



**RIGHT TO
INFORMATION**

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**STATE INFORMATION COMMISSION, HARYANA
SCO 70-71 and 114-115, SECTOR 8-C,
Chandigarh.**

Website: cicharyana.gov.in

**Appeal Case No. 2566 of 2010
Appeal Case No. 4107 of 2011
Appeal Case No. 4108 of 2011
Appeal Case No. 4686 of 2011
Appeal Case No. 3025 of 2012
Appeal Case No. 3026 of 2012
Appeal Case No. 3029 of 2012
Appeal Case No. 3030 of 2012**

- 1. Sh. Bhagat Singh S/o Shri Prithvi Singh,
Ward No. 7, Azad Nagar, Near Mohan Halwal's House,
Samalkha, (Panipat)**
- 2. Sh. Virender Singh Arya S/o Shri Raghubir Singh,
2185, Urban Estate, Jind.**

.....Appellant(s)

Versus

- 1. The Principal DAV Centenary Public School, Chulkana Road,
Samalkha (Panipat).**
- 2. The Principal, DAV Centenary Public School, Jind**

.....Respondent(s)

This matter has arisen in pursuance of the earlier hearings held by different benches of the Commission in this case and the order of the Hon'ble Division Bench of the Punjab & Haryana High Court disposing of the pending LPAs with the direction to the Commission to evaluate each case individually in the light of the judgement passed by the Hon'ble Supreme Court in Thalappalam Ser. Coop Bank Limited's case. The matter whether, DAV Centenary Public School, Chulkana Road, Samalkha and the DAV Centenary Public School, Jind are public authority in terms of Section 2 (h) of the RTI Act, 2005 (hereinafter called Act) and fall under the ambit of the Act was under the consideration of the Hon'ble High Court. The Hon'ble Punjab & Haryana High Court while disposing of all such Civil Writ Petitions in LPA No. 1174 of 2011 (O&M) titled Punjab Cricket Association



Vs State Information Commission, Punjab and another decided the matter on 12.12.2013 by passing the following order:

8. (i) *The orders passed by the State Information Commission (SIC) and the learned Single Judge in all these appeals are set aside. The matter is remanded to the SIC to decide the same afresh.*
- (ii) *The interim order shall continue till the disposal of the appeals by the SIC.*
- (iii) *All the pleas available to the appellants herein shall be allowed to be raised before the SIC. The SIC shall decide the matter afresh keeping in view the judgement of the Apex Court in **Thalappalam Ser. Coop Bank Limited's case** (supra) within six months from the date of receipt of a certified copy of this order.*
- (iv) *Each case shall be decided separately by referring to the facts involved therein.*
- (v) *The SIC shall not be influenced by anything which has been observed herein while deciding the matter afresh.*

2. The larger bench of the Commission started the proceedings on 20.06.2014. Shri Bhagat Singh and Shri Virender Singh, appellants appeared before the Commission. The Bench during hearing noted that the burden to show that a body is owned, controlled or substantially financed or that a non-government organization is substantially financed directly or indirectly by the funds provided by the appropriate Government is on the applicant who seeks information or the appropriate Government. The appellants could not produce any material facts in order to assist the Commission in adjudicating on the issue whether the respondent-schools are public authority in terms of Section 2(h) of the Act or not. Neither the District Education Officers were present to explain the stand on behalf of the appropriate Government, in this regard nor the respondents attended the hearing. The Bench decided to adjourn the matter and directed the Commission's Secretariat to serve the parties a notice, through registered post, asking the District Education Officers of the districts to appear in



person with record pertaining to the status of financial assistance if being provided by the State Government to the respondent Schools alongwith their comments on the issue of 'control' on the said Schools.

3. The Bench heard the matter on 04.07.2014. Shri Bhagat Singh, the appellant and Shri Rajdeep Singh Cheema, Advocate on behalf of the Principal DAV School, Samalkha were present.

