closed being bereft of merit.

Counsel for the petitioner has based his argument on the ground that 12 acres of land had been leased out by the Punjab Government and there were grants being given by the Government and therefore, respondent No.2-hospital and respondent No.3-Society would come within the definition of 'Public Authority' and therefore, it is liable to provide information, as demanded. Reliance has been placed upon the order under Section 80(G)(5)(vi) of the Income Tax Act, 1961, to submit that benefits have been taken and the Society should be treated as a 'Public

Authority.

A perusal of the paperbook would go on to show that the land in question was allotted in the year 1950, at the time of partition. The Municipal Corporation, Ludhiana had been giving annual grant of Rs.50,000/-, which would be clear from Annexure P4, which pertains to the year 1999. A perusal of Annexure P7 would also go on to show that the respondent-Society is a registered charitable institution and running Dr.B.L.Kapoor Memorial Hospital and College of Nursing. The petitioner is an ex-employee whose services were terminated by the said hospital, which has led to the filing of the application seeking information.

The Apex Court in ***Thalappalam Ser. Coop. Bank Ltd. & others Vs. State of Kerala & others 2013 (16) SCC 82*** has discussed the issue threadbare as to the financial control of the societies and that the appropriate Government should have the control of the body to such a degree that the same should be substantial and not merely supervisory. The substantial financing has been held to be having solid and massive financing and not a moderate and tolerable one. Relevant observations read as under:

> "34. We are of the opinion that when we test the meaning of expression"controlled" which figures in between the words "body owned" and"substantially financed", the control by the appropriate government must be a control of a substantial nature. The mere 'supervision' or 'regulation' as such by a statute or otherwise of a body would not make that body a"public authority" within the meaning of Section 2(h)(d)(i) of the RTI Act. In other words just like a body owned or body substantially financed by the appropriate government, the control of the body

by the appropriate government would also be substantial and not merely supervisory or regulatory. Powers exercised by the Registrar of Cooperative Societies and others under the Cooperative Societies Act are only regulatory or supervisory in nature, which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled. Management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Cooperative Societies Act and not on the authorities under the Co-operative Societies Act.

35. We are, therefore, of the view that the word "controlled" used in Section 2(h)(d)(i) of the Act has to be understood in the context in which it has been used vis-a-vis a body owned or substantially financed by the appropriate government, that is the control of the body is of such a degree which amounts to substantial control over the management and affairs of the body.

SUBSTANTIALLY FINANCED

36. The words "substantially financed" have been used in Sections 2(h)(d)(i) & (ii), while defining the expression public authority as well as in Section 2(a) of the Act, while defining the expression "appropriate Government". A body can be substantially financed, directly or indirectly by funds provided by the appropriate Government. The expression"substantially financed", as such, has not been defined under the Act."Substantial" means "in a substantial manner so as to be substantial". In Palser v. Grimling (1948) 1 All ER 1, 11 (HL), while interpreting the provisions of Section 10(1) of the Rent and Mortgage Interest Restrictions Act, 1923, the House of Lords held that "substantial" is not the same as"not unsubstantial" i.e. just enough to avoid the de minimis principle. The word "substantial" literally means solid, massive etc. Legislature has used the expression "substantially financed" in Sections 2(h)(d)(i) and

(ii) indicating that the degree of financing must be actual, existing, positive and real to a substantial extent, not moderate, ordinary, tolerable etc.

37. We often use the expressions "questions of law" and

"substantial questions of law" and explain that any question of law affecting the right of parties would not by itself be a substantial question of law. In Black's Law Dictionary (6th Edn.), the word 'substantial' is defined as 'of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real: not seeming or imaginary; not illusive; solid; true; veritable. Something worthwhile as distinguished from something without value or merely nominal. Synonymous with material.' The word 'substantially' has been defined to mean 'essentially; without material qualification; in the main; in substance; materially.' In the Shorter Oxford English Dictionary (5th Edn.), the word 'substantial' means 'of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; sold; weighty; important, worthwhile; of an act, measure etc. having force or effect, effective, thorough.' The word 'substantially' has been defined to mean 'in substance; as a substantial thing or being; essentially, intrinsically.' Therefore the word 'substantial' is not synonymous with 'dominant' or 'majority'. It is closer to 'material' or 'important' or 'of considerable value.' 'Substantially' is closer to 'essentially'. Both words can signify varying degrees depending on the context.

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)."

It has also been noticed in the impugned order that the land was given on a lease basis, the term of which had expired in the year 1980 and proceedings were pending under the Public Premises Act. The factum of providing leased land to a charitable institution at the time of partition of the country, cannot be ignored. At that point of time, in an effort to ensure that there were good hospitals available, the State Government would have doled out the benefits. Merely because leased land of 12 acres was given by the Government, would not mean that the Society is controlled and financed to such an extent that the State would have a substantial control over the same.

The exemption granted under the Income Tax Act is a permissible exemption which can be claimed by certain category of tax-payers and merely because such an exemption has been granted, would not mean that the Government would have such control over the hospital. The findings recorded are that the aid which has been given to the hospital is not of that magnitude and was just marginal and not on a regular basis. Nothing could be demonstrated, as such, by the counsel that the order which has been passed by the five members of the Commission, after considering all the relevant aspects, suffers from any illegality or infirmity which would warrant interference at the hands of a disgruntled employee.

Resultantly, in view of the above discussion, the present writ petition is dismissed in limine.

OCTOBER 4th, 2016 **(G.S. SANDHAWALIA)**
sailesh **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No