IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2022

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THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.Nos.34128 and 34129 of 2014
and M.P.Nos.1 and 1 of 2014

Worth Trust,
Represented by its Director and
Chief Executive Officer P.Athmanathan,
48, New Thiruvalam Road,
Katpadi, Vellore - 632 007. .... Petitioner in both Writ Petitions

Vs.

1. The Public Information Officer-cum-District Disabled Rehabilitation Officer,
District Rehabilitation Centre,
Old Panchayat Board Office Complex,
Anna Salai, Vellore - 632 001.

2. The Tamil Nadu Information Commission,
Represented by its Registrar,
No.2, Thiagarajar Salai,
Teynampet, Chennai - 600 018.

3. C.Vijayalakshmi

.... Respondents in both Writ Petitions

PRAYER IN W.P.NO.34128 OF 2014: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the second respondent culminating in its impugned order dated 03.09.2014 passed in Case No.14646/Hearing/D/2013, and quash the same.

PRAYER IN W.P.NO.34129 OF 2014: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the impugned proceedings of the first respondent bearing Na.Ka.No.36/2013, dated 09.10.2014 culminating in Na.Ka.No.36/2013 dated 30.10.2014 issued to the petitioner and quash the same.

For Petitioner : M/s.Arun Anbumani

For Respondent No.1 : M/s.Tippu Sultan Government Advocate

For Respondent No.2 : M/s.Niranjan Rajagopal

For Respondent No.3 : M/s.Sathia Chandran

COMMON ORDER

The present Writ Petitions have been filed for the issuance of a Writ of Certiorari, to call for the records of the second respondent culminating in its impugned order dated 03.09.2014 passed in Case No.14646/Hearing/D/2013 and impugned proceedings of the first respondent bearing Na.Ka.No.36/2013, dated 09.10.2014 culminating in Na.Ka.No.36/2013 dated 30.10.2014 issued to the petitioner and quash the same.

2. The petitioner is a Trust and in existence for over 50 years. They impact education to the differently abled persons. In that, the Government provides subsidy for differently abled persons. According to the petitioner, the subsidy availed by them during the year 2010-11 was 1.83% of the total expenditure, 2011-12 - 1.99%, 2012-13 - 2.93% and 2013-14 - 7.37%. The petitioner earns an income from his business activities over and above Rs.20.00 Crores per annum. For running this Trust, the petitioner does not get finance directly or indirectly from the Government. But, independently, transacts around to Rs.22.00 Crores per annum.

3. While the matter stood thus, the third respondent, who is the wife of the employee of the Trust, made an application on 15.09.2012 under Right to Information Act, 2005. The petitioner replied that they will not fall under the purview of the Right to Information Act as they are not public authority. The third respondent again made a First Appeal to the District Revenue Officer, wherein it was informed that the petitioner will not fall under the control of education department and that they are not getting any financial assistance from the Government and therefore, the Right to Information Act will not apply. Aggrieved over the same, the third respondent preferred a Second Appeal to the second respondent. The Information Commission directed the Public

Information Officer, first respondent herein, to enquire as to whether the petitioner has received any financial assistance from the Government directly or indirectly and if it is found that the petitioner is substantially financed, to get an information from them and furnish to the third respondent. Aggrieved over the same, the petitioner is before this Court.

4. Heard the submissions made by the learned counsel appearing for the respective parties.

5. The financial status projected by the petitioner gives an impression that they have a total income of around Rs.25.00 Crores per annum. They are executing various schemes and projects, which has some connection with the social welfare measures, which are done by the Government also. In one such scheme for educating the differently abled persons, the Government provides subsidy, as per the statement of the petitioner, which is ranging only 1.83% per annum or 2% per annum. It is well settled that under Section 2(h) of the Right to Information Act, 2005, the 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 and (d) by notification issued or order made by the appropriate Government. It further includes the body owned, controlled or substantially financed by the Government or non-Government Organisation substantially financed by the Government.

