IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6997 OF 2016

Maharashtra Institute of Technology College,
Through its Principal,
Santosh s/o Panditrao Bhosle
Age: 46 years, Occu: service,
R/o M.I.T. College, Beed Bypass,
Aurangabad, Tq. & Dist. Aurangabad Petitioner

versus

1) Maharashtra State Information Commission,
Bench at Aurangabad, Aurangabad

2) Uttam s/o Ganpatrao Dabhade
Age: 53 years, Occu: Service,
R/o Ward No.6, Behind Onion Market,
Shrirampur, Tq. Shrirampur,
Dist- Ahmednagar. Respondents

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Mr. S.P. Katneshwarkar advocate for the petitioners
Mr. S.K. Tambe, Assistant Government Pleader for respondent No.1.

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CORAM: ROHIT BABAN DEO, J.

Date: JANUARY 27th, 2020

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ORAL JUDGMENT

1 Rule. Rule made returnable forthwith.

2 Heard finally with the consent of the learned counsel for the petitioner and the learned AGP.

3 These petitions involve common questions of fact and law and are therefore decided by this common Judgment.

4 The petitioners in these petitions is the Maharashtra Institute of Technology College which is managed by the Gramodyogik Shikshan Mandal, Aurangabad.

5 The petitioners aver that the permission granted by the State of Maharashtra to the petitioner college is on permanent non-grant basis. A specific averment is made in the petitions that the petitioner college is unaided.

6 The daughter of respondent No.2 Miss Shruti Dabhade was admitted to Food Processing Technology (M.Tech.) course in the academic year 2014-2015. The petitioners contend that due to ill-health Miss Shruti Dabhade requested that her admission be cancelled. The petitioner college took a stand that in accordance with the Rules applicable, the request for cancellation of admission can be considered only after payment of full fees, which position was informed to respondent No.2. The petitioner further contends that respondent No.2 deposited the balance fees and the admission of Miss Shruti Dabhade stood cancelled. The original documents were returned to respondent No.2.

7 The petitioners contend that respondent No.2 submitted three separate applications under the provisions of Right to Information Act, 2005 (RTI Act). In the light of the order which I propose to pass, it is not necessary to reproduce in detail the nature of the information sought. Suffice it to state that according to the petitioner, although the necessary information was supplied, respondent No.2 approached respondent No.1 in appeal, alleging non-receipt of the complete information. The petitioner was directed to attend the office of respondent No.1 at 10 a.m. on 18.2.2016. Due to certain unavoidable circumstances, the representative of the petitioner could not reach the office of respondent No.1 in time and in the interregnum, the hearing was completed.

8 By the impugned order, respondent No.1 directed the petitioner to supply the information to respondent No.2 and further asked the petitioner to show cause as to why punitive action under the provisions of RTI Act be not initiated.

9 The petitioners contend that it is not a public authority as defined under section 2(h) of the RTI Act which reads thus:-

> *" (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; ".*

10 The submission of the petitioners that it is not covered by the RTI Act is predicated on the assertion that no financial aid is received from the Government. The petitioners assert that there is no grant which is received from the Government.

11 It would be necessary to refer to the recent decision of the Honourable Apex Court in case of ***D.A.V. College Trust & Management Society & others versus Director of Public Instructions & others*** (2019 DGLS (SC) 1234 in particular and to the following observations:-

" 25. That brings us to the second limb of the argument of the appellants that the colleges/schools are not substantially financed. In this regard, we may again make reference to the judgment in the Thalapplam case (supra) wherein this Court dealing with the issue of substantially financed made the following observations:

"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 ninetyfive per cent grantinaid from the appropriate Government, may answer the definition of public authority under Section 2(h)(d)(i)."*

26. In our view, 'substantial' means a large portion. It does not necessarily have to mean a major portion or more than 50%. No hard and fast rule can be laid down in this regard. Substantial financing can be both direct or indirect. To give an example, if a land in a city is given free of cost or on heavy discount to hospitals, educational institutions or such other body, this in itself could also be substantial financing. The very establishment of such an institution, if it is dependent on the largesse of the State in getting the land at a cheap price, would mean that it is substantially financed. Merely because financial contribution of the State comes down during the actual funding, will not by itself mean that the indirect finance given is not to be taken into consideration. The value of the land will have to be evaluated not only on the date of allotment but even on the date when the question arises as to whether the said body or NGO is substantially financed.

27. Whether an NGO or body is substantially financed by the government is a question of fact which has to be determined on the facts of each case. There may be cases where the finance is more than 50% but still may not be called substantially financed. Supposing a small NGO which has a total capital of Rs.10,000/ gets a grant of Rs.5,000/ from the Government, though this grant may be

50%, it cannot be termed to be substantial contribution. On the other hand, if a body or an NGO gets hundreds of crores of rupees as grant but that amount is less than 50%, the same can still be termed to be substantially financed. "

12 The Honourable Apex Court articulated that whether an institution is substantially financed by the Government is a question of fact which is to be determined on the facts of each case. In the present case, since the representative of the petitioner could not attend the hearing, there was no opportunity to place on record the relevant material on the basis of which respondent No.1 could have addressed the issue. In this view of the matter, I consider it appropriate to quash the order impugned dated 18.2.2016 passed by respondent No.1 and remit the Appeal Nos.2185/2015, 2210/2015, 2693/2015 to respondent No.1 for fresh decision in the light of enunciation of law in the matter of **D.A.V.College Trust & Management Society and others versus Director of Public Instructions and others**.

13 Rule is made absolute in the aforestated terms.

14 Petitions are disposed of.

(ROHIT BABAN DEO, J)

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