

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

1. Civil Writ Petition No.4082 of 2010
Date of Decision: July 4th, 2019

Shiromani Gurudwara Parbandhak Committee, Amritsar

...Petitioner

Versus

State of Punjab and others

...Respondents

2. Civil Writ Petition No.5446 of 2010

Nankana Sahib Education Trust, Ludhiana

...Petitioner

Versus

The State of Punjab and others

...Respondents

3. Civil Writ Petition No.11490 of 2012

Shri Guru Ram Dass Charitable Hospital Trust, Vallah, Amritsar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Kanwaljit Singh, Senior Advocate
with Mr. Ashish Soi and Mr. Munish Kapila, Advocates
for the petitioner (in CWP No.4082 of 2010).

Mr. Ish Puneet Singh, Advocate
for the petitioner (in CWP No.5446 of 2010).

Mr. Ashok Sharma Nabhwala, Advocate
for the petitioner (in CWP No.11490 of 2012).

Mr. Charanpreet Singh, Assistant Advocate General, Punjab.

Mr. Sardavinder Goyal and Mr. H.C. Arora, Advocates
for respondent No.3.

AUGUSTINE GEORGE MASIH, J.

By this order, I propose to decide three writ petitions, which
emanate from the orders passed by the State Information Commission, Punjab
(hereinafter referred to as 'the Commission') holding Shiromani Gurdwara

Parbandhak Committee (hereinafter referred to as 'SGPC') a 'public authority' under The Right to Information Act, 2005 (hereinafter referred to as 'RTI Act') as also the institutions, which are owned, controlled and substantially financed by it. The issue involved in these writ petitions being identical, these three writ petitions were heard together with the basic arguments being addressed in the context of the pleadings in *CWP No.4082 of 2010* titled as *Shiromani Gurudwara Parbandhak Committee, Amritsar Versus State of Punjab and others*. The initial facts are, therefore, being taken from the said writ petition.

2. Three complaints came to be filed before the Commission, where the applicants having sought information relating to the selection process from the SGPC where they had applied for different posts in three different institutions run by SGPC but the said information was not supplied to them within the time stipulated under the RTI Act. It would not be out of way to mention here that the information, which has been sought for, pertaining to the selection in which the applicants had participated but were not selected and were thus seeking information pertaining to the said selection.

Before the Commission, the stand which has been taken by the SGPC is that the RTI Act is not applicable to it or the institutions run by it for the reason that SGPC is a religious body and not a Government financed body. It runs about 31 colleges and about 50 schools in Punjab, Haryana, Himachal Pradesh, Uttar Pradesh and Maharashtra. SGPC educational institutions in Punjab have been granted a minority status by the State Government vide notification dated 16.04.2001. Out of the above, 13 colleges and 12 schools run by SGPC, receive grant-in-aid from the State

Government and, therefore, these institutions would be covered under the RTI Act but the self-financed colleges and schools, which are 100% funded by SGPC and do not get grant from the State or any central agency, would be outside the purview of RTI Act. It was, therefore, asserted that the RTI Act will not be applicable to the institutions run by the SGPC.

Assertion has also been made that the institutions, which have been constituted and established by SGPC being minority institutions would be protected under the provisions of Article 30 of the Constitution of India and information, if supplied under the RTI Act, would violate the said fundamental right.

3. These pleas as were taken by SGPC before the Commission were rejected vide order dated 04.12.2009 (Annexure P-1) by concluding that SGPC is a public authority under Section 2 (h) (c) of the RTI Act being a creation of law under the State Legislature. Whether it is funded or some financial aid is received from the Government or not is immaterial and, therefore, it was bound to provide the information under the RTI Act to the applicants, who had approached the Commission under Section 18 of the RTI Act. It was further observed that the information, which has been sought by the applicants, does not pertain to any religious affairs but relates to the selection process of the teachers recruited by SGPC in the institutions established by it. The Commission did not find any reason as to why this information should be withheld as according to the Commission, transparency will bring greater legitimacy to the system and strengthen the confidence of all concerned. Review applications preferred by SGPC were dismissed vide order dated 27.01.2010 by the Commission (Annexure P-2).

