



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

Complaint Case No. 82 of 2013.

Shri Harinder Dhingra, D4 A/7, DLF, Phase No. 01,
Gurgaon.

.....Complainant

Versus

The Principal, Ryan International School, Site No. 1,
Sector-40, Gurgaon.

SPIO O/o District Education Officer, Gurgaon.

.....Respondent

Shri Harinder Dhingra filed a complaint on 18.4.2013 under Section 18 of the RTI Act, 2005 stating that he had sought information from the Principal, Ryan Public School, Gurgaon and that the respondent school had wrongfully denied the information on the ground that the school is not a public authority under Section 2 of the Act. The complainant agitated the stand taken by the respondent school. The matter was heard by the Bench of Shri Sajjan Singh, the then State Information Commissioner. It was decided to keep the matter pending till Hon'ble High Court takes a view on the issues raised in this complaint in the pending LPA. The Hon'ble Punjab and Haryana High Court while disposing of all the 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. It is in this context that the Chief Information Commissioner while hearing the matter on 22.1.2015 decided that the matter be heard by a Division Bench. It is in pursuance of this order that the matter is being heard today. The Bench perused the proceedings of the case. The Commission had earlier served notices to the parties on 24.12.2014 and 16.1.2015 directing the respondent school to file written statement whether the respondent school was getting any financial aid from the appropriate Government. The school was also asked to provide details regarding affiliation of the school and also to state whether Department of School Education Haryana had any control over the respondent school through District Education Officer, Gurgaon. The First Appellate Authority-cum-District Education Officer was directed to represent the appropriate Government.

3. Shri Harinder Dhingra, complainant is present before the Bench today and submitted that the respondent school is discharging a public function and as such is a public authority within the meaning of Section 2(h) of the RTI Act, 2005. The Right to Information was enacted in



order to ensure transparency in the system, smoother and deep access to information and to provide an effective framework for setting out the practical regime of right to information, recognized under Article 19 of the Constitution of India and to strengthen the concept of transparency and accountability in the system. The instrumentalities/authorities which deal with the public funds or with the interest of the citizens and are governed by Acts of Central or State Government as the case may be, are required to be made accountable. The complainant relied upon the judgement dated 6.5.1997 delivered by the Hon'ble Punjab and Haryana High Court In *Ravneet Kaur Vs. Christian Medical College and Anr.*, a judgement of Delhi High Court delivered in WP (C) Nos. 6129 of 2007 in *Krishak Bharti Cooperative Ltd. Vs. Ramesh Chander Bawa*, 7787 of 2008 in *National Agricultural Cooperative Federation of India Ltd. Vs. B.M.Verma* and 7770 of 2008 in *National Cooperative Consumer Federation of India Ltd. Vs. Raj Mangal Prasad* decided on 14.5.2010. Shri Dhingra emphasized that the school was a public authority as school was discharging a public function i.e. imparting of education. He read sub para 10 of para 17 of the judgement to support his arguments which reads as follows:

"It has not been shown before us that the State exercises any direct or indirect control over the affairs of the Society for deep and pervasive control. The State furthermore is not a majority shareholder. The State has the power only to nominate one Director. It cannot, thus, be said that the State exercises any functional control over the affairs of the Society in the sense that the majority Directors are nominated by the State. For arriving at the conclusion that the State has a deep and pervasive control over the Society, several other relevant questions are required to be considered, namely, (1) How was the Society created? (2) Whether it enjoys any monopoly Character? (3) Do the functions of the



Society partake to statutory functions or public functions? and (4) Can it be characterized as public authority?"

4. The complainant pleaded that the respondent school is a public authority and liable to furnish information under the RTI Act on some other grounds also. The respondent school was allotted land by Haryana Urban Development Authority on concessional terms. Shri Dhingra's affidavit stating that Ryan International School enjoys exemption from Income Tax under Section 10 and 11 of the Income Tax is on the case file. His argument is that the respondent school has been substantially financed, hence, fulfils the yardstick for declaration as public authority. He pleaded that directions be issued to the respondent school to implement provisions of the RTI Act by declaring the school a public authority under Section 2 (h)(d) of the RTI Act, 2005 and prayed for necessary action under Section 20 (1) of the RTI Act, 2005.