4. Sh. Rajdeep Singh Cheema, learned counsel appeared on behalf of the Principal, DAV Centenary Public School, Samalkha (DAV School, Samalkha) filed written submission challenging the orders dated 5.7.2011 passed by Learned State Information Commissioner, Haryana vide which DAV School, Samalkha was held as public authority and a show cause notice was issued. The show cause notice was dropped by the learned State Information Commissioner. The learned counsel argued that the then Bench did not decide the issue whether the unaided school was a public authority or not under the provisions of the RTI Act, 2005 although a detailed reply had been filed on this issue on the directions of the Hon'ble High Court. Hence, the impugned order dated 5.7.2011 had been challenged before the Hon'ble High Court and paid reliance on the judgement dated 9.5.2011 in CWP No. 19224 of 2006 delivered by Hon'ble Justice Mehinder Singh Sullar, Punjab and Haryana High Court. Whereas the matter of fact is that Hon'ble Court in this judgement had not touched any unaided school and the judgement pertains to either aided school or the societies registered under the under the Cooperative Society Act, 1961 or a Society registered under the Societies Registration Act, 1860. The Learned State Information Commissioner has erred in declaring the school of the petitioner as Public Authority under Right to Information Act despite the fact that it does not get any grant-in-aid from any State Government or Central Government, it is unaided school. The Learned Commissioner has exceeded his jurisdiction by adding an unaided institution in the definition of the 'Public Authority' in the Right to Information Act, 2005. The second issue raised by the learned counsel is whether any school to which the Haryana Education Act, 2005 is applicable, automatically falls under the control of the appropriate Government and thereby comes under the purview of the Right to Information Act, 2005. The learned State Information Commissioner did not examine the material facts in

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terms of the provisions of the Act nor gave a clear ruling that the schools under consideration are a public authority.

5. The Learned Counsel submitted that the land for the Samalkha School was purchased by the school itself from its own funds. The school is not getting any grant or aid from the Government or any other agency. It is true that it is the Government which regulates education in all schools in the State in accordance with the Haryana Education Act, 2005 and rules made there under. The establishment of a new school or its up-gradation or the closing down the existing classes are subject to the provisions of the Education Act and the rules made there under. However, for the purpose of the RTI Act, the control of the Education Department is neither deep nor pervasive except that it grants recognition to the school. In the absence of existence of deep and pervasive control with reference to the institution, it cannot be called state or public authority within the meaning of the Right to Information Act. The mere supervision or regulation as such by a statute or otherwise of a body would not make that body a public authority within the meaning of Section 2(h)(d)(1) of the RTI Act. The expression 'control' includes power to take disciplinary action and other incidental or consequential steps to effectuate this end. The Act deals with 'body' which is owned, controlled or substantially financed directly or indirectly by the appropriate Government.

6. The learned counsel further argued that the burden to show that a body is owned, controlled or substantially financed to fall within the meaning of Section 2(h)(d)(1) is on a person who is seeking information from a body or non-governmental organization. The said body or non-governmental organization can also establish that it is not owned, controlled or substantially financed directly or indirectly by the appropriate Government. Hence he submitted documents to prove that the respondent School is not the public authority. He placed before the Larger Bench copies of the Registered Sale Deed dated 4.12.1996, 20.12.1996 and 4.12.1996 vide which the School purchased land from private land owners from its own funds. He further submitted a list of 20 members of the Local Management Committee to highlight that the members were either from the DAV College Trust and Management Society, New Delhi or Principals of nearby Schools plus two members nominated by the Central Board of



School Education. He submitted balance sheet of the School as on 31st March, 2013. Principal DAV Centenary Public School, Samalkha has certified that the School has not received any kind of grant from Government or any of its instrumentalities. It is an unaided School functioning under the direct control of DAV College Trust and Management Society, New Delhi. The DAV College Trust and Management Society is exempted under Section 10 (23C) VI of the Income Tax Act and Road Tax for all buses till 31.3.2015 but it cannot be termed as substantially indirect funding of the society or school. Hence, the respondent School is neither being financed by the appropriate Government nor controlled, therefore does not fall in the category of public authority in term of Section 2 (h) of the Act and has no liability to provide information under the provisions of the Act.

7. Shri Virender Singh, the appellant present during hearing submitted that he addressed seven RTI applications dated 02.06.2011, 02.06.2011, 30.05.2011, 29.10.2011, 29.10.2011 and 29.10.2011 to the Principal, DAV Centenary Public School, Urban Estate, Jind. The RTI applications were returned alongwith fee with the intimation that respondent-School does not fall under the provisions of the Act. He argued that the land on which school has been established has been provided by Haryana Urban Development Authority (in short HUDA) on lease basis on certain terms and conditions. The Estate Officer is on the local Managing Committee of the School. Keeping in view these facts, the respondent-SPIO is a public authority in term of Section 2 (h) of the Act.

8. Sh. Balwan Singh Gulia, Deputy District Education Officer, Jind appeared before the Bench to represent the Education Department at the District level. He submitted Principal, DAV Centenary Public School, Jind's letter dated 3.7.2014 wherein it has been certified that the School is an unaided private institute managed by the DAV College Trust and Management Society, New Delhi, New Delhi and is neither funded by the Central Government nor by the State Government or any other authority. The Principal has further certified that the institution is providing fee concession facility to the students belonging to the Weaker Section of the society on means & merit basis. Shri Balwan Singh further stated that a one time grant of Rs. 1.00 lakh was sanctioned to the respondent School.



by the Finance Minister, Haryana vide letter dated 6.7.2006 for the purchase of furniture. He submitted that the school is recognized by the Central Board of School Education and the District Education Department has no control over the said school other than the issuance of 'No Objection Certificate'.