4. This has led to the filing of the above referred to writ petition

i.e. CWP No.4082 of 2010. The grounds, which have been taken in the present writ petition challenging these orders, are that the SGPC has set up its own educational institutions/institutes and these cannot be said to be the creature of the Sikh Gurdwaras Act, 1925, especially with regard to those institutions where no aid or funds are being provided directly or indirectly by the State or the Central Government. The effort, which has been made by SGPC, is to conserve the culture and religious heritage of the minority community i.e. Sikhs as well as to impart education. As per Article 30 of the Constitution of India, every minority shall have a right to maintain and administer educational institutes of their choice. A State cannot prohibit establishment of such educational institutions by a minority community nor can it interfere with the administration of the said institutions. The institutes which are established by SGPC are separate legal entities either in the form of trusts or societies etc. and any act on the part of the State, which tends to interfere with the rights of the minority community to freely administer their educational institutions, would amount to breach of fundamental rights as guaranteed under the Constitution. Applicability of the RTI Act, if permitted to the educational institutions run by SGPC, would tend to place a unreasonable restriction on the minority community to administer its educational institutions and amount to interference with the autonomous administration, especially relating to unaided institutions. None of the three institutions, where the three respondents i.e. respondents No.3, 4 and 5, had applied were either aided or financed or supported financially by the State Government or the Central Government, therefore, when the said institutions were not financed by the appropriate Government, the provisions of the RTI Act would not apply.

Provision of Section 2 (h) of the RTI Act clearly lays down that until and unless any authority or body or institution is not covered under the definition of public authority as defined therein, the said authority or body or institution would not be amenable to the provisions of RTI Act. The minority unaided institutes, pertaining to which the impugned orders have been passed, do not fall under the domain of the RTI Act.

It is asserted that although SGPC is established under the Sikh Gurdwaras Act, 1925, however, the institutes which have come out of benevolence and out of proactive support of SGPC which also maintains and administers them, would not fall within the purview of RTI Act. What has been asserted is that the Sikh Gurdwaras Act, 1925, is not the fountainhead for the origin of an institute established by SGPC as the powers of these institutions' rights and privileges are not the creation of the said Act. Another aspect, which has been highlighted is that the unaided institutes run under the aegis of SGPC are not substantially financed by the Central or the State Government nor are these institutes owned and controlled by the appropriate Government. It is thus asserted that the impugned order, which has been passed by the Commission being without jurisdiction, cannot sustain and deserves to be set aside.

5. Learned senior counsel for the petitioner has argued the case on these premises and highlighted these aspects on the basis of various judgments on the aspect that the petitioner-SGPC does not fall within the definition of public authority as laid down in Section 2 (h) of the RTI Act. The said judgments are as follows:-

Dattaprasad Co-operative Housing Society Ltd., Bangalore Vs.

Karnataka State Chief Information Commissioner & Anr. AIR 2009 Kar. 1,

Shikshak Sahakari Bank Limited Vs. Shri Murlidhar Pundlikrao Sahare 2010 (5) R.C.R. (Civil) 880, Bhaskarrao Shankarrao Kulkarni Vs. State Information Commissioner 2010 (5) R.C.R. (Civil) 956, Kuldeep Singh Vs. State of Punjab and another 2011 (2) R.C.R. (Civil) 22, Bhanunni Vs. Commissioner, Hindu Religious and Charitable Endowments (Admn.) Dept. 2012 (1) R.C.R. (Civil) 249, Avtar Singh Vs. State Information Commission, Punjab and another PLR Vol.CLXXI (2013-3) 287, Thalappalam Ser. Coop. Bank Ltd. and others Vs. State of Kerala and others 2013 (6) R.A.J. 136, Delhi Sikh Gurudwara Management Committee and others Vs. Mohinder Singh Matharu 2013 (2) R.C.R. (Civil) 182, The Thrissur District Co-op. Bank, Sahakarana Sathabdi Mandiram, Thrissur-680022, represented by its, General Manager Vs. The State Information Commission, represented by its Secretary, Punnen Road, Thiruvananthapuram 2017 AIR (Kerala) 120, Canara Bank Rep. by its Deputy Gen. Manager Vs. C.S. Shaym & Anr. 2017 (4) R.C.R. (Civil) 292 and Puneet Kumar Vs. State Information Commission, Haryana through its registrar and others 2017 (2) Law Herald 1101.

