

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

WRIT PETITION NO.7930 OF 2017  
(Moolji Jetha College, Jalgaon Vs. Dr. Shri Sanjay Krishnaji  
Bhokardole)

WITH  
WRIT PETITION NO.8318 OF 2018  
(Moolji Jetha College, Jalgaon and another Vs. Dr.Shri Sanjay  
Krishnaji Bhokardole)

Mr. A.V.Hon, Advocate for the petitioners.

Mr. M.M.Bhokarikar, Advocate for the respondent)

**CORAM : BHARATI H. DANGRE, J.**

**DATE : 14<sup>TH</sup> FEBRUARY, 2022.**

**P.C. :**

1. The two writ petitions raise a common question of law whether a College run by a Trust, which is duly registered under the Maharashtra Public Trusts Act, 1950 and the Societies Registration Act, 1860, and running various courses, some of them, on permanent "no grant basis", fall in the ambit of the term, "Public Authority" as defined in Section 2(h) of the Right to Information Act, 2005.

This neat question of Law fall for consideration in the backdrop of the facts, narrated in the following paragraphs.

2. The petitioner No.1 is a college run by Khandesh College Education Society Trust registered under the Maharashtra Public Trusts Act, 1950 and the Societies Registration Act, 1860. The College is running various courses and it is specifically pleaded by the petitioners that some of the courses run through the petitioner College are permanently on "No Grant Basis" i.e. they are not in receipt of any financial assistance, from the Government either directly or indirectly. This impression of the petitioners led to rejection of the application filed by the respondent who sought information from the Public Information Officer of the College, on the ground that the information sought pertains to the permanent non aided institute, which would not fall within the purview of Right to Information Act, 2005.

It is pertinent to note that the respondent applied to the Information Officer of the College on 05/01/2015 where he sought the following information :-

*"(i) advertisement given in daily Lokmat newspaper dated 12.07.2014 and the list of the candidates alongwith the documents submitted by them, (ii) whether as per the advertisement the posts are to be filled on Daily rated or self-employment and whether the list was called from the employment exchange and copy of the list of candidates received, (iii) The details of the interview conducted as per the advertisement and the marks scored by each of the*

*candidates, and (iv) list of the selected candidates and details of their appointment and present status of their service."*

3. On rejection of his application, on 13/01/2015, the respondent filed an appeal u/s 19(1) of the Right to Information Act, 2005 before the First Appellate Authority, who maintained the said order. The respondent then approached the State Information Commissioner, Bench at Nashik by filing an appeal u/s 19(3) of the Act of 2005, being aggrieved by the rejection of his application and he clarified that the College had issued the advertisement for the post of Professor and though the interviews were conducted, the result was not declared and since he was one of the candidate, who was qualified to be selected with unparalleled experience, he ought to have been selected, however, by ignoring his claim, the candidate who came to be appointed to occupy the post of Professor was even not the one who was subjected to interview and in the backdrop of these facts, he sought the necessary information.

4. The State Information Commissioner, upon receipt of the appeal, issued notice to the Information Officer as well as the First Appellate Authority and upon hearing the respondent, passed an order on 05/05/2017 and directed the information sought by the

respondent to be supplied barring the information which is personal in nature, free of costs to the respondent. It is this order, which is the subject matter of the petition.

5. The learned Advocate Mr.Hon submits that the State Information Officer has taken a contradictory stand in an appeal filed by one Shailesh Kulkarni, R/o Jalgaon, wherein the information was refused to be provided on the same ground, that the institution is not receiving grant in aid and the information being sought in respect of the pay scale of the teaching and non teaching staff of non aided temporary teachers, the Appellate Authority, by relying upon the decision of the High Court in Case of WP No.5132/2008 has rendered a finding that the provisions of the Right to Information Act, 2005 are not applicable to the non grant in aid educational institutions and therefore in an appeal filed by Mr.Shailesh Kulkarni, he was refused the information on the ground that the College is not amenable to the provisions of the Right of Information Act, 2005. The copy of the said order is placed on record alongwith the petition.

The learned Advocate Mr.Hon would further submit that the State Information Commissioner, ought to have taken into

consideration the definition of "Public Authority" as defined under the provisions of the Act of 2005 and since it is a non-government Organization which is not substantially financed, directly or indirectly by the funds of the State Government, it is not covered within the definition of Public Authority. It is also argued by the learned counsel that the courses for which the staff is appointed is on permanent no grant basis and therefore there was no financial aid either received or likely to be received in future for the said courses and therefore the impugned order directing the information to be supplied, cannot be sustained.

Mr. Hon refers to the order granting permission to run the course and by referring to the said order, it is sought to be argued that the course of Bachelor of Journalism and Computer Science is granted on permanent no grant basis indicating that no grants will be ever conferred for running the said course and the salary of the staff is to be paid from the fees collected from running of the said courses and therefore the petitioner/College is not duty bound to provide information as sought by the petitioner under the Right to Information Act.

