IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 25385 of 2016
Date of decision: 22.12.2016

Komal Jain ....Petitioner(s)

Versus

The President, Mahavir Jain Sabha and others ...Respondent(s)

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

Present: Mr. Anupam Bhanot, Advocate, for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The petitioner challenges the order dated 18.08.2016 (Annexure P-2) passed by the respondent no. 2-Commission under the Right to Information Act, 2005 (in short 'the Act') whereby, the Commission has held that the onus lay on the petitioner to prove that respondent no. 1 is the Public Authority under the definition of Section 2(h) of the Act. It was noticed that the complainant was not present and several opportunities have been provided for the said purpose. Accordingly, the respondent was held to be a non-Government organization which had not received any financial assistance directly or indirectly from the Government which could qualify to be considered as a Public Authority and the complaint was disposed of accordingly.

Counsel for the petitioner has placed reliance upon Annexure P-3 to submit that the Sabha as such had been paid some amounts against the surgeries conducted in the free eye camps. The information sought as per the Annexure P-1 is regarding the construction and the deposits made in the bank accounts, list of members at the time of elections etc. and the balance sheets of the said Sabha.

It is not disputed that the petitioner is the Ex-President of the said Sabha and, thus, is seeking the accounts for the sake of transparency. The information as such has only to be supplied if sufficient material had been brought on record by the petitioner that the said Sabha as such was heavily dependent upon the State Government and the control was of such substantial nature to being it within the ambit of a Public Authority. The Apex Court in ***Thalappalam Ser. Coop. Bank Ltd. and others vs. State of Kerala and others, 2013 (16) SCC 82*** has laid down the law regarding the said aspect and the applicability of the Act. It has been accordingly held that the control as such should be of such nature which should be substantial over the affairs of management of the body and to such a degree which should be massive and solid and not moderate, ordinary or tolerable. The relevant portion reads thus:-

> *"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.

xxxx xxxx xxxx

39. The term "Non-Government Organizations" (NGO), as such, is not defined under the Act. But, over a period of time, the expression has got its own meaning and, it has to be seen in that context, when used in the Act. Government used to finance substantially, several non-government organizations, which carry on various social and welfare activities, since those organizations sometimes carry on functions which are otherwise governmental. Now, the question, whether an NGO has been substantially financed or not by the appropriate Government, may be a question of fact, to be examined by the authorities concerned under the RTI Act. Such organization can be substantially financed either directly or indirectly by funds provided by the appropriate Government. Government may not have any statutory control over the NGOs, as such, still it can be established that a particular NGO has been substantially financed directly or indirectly by the funds provided by the appropriate Government, in such an event, that organization will fall within the scope of Section 2(h)(d)(ii) of the RTI Act. Consequently, even private organizations which are, though not *owned or controlled but substantially financed by the appropriate Government will also fall within the definition of "public authority" under Section 2(h)(d)(ii) of the Act.*

BURDEN TO SHOW:

40. The burden to show that a body is owned, controlled or substantially financed or that a non-government organization is substantially financed directly or indirectly by the funds provided by the appropriate Government is on the applicant who seeks information or the appropriate Government and can be examined by the State Information Commission or the Central Information Commission as the case may be, when the question comes up for consideration. A body or NGO is also free to establish that it is not owned, controlled or substantially financed directly or indirectly by the appropriate Government."

The burden also, as such, is upon the person alleging so and the petitioner being the ex-President had failed to do so. As noticed above, apart from the solitary amounts which were paid by the State Government for the free eye camps which had been conducted by the Sabha, nothing has been shown that the land as such had been allotted by the Government or that the Members of the Sabha are Government functionaries and having substantial control over the Sabha which could bring it within the ambit of Public Authority as defined under the Act.

In such circumstances, there is no scope for interference and the writ petition is accordingly dismissed.

22.12.2016 (G.S. SANDHAWALIA)
shivani JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No