6. In CWP No.5446 of 2010 titled as *Nankana Sahib Education Trust, Ludhiana Versus The State of Punjab and others*, challenge is to the order dated 14.09.2009 passed by the Commission, where application moved by Shri Kuldeep Singh Khaira-respondent No.3 seeking information relating to Nankana Sahib Education Trust from the PIO of the SGPC, Amritsar, pertaining to its affairs, stands allowed despite the stand of SGPC that the Trust was an independent entity and the information should be sought from the Trust directly.

The question which was framed by the Commission was as to whether the Nankana Sahib Education Trust, Amritsar, is an emanation/instrumentality of SGPC, Amritsar, or a purely independent body having both in law and facts separate existence and as to whether the said Trust is a public authority under the RTI Act?

The said question was answered by the Commission on the basis of the admitted position that out of the total 15 members of the Board of Trustees, 9 members were appointed by SGPC. The President of SGPC is an ex-officio President of the Trust and is also the Chairman of every managing committee appointed under the instrument of Trust. With the SGPC members being in absolute majority in the Board of Trustees, managing the Trust with the President of the SGPC being the ex-officio President of the Trust also, irrespective of SGPC having not given any financial aid to the Trust, there is deep and pervasive control of the affairs of the Trust by SGPC and thus is a emanation/instrumentality of SGPC and, therefore, the Public Information Officer of SGPC can be called upon to provide information in relation to the affairs of the Trust. Order of the Commission has been challenged on the same grounds as in the aforesaid writ petition i.e. CWP No.4082 of 2010.

7. In *CWP No.11490 of 2012* titled as *Shri Guru Ram Dass Charitable Hospital Trust, Vallah, Amritsar Versus State of Punjab and others*, the order under challenge is dated 17.05.2012, where an application filed by Dr. Sandeep Kumar Gupta-respondent No.3 seeking information related to the working and management of the petitioner-Trust when was not supplied, approached the Commission, which allowed the said application vide the impugned order, where the stand of the petitioner-Trust

was the same as that of the SGPC. It was primarily asserted that the land was donated by the public and the Gram Panchayat and that it has not received any assistance from SGPC nor is it in receipt of any financial help from the State Government or the Central Government. The Trust has been set up by the minority community and runs a private medical institution, which is free to admit students in medical education in 50% minority quota by holding and organizing an admission test without interference from outside. The said ground has been rejected by the Commission by holding with reference to the trust deed, according to which SGPC, Amritsar, had agreed to pay ₹60 lakh every year to be utilized for running and maintaining of the hospitals and assets. An amount of ₹21,01,66,024/- was given by the Manager, Shri Darbar Sahib, Amritsar, vide letter No.1655 dated 08.05.2012 to the Shri Guru Ram Dass Medical College, Vallah, which has been shown as a loan but except for payment of ₹6 crores as annual interest of 6%, the entire balance amount is interest free. Free land given by the Gram Panchayat, which is a statutory body and an instrumentality of the State amounts to financial assistance. As far as the management is concerned, out of the total 11 trustees, 9 of them are appointed by SGPC. The President of SGPC is the ex-officio President of the Trust and thus SGPC being the statutory body, having pervasive control over the Trust will bring it within the ambit of Section 2 (h) of the RTI Act. This order has been challenged in the present writ petition on the same grounds as in CWP No.4082 of 2010.

