

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

103

CWP No.2092 of 2020
Date of Decision :29.05.2020

Shyam Sunder Goel

....Petitioner

Versus

State Information Commission, Haryana.

....Respondent

Coram : **Hon’ble Mr. Justice B.S. Walia**

Present: Dr. Payel Mehta, Advocate for the petitioner.

B.S. Walia, J.

1. Prayer in the petition under Article 226 of the Constitution of India is for the issuance of a writ in the nature of Certiorari for setting aside order Annexure P-1 dated 05.09.2019 passed by the State Information Commission Haryana holding the appeal filed by the petitioner not maintainable under the provisions of the Right to Information Act, 2005 (hereinafter referred to as the Act).

2. That the brief facts of the case as set out in the writ petition are that aggrieved by encroachments by street vendor’s and rehri mafia at prominent public places, the petitioner filed an application before the SPIO, office of MLA, Assembly Constituency – Ambala City i.e. **Annexure P-2** seeking the following information: –

i) Copy of the program of the Hon’ble MLA to lift the ansan by the Rehri Fadi Walas by offering glass of juice with his own hands.

ii) Copy of the photos clicked lifting the ansan in the presence of from

- iii) Copy of any agreement reached out with the Rehri Fadi Mafia on the date of lifting of the ansan or on any other date.
- iv) If the Hon'ble MLA has promised any other space in near future for the Rehri Fadi Mafia in place of encroached parking in front of LIC building.
- v) If the Hon'ble MLA has done any effort for implementation of Street Vendor's Act 2014 in Ambala City or anywhere in Haryana. Copies of all correspondence or other records relating to that.
- vi) If the answer to the point No. 5 is in negative has the Hon'ble MLA any plan to get it implemented in near future.
- vii) If the answer to the point No. 6 is in negative, reasons if any, for that.
- viii) If the Hon'ble MLA has any plan to get the encroached parking in front of LIC in Amba Market vacated by the Rehri Fadi Mafia, in public interest.

3. That no reply was received by the petitioner to the application Annexure P-2 within the stipulated period of 30 days from the concerned SPIO. Consequently the petitioner filed 1st appeal before the concerned 1st appellate authority i.e. Annexure P-3 dated 15.07.2019. However no reply was received by the petitioner within the stipulated period of 30 days to the 1st appeal filed by him. Consequently the petitioner filed 2nd appeal, Annexure P-4 dated 16.08.2019 before the respondent under the provisions of the Act. However the same was dismissed by the respondent vide order Annexure P-1 dated September 5-19 on the ground of non-maintainability as the petitioner had sought information from the State Public Information Officer – Member of Legislative Assembly (MLA), Ambala City, Shri

Aseem Goel and a member of the legislative assembly was not a Public Authority in terms of Section 2 (h) of the Act.

4. Sole argument of Ld. Counsel is that the impugned order is in derogation of the provisions of Section 2 (h) of the Act, therefore liable to be set aside and the petitioner held entitled to the information sought for by him.

5. That definition of the term public authority is given in Section 2(h) of the Act. The same is reproduced hereunder: –

Section 2(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;

6. That Section 4 of the Act stipulates the obligations of public authorities. Thus before the obligations stipulated under section 4 can be imposed upon an entity, said entity must fall within the definition of a public authority as defined in Section 2 (h). Equally, before an entity can be said to constitute a public authority within the meaning of Section 2 (h) it must be shown that the entity is ;-

a) an authority or

b) body or

c) institution of self-government.

7. That in **Som Prakash Rekhi vs Union of India and Other (1981) 1 SCC 449**, the Supreme Court held as under :-

“Authority in law belongs to the province of power :
‘Authority (in administrative law) is a body having jurisdiction in certain matters of a public nature.’
Therefore, the ‘ability conferred upon a person by the law to alter, by his own will directed to that end, the rights, duties, liabilities or other legal relations, either of himself or of other persons’ must be present extra to make a person an ‘authority.’ When the person is ‘an agent or instrument of the functions of the State’ the power is public.”

That a perusal of the aforementioned extract of the decision of the Supreme Court makes it clear that before a person can be deemed to be an authority there must exist the ability conferred upon such person by law to alter by his own will directed to that end, the rights, duties, liabilities or other legal relations either of himself or of other persons and that he must be acting as an agent or instrument of the State. Applying the aforesaid reasoning, it emerges that a member of the legislative assembly in his individual capacity has no power to alter either his own or any other person’s rights, duties, liabilities or other legal relations nor does he act as an agent of the State, though the legislative assembly of which he is a member may be so empowered or acting. Consequently an MLA in his individual capacity does

not comprise an ‘authority’ as understood in law, therefore is not covered by the definition of the term public authority as defined in Section 2 (h) of the Act. In the circumstances, no ground exists warranting interference with the impugned order. Accordingly, finding no merit in the writ petition, the same is dismissed in limine.

29.05.2020
‘Rajneesh’

(B.S. Walia)
Judge

Whether speaking / reasoned	:	Yes / No
Whether reportable	:	Yes / No