

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

205

CWP-9873-2015

Date of decision : 03.10.2016

The Rail Coach Factory Employes Primary Coop Consumer Store Ltd.

... Petitioner

Vs

The State Information Commission Punjab and others

... Respondents

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

Present :- Mr.Harbans Sharma, Advocate
for the petitioner.

Mr.Lavanya Paul AAG, Punjab

G.S.Sandhawal, J. (oral)

The petitioner challenges the order dated 07.04.2015 (Annexure P/6) passed by respondent No.1-State Information Commission. Vide its impugned order, the Commission has directed the respondent to provide the complete information on all 4 points to the appellant, respondent No.2 herein, before the next date of hearing.

The said order was stayed by this Court while issuing notice of motion on 18.05.2015 keeping in view the judgment of the Apex Court in case **Thalappalam Service Cooperative Bank Ltd. and others** Vs. **State of Kerala and others**, 2013(4) R.C. R. (Civil) 912.

It is not disputed that respondent No.2 had approached the Public Information Officer of the petitioner's society vide application dated 12.08.2014 (Annexure P/1) seeking information regarding

number of members in the RCF, Employees Primary Co-operative Consumer Store Ltd., Hussainpur, Kapurthala and procedure to enroll new members, procedure for expelling the membership of a member in the above Consumer Store, remedy with the member who is expelled against Act and Rules of the Cooperative Department along with copy of relevant rules.

The said information was denied on the ground that the petitioner was not a public authority and was not bound to supply information. Accordingly, the petitioner being aggrieved, filed a first appeal before the appellate authority under the *Right to Information Act, 2005* (in short-of the Act) . The appeal having not been decided, he filed the second appeal-cum-complaint under Section 18(1) (d) and Section 19(3) of the Act before the respondent-Commission. The defence taken by the petitioner in the reply filed (Annexure P/5) was that in view of the judgment of Apex Court in Thalappalam's case (supra), the petitioner was not substantially financed by the appropriate Govt. The said defence taken, has not ever been considered by the respondent-Commission which has not even touched this aspect.

In *Thalappalam's case (supra)*, the Apex Court held that the control has to be substantial in the management of the affairs of the body as provided under section 2(h)(d) of the Act, to bring it within the fold of public authority. It was further held that burden would be on the applicant who seeks information. The State Commission would necessarily have to decide the issue whether the body was owned,

controlled or substantially financed directly or indirectly by the appropriate Govt. The relevant observations are 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.
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.

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.”

In similar circumstances, Division Bench of this Court in case **Punjab Cricket Association** Vs. **State Information Commissioner, Punjab and another**, 2014(2) PLR 249 remanded the issue to the respondent-Commission keeping in view the observations of the Apex Court. The said observations read as under:-

“8. Accordingly, while allowing the appeals, the following directions are issued:-

- i) *The orders passed by the State Information Commission (SIC) and the learned Single Judge in all these appeals are set aside. The matter is remanded to the SIC to decide the same afresh.*
- ii) *The interim order shall continue till the disposal of the appeals by the SIC.*
- iii) *All the pleas available to the appellants herein shall be allowed to be raised before the SIC. The SIC shall decide the matter afresh keeping in view the judgment of the Apex Court in **Thalappalam Ser. Coop Bank Limited’s case** (supra) within six months from the date of receipt of a certified copy of this order.*
- iv) *Each case shall be decided separately by referring to*

the facts involved therein.

- v) *The SIC shall not be influenced by anything which has been observed herein while deciding the matter afresh.”*

The stand of the respondent No.2 in the written statement herein also is that the petitioner's society gets the financial assistance from Rail Coach Factory, Kapurthala and the office space has been provided to it, free of cost and its employees get free railway pass from Railway Authorities. The petitioner's society is also getting electricity and other benefits.

Resultantly, this Court is of the opinion that it is for the respondent-Commission to firstly, decide the issue whether the petitioner is a public authority under Section 2(h) of the Act, which it has failed to do so, and directed for furnishing all information without touching the aspect whether the society would be covered under the Act or not which is a issue of jurisdiction and goes to the root of the matter.

Resultantly, this Court is of the opinion that the matter is to be decided afresh by the respondent-Commission, accordingly, keeping in view of the above observations.

Accordingly, the present writ petition is allowed and the respondent-Commission shall decide the issue afresh by referring to the facts of the case keeping in view the above observations.

03.10.2016
sd

[**G.S. SANDHAWALIA**]
JUDGE

Whether speaking/reasoned
Whether Reportable

: Yes/No
: Yes/No