6. When the matter was heard, it is submitted by the learned counsel appearing for the Government that the petitioner was provided with the subsidy to the tune of Rs.3.30 Lakhs for education programme to the differently abled persons. Other than this, there is no material available to show that the Government has financed, much less, substantially financed the running of the petitioner Trust.

7. As per the Act, the public authority shall be a creature under the Constitution or law made by the Parliament or State Legislature or as notified by the appropriate Government under this purpose. Obviously, the petitioner Trust does not fall within the above Clauses. It is a non-governmental organisation running the charitable institution. It has to be seen whether it is substantially financed by the Government. As discussed above, there is no material to show that the petitioner Trust is substantially financed by the Government, but only provided the subsidy for providing their scheme.

8. Providing subsidy for executing a social welfare scheme is entirely different from substantially financing the business. The petitioner is not running an institution with the finance provided by the Government or running the petitioner Trust or depend on the Government for its expenditures. It does not derive any benefit from the Government. In other words, for running the educational courses, it does not get any grant-in-aid from the Government for paying the fees or to meet other expenditures. If that be so, it cannot be said that the petitioner Trust is financed by the Government. It is noted that the income of the Trust is around Rs.25.00 Crores, which is accountable to the income tax department and other statutory authorities. If at all, it is substantially financed by the State Government and that the State Government for running the institution, it would be reflected in the accounts submitted by them and it is very easy for the respondent to find out as to whether the petitioner Trust will fall under the definition of the public authority or not? As stated above, none of the materials are produced to show that the petitioner Trust falls under the definition of public authority and therefore, without ascertaining the facts with the available material, the direction issued by the State Information Commission will not bring the petitioner Trust into the purview of the Right to Information Act.

9. The Hon'ble Supreme Court in the case of D.A.V. College Trust and Management Society and Others Vs. Director of Public Instructions and Others [(2019) 9 SCC 185] has observed that an NGO not owned or controlled by Government, not having been created by an Act or notification, would still fall under the ambit of "public authority", if it is substantially financed directly or indirectly by Government. In the instant case, it is found that the petitioner Trust is a non-governmental organisation and it is not substantially financed by the Government. The relevant paragraphs of the judgement of the Hon'ble Supreme Court are extracted hereunder:-

> 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: "
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> > 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.

28. Another aspect for determining substantial finance is whether the body, authority or NGO can carry on its activities effectively without getting finance from the Government. If its functioning is dependent on the finances of the Government then there can be no manner of doubt that it has to be termed as substantially financed.

29. While interpreting the provisions of the Act and while deciding what is substantial finance one has to keep in mind the provisions of the Act. This Act was enacted with the purpose of bringing transparency in public dealings and probity in public life. If NGOs or other bodies get substantial finance from the Government, we find no reason why any citizen cannot ask for information to find out whether his/her money which has been given to an NGO or any other body is being used for the requisite purpose or not.

10. In view of the judgment as well as the discussions made above, this Court finds that the petitioner Trust does not fall under the definition of public authority to bring it under the purview of Right to Information Act. Hence, the impugned order passed by the second respondent in Case No.14646/Hearing/D/2013, dated 03.09.2014 and the impugned proceedings dated 09.10.2014 and 30.10.2014 in Na.Ka.No.36/2013 issued by first respondent are set aside.

In fine, these Writ Petitions are allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To

1. The Public Information Officer-cum-
District Disabled Rehabilitation Officer,
District Rehabilitation Centre,
Old Panchayat Board Office Complex,
Anna Salai, Vellore - 632 001.

2. The Registrar,
Tamil Nadu Information Commission,
No.2, Thiagarajar Salai,
Teynampet, Chennai - 600 018.

+1cc to Mr.Arun Anbumani, Advocate Sr.13569
+1cc to the Government Pleader Sr.14113

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and M.P.Nos.1 and 1 of 2014

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srg 30/05/2022