6. The learned Advocate Mr.Hon has relied upon the decision of the learned Single Judge in case of **Bhaskarrao Shankarrao Kulkarni Vs. State Information Commissioner, Nagpur and others in WP No.5294/2008**, wherein it has been held that the public trust known as Shree Govind Ramnand Samarth Sadguru Pralhad Maharaj (Ramdasi) Sansthan is not a public authority, bound by the provisions of the R.T.I. Act, as any person seeking to establish a particular public trust is covered by the provisions of the R.T.I. Act, will have to prove that it is a public trust created by Government or Parliament or is substantively financed by the Government and unless it is so established, it cannot fall within the purview of R.T.I. Act. Another decision delivered by the learned Single Judge in **Karmaveer Kakasaheb Wagh Education Society Vs. The Assistant Charity Commissioner and others in WP No.4264/2008 decided on 09/07/2009** is also relied upon to support the submission that the petitioner who is registered under the provisions of the Maharashtra Public Trusts Act and Society Registration Act, is not covered within the definition of "public authority" and therefore is not bound to provide the information. Another decision in case of Nagar **Yuwak Shikshan Sanstha and another Vs. Maharashtra State Information Commission and another in WP No.5132/2008, decided on**

**31/07/2009**, on similar lines is also relied upon to establish that the petitioner is not a Public Authority.

7. On perusal of the facts involved in both the petitions, it is apparent that the Khandesh College Education Society Trust is a Trust registered under the provisions of Maharashtra Public Trusts Act and the Societies Registration Act. The said Trust run the petitioner/College, which in turn run various courses, some of them are permanently on no grant basis, like the Courses of Bachelor of Journalism and Computer Science. The argument of the learned Advocate for the petitioner is that the said course which is not in receipt of any grant in aid from the State Government will not fall within the purview of "public authority", as defined under the R.T.I. Act and since the right to Information under the said Act is applicable only against the Public Authority, it is necessary to refer to the definition of term "public authority", 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 organization substantially financed, directly or indirectly by funds provided by the appropriate Government ;"*

8. The above definition can be divided into two parts; the first one indicating as to what would amount to a Public Authority i.e. any authority or body or institution of State Government, which is established or constituted by or under the Constitution, by any other law made by Parliament, by any other law made by State Legislature, or by a notification issued or order made by the appropriate government, whereas, the second part stipulates that the Public Authority would include any body owned, controlled or substantially financed, non-government organization substantially financed, directly or indirectly by funds provided by the appropriate Government. Thus the definition of the term "Public Authority" in Section 2(h) of the Act, can be said to be partly exhaustive and partly inclusive. The body , which is owned, controlled or substantially financed, is also included in the definition of Public Authority.

9. The petitioner/college is being run by a Trust, who manages and administers their affairs and dealings. The trust run the petitioner college and from the documents placed on record, it is clear that the permission is granted to run the course by the Higher Technical Education Department on no grant in aid basis, but the fact that permission is required, reflect that the State Government exercises control over the said institution. For establishing an institution for imparting various courses the proposals were invited and on being processed, it came to be forwarded to the State Government with its recommendations. On scrutiny of the said proposals, permission has been granted by the State Government to run the said courses in exercise of powers conferred on it u/s 82(5) of the Maharashtra Universities Act, 1994. On the permission being granted, direction is issued to the University to affiliate the said courses. It is in the background of these facts and situation, the word "controlled" used in the definition of public authority, will have to be construed.

10. The Right to Information Act, 2005 is a special Enactment to provide for setting out the practical regime of Right to Information for citizens to secure access to information under the control of

Public Authorities, in order to promote transparency and accountability in the working of every public authority. The preamble to the said Enactment reads thus :-

*"AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed ;*

*AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information ;*

*AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal ;*

*NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it."*

The provisions in the Act will have to come to the aid of the object that is sought to be achieved.

The Act of 2005 cover the information as defined in Section 2(f) of the enactment and the information falls into two categories that is, the information which promotes transparency and accountability in the working of every public authority, disclosure of

which helps in containing or discouraging corruption and other information held by the Public Authorities not falling u/s 4(1)(b) and (C) of the R.T.I. Act, 2005. In regard to information falling under the first category, the public authority owe a duty to disclose the information suo motu to the public so that it can have easy access to the same. As regards the information enumerated or required to be enumerated u/s 4(1)(b) and (c) of the R.T.I. Act, the competent authorities under the Act, will have to act in a proactive manner so as to ensure accountability and ensure that the fight against corruption goes on. The object of R.T.I. Act is to harmonize conflicting public interest, that is by ensuring transparency to bring in accountability and containing corruption on one hand and at the same time ensure that the information disclosed does not harm or adversely affect other public interest, which include efficient functioning of the Government.

