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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1332 of 2008**

1. Bhat Khande Lalit Kala Shiksha Samiti through its Secretary, Registration No.16/1951-52, Gurukul Parisar, Kalibari Road, Raipur, Dist. Raipur, Chhattisgarh

---- Petitioner**Versus**

1. (a) Chhattisgarh Information Commission, through the State Chief Information Commissioner Chhattisgarh Information Commission, Nirmal Chhaya Bhawan, Meeradatar Road, Shankar Nagar, Raipur, Dist. Raipur, Chhattisgarh

1. (b) State Chief Information Commissioner Chhattisgarh Information Commission, Nirmal Chhaya Bhawan, Meeradatar Road, Shankar Nagar, Raipur, Dist. Raipur, Chhattisgarh

2. State Of Chhattisgarh Through The Secretary, Department Of General Administration, D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh

3. Rakesh Choubey R/o 10/226, Satti Bazaar, Raipur, Dist. Raipur Chhattisgarh

---- Respondent**WPC No. 1352 of 2008**

1. Bhat Khande Lalit Kala Shiksha Samiti through its Secretary, Registration No.16/1951-52, Gurukul Parisar, Kalibari Road, Raipur, Dist. Raipur, Chhattisgarh

---- Petitioner**Versus**

1. (a) Chhattisgarh Information Commission, through the State Chief Information Commissioner Chhattisgarh Information Commission, Nirmal Chhaya Bhawan, Meeradatar Road, Shankar Nagar, Raipur, Dist. Raipur, Chhattisgarh

1. (b) State Chief Information Commissioner Chhattisgarh Information Commission, Nirmal Chhaya Bhawan, Meeradatar Road, Shankar Nagar, Raipur, Dist. Raipur, Chhattisgarh
2. State Of Chhattisgarh Through The Secretary, Department Of General Administration, D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh
3. Pramod Tiwari R/o Near Mahavir High School, Gandhi Nagar, Gudiyaari, Raipur, Dist. Raipur Chhattisgarh
4. The Registrar Firms And Societies, O-5, Anupam Nagar, Raipur, Dist. Raipur Chhattisgarh

---- Respondent

For Petitioner	Shri Saurabh Sharma, Advocate
For Respondent/State	Shri Shyam Sunderlal Tekchandani,
Information Commission	Advocate
For Respondent/State	Shri Shashank Thakur, Govt. Adv.

Order On Board

By

Prashant Kumar Mishra, J.

25/09/2018

1. Since common facts and question of law are involved in both the writ petitions, they are being considered and decided by this common order.
2. Petitioner would call in question the legality and validity of the impugned order dated 24-1-2008 passed in complaint case No.258/2007 (WPC No.1332 of 2008) and the impugned order dated 31-1-2008 passed in complaint case No.581/2007 (WPC No.1352 of 2008) by the Chief Information

Commissioner, State Information Commission, allowing the appeal preferred by the respondent No.3 (Rakesh Choubey in WPC No.1332 of 2008 and Pramod Tiwari in WPC No.1352 of 2008) directing the petitioner to supply information to the said respondents.

3. Challenge to the impugned orders is mainly on the ground that petitioner being a registered society bearing Regn.No.16/1951-52, therefore, being a private body it is not covered within the meaning of term 'public authority' defined under Section 2 (h) of the Right to Information Act, 2005 (*for short 'the RTI Act'*).
4. Referring to Sections 4 to 7 of the RTI Act, it is argued that the liability or obligation to provide information is on any public authority and not on any non-Government or private organization. It is also argued that the petitioner has never been substantially financed, directly or indirectly for running the petitioner's educational institution; therefore, it is not a public authority within the meaning of Section 2 (h) of the RTI Act. Reliance has been placed upon the decision rendered by the Supreme Court in **Thalappalam Service Cooperative Bank Limited and Others v State of Kerala and Others**¹.

¹ (2013) 16 SCC 82

5. Respondents would refer to circular (Annexure – P/14) as also the document Annexure – P/8 whereby 75307 sq.ft. land has been allotted to the petitioner society at a substantially concessional rate of Rs.1,706.14 paisa and annual lease rent of Rs.42.65 paisa, therefore, it is substantially financed by the State Government and, as such, it is a public authority.
6. Section 2 (h) of the RTI Act defines the ‘public authority’. The same is quoted below for ready reference :

2. Definitions.--

xxx xxx xxx
 xxx xxx xxx
 xxx xxx xxx

(h) “public authority” means any authority or body or institution of self-government established or constituted,—

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government, and includes any—
 - (i) body owned, controlled or substantially financed;
 - (ii) non-Government Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;

7. In **Thalappalam Service Cooperative Bank Limited** (supra) the Supreme Court had an occasion to consider the scope of embrace within the act, of an entity, which is owned, controlled or substantially financed, directly or indirectly or

funds have been provided by the appropriate government or non-governmental organizations substantially financed directly or indirectly by funds provided by the appropriate government. The meaning of the words ‘substantially financed’ has been dealt with in paras 46 to 48, which are quoted below:

Substantially financed

46. The words “substantially financed” have been used in Sections 2(h)(d)(i) and (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. Grinling*, 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. The 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.

47. 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

"Substantial.—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 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; solid; 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.

48. Merely providing subsidies, 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).

8. It is thus clear that the word ‘substantially financed’ would mean a support which is solid or massive or of considerable value. The word ‘substantially’ is closer to ‘material’ or ‘important’. The Supreme Court clearly opined that 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.
9. In the case at hand, the State Information Commission has not discussed the nature or substantiality of support to bring it within the meaning of term ‘substantially financed’ as has

been interpreted by the Supreme Court. The issue as to whether allotment of land to the society vide Annexure – P/8 (in WPC No.1332 of 2008) in the year 1966 still continues to help the society to meet out the major part of its expenses has not been dealt with nor any material in this regard has been placed before this Court. Therefore, merely because land has been provided to the petitioner society on concessional rate almost five decades back, but there being no evidence of continued substantial financial support to the petitioner society at the relevant point of time would take it out of the embrace of the RTI Act. The society would, thus, not be covered within the term ‘public authority’ as defined under Section 2 (h) of the RTI Act.

10. Once a registered society is not found to be a public authority the Information Commission has no jurisdiction to direct the society to provide information to an individual under the RTI Act, therefore, the impugned orders being without jurisdiction are liable to be and are hereby quashed.
11. In the result, both the writ petitions are allowed to the extent indicated above, leaving the parties to bear their own cost(s).

Sd/-

Judge
Prashant Kumar Mishra

Gowri