9. Shri Rajdeep Singh Cheema, Learned Counsel appeared on behalf of the Principal, DAV Centenary Public School, Jind. He submitted that it is a fact that the answering respondent has been allotted land by the HUDA in April, 1999 and the answering respondent paid an amount of Rs.30,46,655.30 as cost of the land including the lease money as settled with HUDA. As per terms and conditions of allotment, the HUDA is represented by the Estate Officer on the Local Management Committee of the School. As per clause 18, the School invites applications from the students belonging to the weaker and poor sections of the society for the grant of fee concession on the basis of merit-cum-means. The school Management is under an obligation to inform any important policy decision or change regarding admission and fee structure. However, this does not imply that the SDM-cum-Estate Officer controls the running of the school. He neither controls the budget of the school nor signs any documents relating to the financial transactions of the school. Learned Counsel relied on the judgement of the Hon'ble Supreme Court in the Thalappalam Ser. Coop. Bank Ltd. and others Vs. State of Kerala and others, where it has been held that the control of the Government has to be deep and pervasive for a body to be classified as public body within the meaning of Section 2 of the RTI Act, 2005. Neither the allotment of land on payment basis nor the participation of Estate Officer on the Local Managing Committee are material facts to lead to the conclusion that the school is being controlled by the appropriate Government.

10. Learned Counsel also relied on the decision of the Division Bench of the State Information Commission, Himachal Pradesh in complaint case 0191 and 0393 of 2012-13 titled as Sanjeev Chauhan Vs PIO-cum-Deputy Director (HE) Shri Ram Chand Tabyal, Lalpani, Shimla which had relied on the Full Bench decision dated 26.03.2013 of Central Information Commission, New Delhi in Rajiv Gandhi Foundation (RGF), New Delhi case. The Division Bench came to the conclusion that the DAV Public School,

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Hamirpur which is being managed by DAV College Managing Committee, New Delhi, is not a public authority under the RTI Act.

11. Concluding his arguments, learned counsel of the School submitted that a bare perusal of the above cited judgement would reveal that the Bench ignored the plea of the Government land allotted at a nominal price. In the present case, the School has paid a huge amount and it is only a lease deed and the actual owner is still the Government and not the School. Therefore, he submitted that as per the decision of Hon'ble Supreme Court, the School does not fall the category of substantially financed. Hence DAV Centenary Public School, Jind is not a public authority as it does not fulfill the yard stick laid by the Hon'ble Supreme Court in Thalappalam Ser. Coop. Bank Limited and others Vs. State of Kerala and others case.

Decision:-

12. The Bench has heard the arguments of the parties put forth in writing and during hearing. The Commission has also perused the judgement of the Apex Court dated 7.10.2013 passed in Thalappalam Ser. Coop. Bank Limited and others Vs. State of Kerala and others. The submissions and documents such as balance sheet, Principals' certificate regarding Government aid or grant, Constitution of Local Management Committee submitted by the appellants and the respondents were also perused to decide the issue whether the schools under consideration are a public authority within meaning of Section 2(h) of the RTI Act, 2005 and hence legally obliged to furnish any information sought by a citizen under the RTI Act. The question whether there is any material or fact to show that the schools are owned, controlled or substantially financed by the appropriate Government in such a manner that it makes the answering respondents fall within the meaning of Section 2(h) of the Act was considered in depth. The learned counsel appearing on behalf of both these School urged that the School does not fall within the definition of "public authority" as per the provision of 2 (h) of the RTI Act whereas the appellants argued that the schools were public authority and liable to furnish information as stipulated by the provisions of the Act. In order to decide the issue, the definition of public authority as defined in clause (h) of Section 2 of the Act is extracted as below:



(h) **"public authority"** means any authority or body or institution of self-government established or constituted—

(a) by or under the Constitution;

(b) by 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,"

13. While deliberating on the issue whether the DAV Centenary Public School, Samalkha is a public authority in term of Section 2 (h) of the Act or not, the Bench noted that the appellant had failed miserably to prove that the School is owned, controlled or substantially financed, directly or indirectly by the appropriate Government. The appropriate Government's representative did not make any submissions to the effect that the respondent school is controlled or substantially financed by the appropriate Government. He neither made any submissions nor appeared before the Bench in response to the notice issued by the Commission. However, the Bench noted that the DAV school, Samalkha has a local Management Committee which has twenty members out of which two members are nominated by the DAV College Trust and Management Society, New Delhi which is an overall central supervisory body. Two members on the Local Management Committee are nominees of the Central Board of School Education. The Bench noted that the School has purchased land from private land owners out of its own sources. Neither the appellant nor the Government representative has placed anything on record to prove that the appropriate Government has ever financed the School. The fact that the DAV College Trust and Management Society is exempted under Section 10 (23C) VI of the Income Tax Act and Road Tax for all buses till 31.3.2015 cannot lead to the conclusion that the school has received substantial indirect funding. The fact that the Central Board of School Education is represented by two nominated members on the

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local Management Committee cannot be taken as a measure of control on the working of the school. Hence, the material facts placed before the Larger Bench make it clear that the school has neither been substantially financed either directly or indirectly nor is the State control deep and pervasive over the society.