8. Respondents in their reply have primarily reiterated the stand, as has been laid down and accepted by the Commission while passing the impugned orders. It has been asserted that in a similar situation in the case

of *Delhi Sikh Gurudwara Management Committee and others Vs. Mohinder Singh Matharu* 2010 (6) AD (Delhi) 757, the learned Single Judge of the Delhi High Court has declared Delhi Sikh Gurdwara Management Committee as a public authority under Section 2 (h) of the RTI Act on the ground that it is a body constituted by law made by the Legislature. The said judgment of the learned Single Judge has been upheld by the Division Bench of the Delhi High Court in *Delhi Sikh Gurudwara Management Committee and others Vs. Mohinder Singh Matharu* 2012 (193) DLT 405. Reliance has also been placed upon the Division Bench judgment of this Court in *Navpreet Kaur Versus Shri Guru Ram Das Charitable Trust, Amritsar* 2004 (1) RSJ 211.

9. On considering the submissions made by the counsel for the parties as regards the contention of learned senior counsel for the petitioner in the light of the Division Bench judgment of the Delhi High Court in *Delhi Sikh Gurudwara Management Committee and others Vs. Mohinder Singh Matharu* 2012 (193) DLT 405, it is held that SGPC is a public authority under Section 2 (h) of the RTI Act, which issue has not been contested by the counsel for the petitioners.

10. The question, which has been raised by the counsel for the petitioners is with regard to the applicability of the provisions of the RTI Act relating to the institutions, which are created, founded, controlled, financed and run by SGPC as it is asserted that the said institutions are independent legal entities and thus do not fall within the provisions of Section 2 (h) of the RTI Act. Assertion has also been made that these institutions, although a creation of and founded by SGPC, would not fall within the ambit of the definition of public authority as provided under

Section 2 (h) (d) of the RTI Act as it is not the creation of the statute, rather it is protected under the provisions of Article 30 of the Constitution of India. It is neither aided nor owned or controlled or substantially financed directly or indirectly by the funds provided by the appropriate Government and thus not a public authority.

11. This plea of the counsel for the petitioners cannot be accepted as admittedly, SGPC is a creation of statute as accepted by the petitioners having come into existence as per the Sikh Gurdwaras Act, 1925. Had it not been for the creation of SGPC under the Sikh Gurdwaras Act, 1925, the said institution would not have come into existence. It is conceded on the part of the petitioners that the aided institutions would fall within the purview of the RTI Act, however, with regard to the unaided institutions, the plea, which has been taken by the petitioners, is that they are of independent existence without any regular substantial financial assistance being provided by the SGPC or any of the appropriate Governments. These pleas apart from the fact that these institutions, which are claiming themselves to be the minority institutions and thus protected by Article 30 of the Constitution of India, the said pleas would not be of much help as far as the the petitioners are concerned or the institutions created, financed, controlled and managed by SGPC directly or indirectly.

12. The admitted facts are that these institutions although may be separate legal entities but are the offshoots of SGPC with the management being in the hands of SGPC. It is also established on the basis of the pleadings that SGPC has direct control over the institutions established by it, which is apparent from the admission made by SGPC in CWP No.4082 of 2010, where it has been stated by SGPC that although the

said institutions have been established and controlled by it but since the same have neither been established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly by the Central or the State Government, the said institutions would not be a public authority as defined under Section 24 of the RTI Act. This plea of SGPC would not be acceptable in the light of the fact that SGPC itself is a public authority and if the plea of SGPC is accepted, every public authority, with a view to come out of the purview and scope of the RTI Act, would establish a separate institution or body and take a plea of it being not owned, controlled or substantially financed directly or indirectly by funds provided by the appropriate Government. Once any authority or body or institution of self-governance established or constituted falls within the definition of public authority as provided for under Section 2 (h) or all its subsidiaries, which could be in the form of a separate authority or body or institution, which is owned, controlled or substantially financed by it, would be amenable to the provisions of RTI Act.

