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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. 2604 of 2011**

**Shri Sheetal Kumar, Advocate Chamber No. 478, District  
Court, Hisar.**

**.....Applicant**

**Versus**

- 1. The Secretary, Shanti Niketan College of Education, Hisar.**
- 2. Director General, Higher Education, Haryana, Shiksha Sadan, Panchkula.**
- 3. The Secretary, Haryana Board of School Education, Bhiwani.**

**.....Respondent(s)**

This matter has arisen in pursuance of the earlier hearings (expect in Appeal Cases No. 1602 of 2013 and 2089 of 2014) held by different benches of the Commission in these cases 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, private schools involved in these cases are public authorities 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:

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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 18.6.2014. 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 appellant was neither present nor has produced any material facts for the Commission's appraisal while adjudicating on the issue whether the respondent-college is public authority in terms of Section 2(h) of the Act or not. The Director General, Higher Education, Haryana was issued a notice to appear before the Commission. However, the public authority did not attend

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the hearing. There is an affidavit by SPIO-cum-Superintendent (College-II) of the office of Director General Higher Education dated 21.2.2012 on record. The Bench decided to adjourn the matter and directed the Commission's Secretariat to serve the parties notice, through registered post, asking the appellant and the respondents to appear in person on 13.8.2014. None was present. The case was adjourned to 10.9.2014.

3. The Bench heard the matter on 10.9.2014. Shri Sheetal Kumar, Advocate, the appellant was not present. The grounds and contents of his second appeal as well as written statement dated 4.10.2011 were taken up for consideration. The main points raised in the appeal are that the SPIO is hiding the required information as the college is causing monetary loss to ten poor scheduled caste students. The college has failed to safeguard the interests of the poor students and is now trying to hide their deficiency in services. The sought information relates to the Haryana Government's scholarship scheme for SC and BC students. The appellant has argued that it is a fact that the respondent college/Samiti does not get any financial aid from the Government but it is regulated by the Government as it has to comply with the terms and conditions laid down by the Department of Education. Its record is accessible to Director Higher Education, Director, Secondary Education, Board of School Education, UGC, NCTE and Government as per the State's Education policy. Therefore, the information accessible to any public authority under any law can be obtained under RTI Act, 2005.

4. The affidavit dated 22.2.2012 submitted by Shri Rakesh Kumar Bhatnagar, SPIO-cum-Superintendent (College-II) was taken into consideration. He has stated that Shanti Niketan College of Education, Hisar (hereinafter called college) is functioning under the self financing scheme. Shanti Niketan Shiksha Samiti, Hisar (hereinafter called Samiti) was issued NOC

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for starting the college in September, 2006 with fourteen standard conditions. Appropriate Government is not granting any financial aid to the college or Samiti.

5. Shri Gulashan Kumar representative of the College appeared alongwith Shri Anurag Jain, learned counsel and submitted that written statement dated 8.7.2011 is already placed on the case file. He stated that the respondent college is not a public authority in terms of Section 2(h) of the RTI Act as it has not been constituted by virtue of any legislation nor is it owned, controlled or getting any substantial financial assistance, directly or indirectly, from the Government. The Samiti is a private body and the college has been established by its own funds. The land as well as the college building has been funded by the Samiti and not by the appropriate Government or any of its instrumentalities. It is correct that the appropriate Government in the Higher Education Department issued the No Objection Certificate to the Samiti to set up the college. The college is affiliated to the Kurukshetra University for running B.Ed. courses and with SCERT for D.Ed. courses. The examination for D.Ed. is conducted by the School Education Board. The control of these public bodies or the prevailing law, Rules and Regulations is not of such a nature that it can be said that the State exercises any direct or indirect control over the affairs of the Samiti or the college which is deep and pervasive. Learned counsel relied on the Thalappalam Ser.Coop. Bank Limited case where the Hon'ble Supreme Court while delving into the issue whether the societies registered under the Cooperative Societies Act of the State were public authorities under Section 2(h) of the RTI Act, has held that supervisory or general regulation under the statute over the cooperative societies which are body corporate does not render activities of the body so regulated as subject to

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such control of the State so as to bring it within the meaning of the 'State' or instrumentality of the State and the societies are subject to the control of the statutory authorities like Registrar, the Government etc. but it cannot be said that the State exercises any direct or indirect control over the affairs of the society which is deep and all pervasive. Neither the Samiti nor the college can be characterized as public authority. Such controls which are meant to ensure proper functioning of any Society or institution do not make a private body wear the garb of a public authority. It is an established fact that neither the Samiti nor the college is receiving any grant from the Government. It is true that under the Government-sponsored post matric scholarship scheme for SC and BC students, poor students of the college are eligible under the scheme. The scholarship money is transferred directly into the accounts of the students by the Department of Social Justice and Empowerment. Learned counsel cited from the Thalappalam Ser. Coop. Bank Limited case which reads as under:

*"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,*

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*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)."*

Learned counsel concluded that neither the Samiti nor the college is a 'public body' as defined under Section 2(h) of the RTI Act, 2005.

6. The Bench heard the arguments of the learned counsel for the respondent college and carefully considered the grounds and contents alongwith written submissions of the appellant which were already placed on the record. 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 of the respondent college and SPIO of the Director General Higher Education were also perused. The point under consideration is whether the college in question is legally obliged to furnish information under the RTI Act, 2005. There are two major issues to be decided; (a) whether the college under consideration is the public authority within the 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 and (b) whether the public authority can access information relating to the statutory requirements and obligations of a recognized college from a private body under any prevailing law, Rules and Regulations.

7. The material facts which have been placed on record in connection with Shanti Niketan College of Education, Hisar indicate that the college is not getting any grant or financial assistance, direct or indirect, from the appropriate Government or its instrumentalities. The college has its own land and building. It is

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managed by its own governing body. The control of the appropriate Government is not of such a nature that the Samiti/college can be defined as a 'public authority' under Section 2(h) of the RTI Act, 2005.

8. The second issue is whether the public authority can access information relating to the statutory requirements and obligations of a recognized college from a private body under any prevailing law, Rules and Regulations. The Commission has already noted that the college is affiliated to Kurukshetra University and SCERT. The exams are conducted by the School Education Board. NOC for establishing the college has been given by the Government In 2006. A reading of Section 2(j) of the RTI Act, 2005 does establish that the public authority has the requisite powers under the prevailing law, Rules and Regulations under which affiliation/recognition is granted, to access related information from the recognized body or institute. It would be pertinent to refer to Section 2(j) of the Act:

*"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;"*

'Information' means any material in any form relating to any private body which can be access by a public authority under any other law

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for the time being in force. An applicant is entitled to get only such information which can be accessed by the public authority under any other law for the time being in force. A private body need not be a public authority in such a case. Thus, information which a public authority is entitled to access under any law, from private body, is information as defined under Section 2(f) of the RTI Act and has to be furnished.

After detailed deliberation and examination of the material facts, the Bench concludes that the college in question is not a public authority within the meaning of Section 2(h) of the Act, hence, it is not liable to discharge obligations of a public authority as stipulated under the provisions of the RTI Act. However, the college shall be liable to furnish information which the appropriate Government or its instrumentalities or any public authority can access under any law prevalent in the State. The case is decided in terms of the Commission's order in appeal Case No.2566 of 2010 and others.

The appeal is decided accordingly.

Order reserved and pronounced on the 12<sup>th</sup> day of September, 2014.

To be communicated.

**Place: Chandigarh**

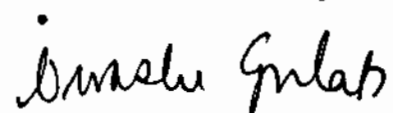
**Date: 12.9.2014**

  
(Yoginder Paul Gupta)

**State Information Commissioner  
Haryana**

  
(Sajjan Singh)

**State Information Commissioner  
Haryana**

  
(Urvashi Gulati)

**State Information Commissioner  
Haryana**