14. As far as DAV Centenary Public School, Jind is concerned, the main argument of the appellant is that the school is run on the land which has been provided by HUDA on lease basis and this amounts to substantial finance to the school. In addition HUDA is represented on the local Managing Committee which is an indication of the fact that the school is controlled by the instrumentality of the appropriate Government through its nominee. The Bench noted that the school was given a grant of Rs.1.00 lac by the Finance Minister for the purchase of furniture in 2006. Other than this, there is no evidence to show that the School is receiving any regular grant from the appropriate Government. It is an admitted fact that it is an unaided institution. It is not a disputed fact that the school has paid substantial amount of lease money for using the land of HUDA for running the school. The Bench perused the letter of allotment dated 9.4.1999 vide which the Estate Officer, HUDA, Jind allotted 21216 square meter land with a cost of Rs. 1892635.70 on lease basis. The land was allotted with certain condition for its utilization on 99 years lease hold basis subject to the provision of the HUDA Act, 1977. The HUDA imposed following conditions upon which the management of the School is liable to abide by:

18. The Society/Trust/Institution shall reserve 10% seats in the School for students belonging to economically weaker sections of the society and the same fees will be charged from such students as is charged by Govt. Schools. Further 10% seats in the School shall also be reserved for those students in respect of whom the fees will be determined on the basis of means and merits of individual case.

19. HUDA will be represented by a member in the management committee of the School to be nominated by the Administrator HUDA. HUDA will be informed about important decisions regarding admission policy and fee structure and changes therein. The Authority will have right to investigate into any Public complaint received against the School and issue suitable directions to the management.

20. The children of plot holders/residents of that sector shall be admitted in priority. The School will primarily



be for the resident of that sector only. Surplus capacity/seats may be filled with outsider students.

Before arriving at any conclusion regarding the nature of DAV Centenary Public School, it would be pertinent to peruse the observations of the Hon'ble Supreme Court raised while deciding the matter in Thalappalam Ser. Coop. Bank Ltd. and others Vs State of Kerala and others:

"38 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 Govt. 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 ninety five percent grant in aid from the appropriate government may answer the definition of public authority under Section 2(h) (d) (i)."

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The Bench observed that it is a fact that HUDA has allotted land on 99 years lease basis to run a School on certain terms and conditions and the school has paid in lump sum for the use of land.

15. The material facts which have been placed before the Larger Bench were examined while deliberating the issue whether both the Schools in question measure upto the yardstick laid down by the Hon'ble Supreme Court in Thalappalam case on the count of 'substantially funded, directly or indirectly' and 'controlled' by the appropriate Government? The answer is in the negative. The schools are unaided. They are neither substantially funded nor controlled by the appropriate Government to fall within the meaning of Section 2 (h) of the Act. The schools are not a public authority. Hence, they are not liable to discharge obligations of a public authority. It will be pertinent to hold that the supervisory control exercised by the

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appropriate Government under the Haryana Education Act, 2005 does not automatically make the schools functioning in the State fall within the purview of the RTI Act, 2005. The RTI Act deals with bodies which are owned, controlled or substantially financed, directly or indirectly, by the appropriate Government. Hence, a school may or may not be a public body depending upon the material facts in each case. However, the information which the appropriate Government or its instrumentalities or any public authority under the RTI Act, 2005 can access under any prevailing law from any body, shall fall within the purview of the RTI Act. Information of this nature shall be accessed under Section 2(f) of the RTI Act. The Commission noted that the information relating to DAV Centenary Public School, Samalkha alongwith compensation has been provided to the appellant in pursuance of the Commission's order dated 5.7.2011 and 19.10.2011 in appeal case No.2566 of 2010. The hands of the clock cannot be reversed.

The appeals are decided accordingly.

Order reserved and pronounced on the 20th day of August, 2014.

To be communicated.

Place: Chandigarh

Date: 20.8.2014


(Yoginder Paul Gupta)

State Information Commissioner


(Sajjan Singh)

State Information Commissioner.


(Naresh Gulati)

State Chief Information Commissioner