11. The Act define the term "appropriate Government" in Section 2(a) as under :-

*"appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly--*

*(i) by the Central Government or the Union Territory administration, the Central Government;*

*(ii) by the State Government, the State Government;"*

12. Another relevant definition in the Act is, "right to information", which is defined in Section 2(j), which read as under :-

*"2(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to –*

*[i] inspection of work, documents, records;*

*[ii] taking notes, extracts or certified copies of documents or records ;*

*[iii] taking certified samples of material ;*

*[iv] obtaining information in the form of diskettes, floppies, tapes video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device."*

13. Perusal of the definition of "Public Authority", would reveal that the definition is partly exhaustive and partly inclusive when it specify the authority or body or institution which would fall within the purview of "public authority" and by including certain other categories, it expand its scope. Any body owned, controlled or substantially financed, any non-Government organization

substantially financed; directly or indirectly by funds provided by the appropriate government is included in the definition of "Public Authority". The inclusive definition would thus cover, any body, owned, controlled or substantially financed, directly or indirectly by the funds provided by the appropriate Government. The word "control" applied in the definition cannot be construed narrowly but will have to be construed broadly as the said word is of a wide connotation and amplitude and includes a variety of powers which are incidental or consequential to achieve the powers vested in the authority concerned. The term "control", legally speaking means, "to restrain, to regulate, to govern, to keep under check, to rule and direct, to subject to authority superintendence."

This Court in case of **Appellate Authority and Chairman Shikshan Prasarak Mandal Vs. The State Information Commissioner and another (supra)** has rightly referred to the term "control" by recording as under :-

*"18] Similar is the meaning ascribed or given to this term in a later decision State of Mysore Vs. Allum Karibasappa and Ors., reported in A.I.R. 1974 S.C. 1863. Finally in the case of Corporation of the City of Nagpur Vs. Ramchandra G. Modak, A.I.R. 1984 S.C. 636, the Supreme Court in para 4 holds as under:*

*"4. It is thus now settled by this Court that the term "control" is of a very wide connotation and amplitude and includes a large variety of powers which are*

*incidental or consequential to achieve the powers vested in the authority concerned. In the aforesaid case, suspension from service pending a disciplinary inquiry has clearly been held to fall within the ambit of the word "control". On a parity of reasoning, therefore, the plain language of clause (b) of section 59(3) as extracted above irresistibly leads to the conclusions that the Municipal Commissioner was fully competent to suspend the respondents pending a departmental inquiry and hence the order of suspension passed against the respondents by the Municipal Commissioner did not suffer from any legal infirmity. The High Court was, therefore, in error in holding that the order of suspension passed by the Municipal Commissioner was without jurisdiction. In this view of the matter the order of the High Court cannot be maintained and has to be quashed."*

*19] What the Supreme Court holds is that "control is exercised by superior authority in exercise of its supervisory power." The word is synonymous with superintendence, management or authority to direct, restrict or regulate. Therefore, if this term comprehends all incidental or ancillary powers, then, to hold that the word "control" appearing in section 2(h) has a very narrow and restricted meaning would be doing violence to the plain language of the Statute and interpreting it so, can never be permitted. A somewhat similar view is taken by a Full Bench of the Kelara High Court in the case of Mulloor Rural Cooperative Society Ltd. Vs. State of Kerala and others reported in A.I.R. 2012 Kerala 124 (see para 4).."*

14. The two petitioners before this Court, is a College run by the Trust, which is registered under the provisions of Maharashtra Public Trusts Act and Society Registration Act. The College is conducting various courses and some of them are permanently on "no grant basis" i.e. not in receipt of any grant or financial assistance, either

from the Government directly or indirectly for conducting the courses. It is not disputed that some of the courses run by the said college receive grant and the course of Bachelor of Journalism is accorded permission on "permanent no grant basis". The information sought by the respondents was as regards this course and in one petition, the respondent sought information about the candidates, who had applied pursuant to the advertisement for the post of "Head of the Department" and the details of the candidates who were qualified as well as the copy of the select list and the names of the candidates on the waiting list, is sought for, whereas in another writ petition, the information is sought by the same petitioner seeking details of the vouchers by which she was paid the salary when he had worked as a Lecturer in the said College for session of 1998-1999 and 1999-2000.

This information has been turned down on the ground that the information sought pertain to a course which is granted permission on "permanent no grant in aid" basis and therefore is not amenable to the scope and application of the Right to Information Act.

15. During the course of hearing before the State Information

Commissioner, the Public Information Officer-Cum-Registrar (कुलसचिव) had categorically made a statement that the said course is non aided but the other courses run by the said college are receiving grants from the State Government. It is also submitted that the State Government exercises full control over the College and therefore it was considered that it would be covered in the definition of "Public Authority" as per Section 2(h) of the Act. In the wake of the aforesaid admission, the State Information Commissioner has issued a direction to supply the information as sought for, since the College fall within the definition of "Public Authority".

16. The permission granted to open the college, which is placed on record, is clearly indicative of the fact that the College is under the Control of the State Government and since it is a public authority amenable to the provisions of the Right to Information Act and in view of the subsisting legal position, where Government exercises its control, though a particular course is not in receipt of grant, the impugned orders deserve to be upheld and the writ petitions are liable to be dismissed and are accordingly dismissed.

**( BHARATI H. DANGRE, J.)**