5. Shri Biju George, Office Incharge appeared on behalf of the Ryan International School, Gurgaon and filed written reply of the Headmistress of the school which is taken on record. It has been submitted that the respondent school is a private unaided minority institution, established and administered by the members of the Christian community, as per Article 30 of the Constitution of India. The School has been granted minority status certificate by the National Commission for Minority Educational Institutions, New Delhi. It was further stated that the Hon'ble Supreme Court has held in T.M.A Pal Foundation Vs. State of Karnataka 2002 (8) SCC 486 that right to administer under Article 30 includes the right to admit student, appoint staff, take disciplinary action against staff, constitute a governing body and set up a reasonable fee structure. The constitution Bench of the Apex Court also held in this case that admission of students to unaided minority educational institution cannot be regulated by the State except for providing qualification and minimum conditions of eligibility in the interest of academic standards. The respondent school is neither



being financed by the appropriate Government nor it is controlled, therefore, it 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.

6. Shri Sandeep Kumar, Clerk appeared before the Bench on behalf of the District Education Officer, Gurgaon. He placed before the Commission an order No. A-III/2005/702-07 dated 4.5.2005 issued by the office of the District Education Officer, Gurgaon vide which the respondent school was accorded permanent recognition under Haryana Board of School Education, exercising powers under rule 34(1) of Haryana School Education Rules, 2003. The permanent recognition is granted to schools under these rules on certain terms and conditions. The sanction letter was taken on record. The affiliation has been granted on the following terms and conditions:

- (i) The school shall follow the course of study as per syllabus prescribed by affiliated board.*
- (ii) The school shall charge fees and funds as declared to the appropriate authority at the time of application for recognition and display the same on the notice board of the school and shall not increase the fees during any academic session. In case of change in the fee structure the school shall inform to the appropriate authority in the month of January for the next academic year and will also issue printed receipt of fees/funds to the students.*
- (iii) Salary shall be paid as per declaration at the time of seeking recognition.*
- (iv) No capitation fee and other charges shall be charged from the children/parents.*



- (v) *School shall be open for admission without any discrimination bases on religion, caste, race, place of birth of any other whimsical.*
- (vi) *Managing Committee shall not allow to run two school affiliated by different board/council in the same premises.*
- (vii) *Managing committee shall not close down the school or an existing class during the academic session without the prior approval of the appropriate authority.*
- (viii) *The school shall open for inspection for the inspecting officer authorized by the Director/Appropriate Authority.*
- (ix) *Recognition so granted shall be reviewed after every 10 year.*
- (x) *No financial assistance shall be granted by the department of the school.*
- (xi) *School premises shall not be used for commercial purpose and anti National Activities.*
- (xii) *Approval of Managing Committee shall be obtained from the appropriate authority in case of any change in the committee.*
- (xiii) *The managing committee shall follow the instructions issued by the Government/Director from time to time and supply the information to the Government/Department as required.*
- (xiv) *In additional to above the Managing Committee shall abide by the provisions of Haryana School Rules, 2003 and amendments if any thereafter.*
- (xv) *The Managing Committee shall be liable for disciplinary action in case of violation of any provisions of the rules.*