13. The plea, therefore, as is sought to be taken by SGPC that the institutions, information of which has been sought for by the complainants before the Commission, are independent entities and, therefore, would not be amenable to the provisions of the RTI Act, cannot be accepted, especially when it has been admitted by it that where the institutions may not have been financed by it but have been either established or controlled by it, thus bringing it within the purview of the RTI Act.

14. As regards CWP No.4082 of 2010 is concerned, it is admitted by SGPC, which is a petitioner therein, that the institutions qua which the three complainants had sought information, were constituted and

established by SGPC, whereas in CWP No.5446 of 2010, petitioner-Nankana Sahib Education Trust, admittedly has fifteen members on the Board of Trustees, nine of whom are appointed by SGPC. The President of SGPC is an ex-officio President of the Trust and is also the Chairman of every managing committee appointed under the Instrument of Trust. The Trust is, therefore, for all practical purposes being controlled by SGPC having deep and pervasive control over the affairs of the Trust and is thus an emanation and instrumentality of SGPC.

In CWP No.11490 of 2012, where the petitioner is Shri Guru Ram Dass Charitable Hospital Trust, the said Trust has come into existence with the passing of the resolution by the Executive Board of SGPC on 26.01.1992 that the control and management of Shri Ram Dass Hospital and Research Institute, which was set up by SGPC from its own resources and was being run by it with effect from 17.10.1997 by incurring expenditure on it and being under direct control and management can be said to be an irrevocable Charitable Trust. These facts are apparent from the trust deed. Clause IV of the trust deed, which has been reproduced in the reply, which has been filed by respondent No.2 in the said writ petition, establishes the fact that out of the eleven trustees, nine are appointed by the Executive Committee of SGPC. The President of SGPC is the ex-officio President of the Trust. It is through these nominees that SGPC runs, manages and controls the affairs of the Trust. It can, therefore, be safely said that the Trust is nothing but an extended arm of SGPC.

Apart from these facts and the financial support given by SGPC and other sources including the Manager, Shri Darbar Sahib, Amritsar, the land was donated by the villagers and the Gram Panchayats of the villages,

on which land the hospital was constructed. This also clearly makes out the substantial financing of the institution through public sources as Gram Panchayat is an instrumentality of the State.

15. All these above aspects leave no manner of doubt that SGPC as well as its instrumentalities cannot shirk the responsibility of providing information under the RTI Act as it would be covered under the provisions of the said Act. The law which has been laid down in the various judgments, referred to above, which have been cited by learned counsel for the petitioners, would not help the case of the petitioners, especially in the light of the fact that it is a conceded position that SGPC being a statutory body, is covered under the provisions of the RTI Act and it is the establisher or constitutor or owner or financer/substantial financer or controller of the authority or body or institution being run by it as their extended arm.

16. The above reasoning can be elaborated by making reference to a banyan tree, which after growing, spreads its branches and from these branches, aerial prop roots sprout out, which grow and reach the ground. These roots although mature into thick woody trunks appear to be a separate and independent entity in itself but are dependent upon the main stem for its subsistence and sustenance.

Similar is the position with regard to SGPC and the institutions, which are established through or by it as they do not have an independent existence, with the management being controlled by SGPC where more than 3/4th members/trustees appointed by it and and above all, the President of SGPC is the ex-officio Chairman/President of the managing committee of the institutions. It can safely be said that SGPC has direct connection and control or in other words, there institutions are an emanation and

instrumentality of SGPC and thus, covered under the provisions of the RTI Act, 2005.

17. In view of the above, this Court does not find any illegality in the impugned orders passed by the Commission calling for interference. There being no merit in these writ petitions, the same, therefore, stand dismissed.

July 4th, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes