* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Judgment reserved on : 24 November 2023**

Judgment pronounced on : 21 December 2023

\+ CONT.CAS(C) 688/2018 & CM APPL. 37147/2018

SHEOJI KUMAR PATHAK ..... Petitioner

Through: Petitioner in person.

versus

R S SHARMA ..... Respondent

Through: Ms. Gauri Puri with Ms. Aditi Gupta and Mr. Kashish, Advs.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

JUDGMENT

FACTUAL BACKGROUND

1. The petitioner, Sheoji Kumar Pathak is embroiled in a long and arduous litigation with the respondent in respect of his service entitlements. Shorn of unnecessary details, in so far as the instant petition is concerned, he had filed an application seeking copy of list of seniority-wise staff members, and the copy of appointments of PIO's[1] and FAAs[2] from DAV College Managing Committee[3] when he was transferred from Jharkhand to Odisha in 2008 instead of being promoted. The Central Information Commission[4] *vide* its decision dated 28.11.2016 in CIC/CC/A/20l4/00217 titled 'Sheoji Kumar Parak v. PIO, DAV College Managing Committee', while placing reliance on the order passed by the Punjab and Haryana High Court in **DAV College Trust and Management Society v. Director of Public**

[1] Public Information Officer
[2] First Appellate Authority
[3] DAV CMC
[4] CIC

Instruction[5], held that DAV was a 'public authority' within the meaning of Section 2(h) of the Right to Information Act, 2005[6] and *vide* paragraph (9) directed appointment of the PIO and directed the DAV CMC to thereafter take requisite steps to provide the information sought by Mr. Sheoji Kumar Pathak before 23.12.2016.

2. Aggrieved of the order of CIC dated 28.11.2016, DAV CMC filed a writ petition i.e., W.P. (C) 12071/2016 titled 'D.A.V. College Managing Committee v. Sheoji Kumar Parak' canvassing that the observation that DAV CMC was a public authority was incorrect in law; and it was pointed out that the decision in ***DAV College Trust and Management Society*** (***supra***) was in appeal, pending decision before the Apex Court. This Court *vide* order dated 12.01.2018 thus observed that since the P&H Court decision had not been stayed, DAV CMC would be required to comply with the same and passed the following directions:

> "7. Insofar as the question regarding providing the information sought for by the respondent is concerned, it is seen that the information sought for by the respondent is not exempt from disclosure under Section 8 of the Act. Therefore, if such information is available with the petitioner, the same ought to be provided to the respondent.
> 8. Having stated the above, it is also relevant to observe that although the nature of the information as sought by the respondent is discernible, some of the queries as stated in the application dated 04.09.2014 are ambiguous and do not indicate the precise information sought by the petitioner.
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> 9. In the circumstances, the respondent is, directed to examine the information sought for by him and if necessary, reword the same so that the same can be easily comprehended. The respondent shall file a typed application clearly indicating the information sought

[5] AIR 2008 P&H 117
[6] RTI Act

> for by him within a period of two weeks from today. The petitioner shall respond to the same within a period of four weeks of receipt of such application."

3. Suffice to state that the contemnor failed to appear in-person before the Delhi High Court Mediation and Conciliation Centre on 05.03.2018 at 3:00 pm, hence no negotiation took place. Thus, mediation was a non-starter.

4. The present contempt petition being CONT. CAS (C) 688/2018 is filed by the petitioner under Section 10, 11 & 12 of The Contempt of Courts Act, 1971[7], alleging that the respondents have committed the contempt of the order dated 28.11.2016 passed by this Court in the above-mentioned writ petition W.P. (C) 12071/2016. The petitioner has submitted that he had complied with the direction of order dated 12.01.2018 *vide* paragraph (9) to the extent that a re-worded typed application dated 28.01.2018 enlisting 09 pieces of information sought for under the Act was sent to Shri R.S. Sharma, General Secretary, DAV CMC. Shri R.S. Sharma has since expired, Mr. Ajay Suri has been impleaded as the respondent *vide* order dated 10.10.2023.

5. In response to the above-mentioned application dated 28.01.2018 filed by petitioner, DAV CMC *vide* its letter DAVCMC/Legal Dept./20 dated 27.02.2018 communicated to the petitioner that the information sought could not be provided since the mandate of Section 8 of the RTI Act, the applicant, i.e., the petitioner herein, had to satisfy that the disclosure of the information was warranted in the larger 'public interest'. Since, the information sought for by the petitioner was not serving the larger 'public interest', hence

the same could not be supplied. Furthermore, the letter re-asserted on the disposition that DAV CMC was not a public authority.

6. The petitioner herein urges that the above stated communication is a flagrant violation of this Court's order dated 12.01.2018 *vide* paragraph (8), since the learned predecessor Single Judge had explicitly observed that the information sought was not exempted from disclosure under Section 8 of the RTI Act.

ANALYSIS AND DECISION:

7. Having heard the petitioner and learned counsel for the respondent and on perusal of the record, it is pertinent to mention that the Supreme Court in the case of **DAV College Trust and Management Society v. Director of Public Instruction**[8], has held that DAV CMC qualifies as a 'public authority' within the meaning of Section 2(h) of the RTI Act. It would be relevant to extract the following paragraphs from the judgment, which read as under:

> "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.
> 30. It is in the light of the aforesaid proposition of law that we now propose to examine the cases individually.
> Civil Appeal No. 9828 of 2013
> 31. This has been filed by D.A.V. College Trust and Management Society, New Delhi; D.A.V. College, Chandigarh; M.C.M.D.A.V.

[7] CC Act
[8] 2019/INSC/1042

College, Chandigarh and D.A.V. Senior Secondary School, Chandigarh.

32. Appellant No. 1 is the Society which runs various colleges/schools but each has an identity of its own and, **in our view, each of the college/school is a public authority within the meaning of the Act**. It has been urged that these colleges/schools are not being substantially financed by the Government in as much as that they do not receive more than 50% of the finance from the Government. Even the documents filed by the Appellants themselves show that M.C.M.D.A.V. College, Chandigarh, in the years 2004-05, 2005-06 and 2006-07, has received grants in excess of 1.5 crores each year which constituted about 44% of the expenditure of the College. As far as D.A.V. College, Chandigarh is concerned the grant for these three years ranged from more than 3.6 crores to 4.5 crores and in percentage terms it is more than 40% of the total financial outlay for each year. Similar is the situation with D.A.V. Senior Secondary School, Chandigarh, where the contribution of the State is more than 44%.

33. Another important aspect, as far as the colleges are concerned, is that 95% of the salary of the teaching and non-teaching staff of the College is borne by the State Government. A major portion of the remaining expenses shown by the College is with regard to the hostels, etc. It is teaching which is the essential part of the College and not the hostels or other infrastructure like auditorium, etc. The State has placed on record material to show that now these grants have increased substantially and in the years 2013-14, 2014-15 and 2015-16, the D.A.V. College, Chandigarh received amounts more than Rs. 15 crores yearly, M.C.M.D.A.V. College, Chandigarh received amounts more than Rs. 10 crores yearly and the D.A.V. Senior Secondary School, Chandigarh received grant of more than Rs. 4 crores yearly. It can be safely said that they are substantially financed by the Government.

35. These are substantial payments and amount to almost half the expenditure of the Colleges/School and more than 95% of the expenditure as far as the teaching and other staff is concerned. **Therefore, in our opinion, these Colleges/School are substantially financed and are public authority within the meaning of Section 2(h) of the Act**."

8. Alluding to the letter dated 27.02.2018, at the cost of repetition, the respondent has reiterated its earlier stand and has refused to supply the information on the ground that their institution is not covered under Section 2(h) of RTI Act and that information sought does not

serve larger 'public interest'. Suffice to point out that the said letter makes reference to decisions by CIC and various High Courts to illustrate that DAV CMC is not a public authority.

9. *Ex-facie*, it is apparent that despite categorical directions of this Court that the information sought is not exempted from Section 8 of the RTI Act and that DAV CMC is a 'public authority', which view has been fortified by the Hon'ble Supreme Court in ***DAV College Trust and Management Society v. Director of Public Instruction (supra)***, the respondent is guilty of committing patent breach of the directions passed by this Court. Therefore, this Court holds the respondent guilty for committing civil contempt under Section 2(b) read with Section 10, 11 and 12 of the CC Act. Since, the deceased respondent was not sued in his individual capacity but as the General Secretary of the DAV CMC, his successor in office remains accountable.

10. In view of the foregoing discussion, let notice be issued to the respondent for the next date of hearing i.e., 15.02.2024 to show cause as to why he should not be punished under Section 2 (b) read with Section 10, 11 and 12 of the CC Act for being in gross violation of the directions of this Court dated 12.01.2018.

11. The present Contempt Petition stands disposed of.

DHARMESH SHARMA, J.

DECEMBER 21, 2023/ss/