Decision:-



7. The Bench 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 matter before the Bench is that there is a complaint filed by Shri Dhingra that the penal action be taken against the respondent school for not furnishing information and the complainant is seeking directions to the respondent school for appointing designated officers under the provisions of the RTI Act, 2005 and declaration of the school as a public authority under Section 2 (h) of the Act. The major issue to be decided in this complaint case is whether the school under consideration is 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 burden to show that a body is owned, controlled or substantially financed or that a non-governmental 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 complainant has contended that the respondent school has been allotted land by HUDA on concessional rates and enjoys exemption under Income Tax Law. The major argument put forward by the complainant is that the respondent school is performing public function, hence, is a public authority under Section 2 (h) of the RTI Act, 2005. In support of this contention, reliance has been placed on the decisions in Ravneet Kaur Vs. Christian Medical College and Anr. and Krishak Bharti Cooperative Ltd. Vs. Ramesh Chander Bawa cases. The Commission observes that it is accepted and well settled position that a private educational institution imparting education to the students is discharging the functions of the State. Imparting education to students is the bounden duty of the State. It is an obligation on the State to



provide facilities and opportunities to the people to avail of the right to education. Any private institution imparting education is performing a public duty. Again, it is well settled position that a writ under Article 226 of the Constitution of India would lie against such an institution although the institution may not be a 'State' as defined in Article 12. The principle laid in the above cited judgements related to the maintainability of writ jurisdiction. The position regarding a 'public authority' under Section 2 (h) of the RTI Act has been settled by the Apex court in the Thalappalam case. The quote cited and relied upon by the complainant during his arguments and as recorded in para 3, relates to the principle which was approved by the Apex Court in S.S.Rana Vs. Registrar, Cooperative Societies and another (2006). In that case too the Apex court was dealing with the issue of maintainability of the writ petition against a Central Cooperative Society Bank Limited registered under the provisions of the Himachal Pradesh Cooperative Societies Act, 1968. The Apex court has laid the guiding principles in Thalappalam case and has held:

^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)."

8. The Commission observed that mere Income Tax exemption or allotment of land by HUDA under its policy to allot land to education institutions on concessional rates cannot be termed as 'substantial funding'. Again, the regulation of the private educational institute under Right To Education or affiliation by the appropriate authority cannot be taken as 'control' by the appropriate Government. The question whether there is any material or fact to show that the school is 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 representative of the respondent 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 appellant argued that the school was 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,"



9. While deliberating on the issue whether the Ryan International School, Gurgaon is a public authority in term of Section 2 (h) of the Act or not, the Bench noted that the appellant had failed 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. However, the Bench observed that the Ryan International school, Gurgaon is not a public authority as per the yardsticks laid down in the Thalappalam case while interpreting Section 2 (h) of the RTI Act.

10. After having observed that the respondent school is not a public authority, it is pertinent to examine whether the sought information can be accessed by the citizens through some public authority exercising supervision and control under any prevailing law of the land. The Commission observed that the complainant had sought detailed information regarding teachers employed by the school including their educational qualifications, their salaries, allowances and other benefits; and list of beneficiaries of free education as per prevalent law of the land. It is an admitted fact that the appropriate Government exercises supervisory control over the schools functioning in the State under the Haryana Education Act and rules framed there under as amended from time to time. The Commission has previously held while deciding a large number of cases that 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 anybody, 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 respondent school is an affiliated school. The terms and conditions of affiliation have been listed in para 6. There is a requirement for the respondent school to furnish periodic returns (form 6) to the appropriate authority. The returns include information relating to fee structure, salary of the



teachers and compliance of the rules framed under the Haryana Education Act as amended from time to time. The sought information squarely falls within its ambit. Hence, the sought information is permissible as accessible by the public authority. The complainant has relied on the High Court of Delhi's decision in Delhi State Public School Management Association Versus Directorate of Education and another order dated 2.5.2013 and the Central Information Commission's order dated 23.8.2013 while seeking issuance of directions to the respondent school to display on their website information falling under the Management Information System which is to be filed by each school (whether aided or unaided) to the Directorate of Education. The interim order of the High Court and CIC decision dated 14.10.2010 which was challenged by the Delhi State Public School Management Association and CIC order dated 23.8.2013 were perused. Hon'ble Delhi High Court has stayed the impugned order of the CIC to the extent that it requires details relating to the Appendix II to the Delhi School Education Act and Rules, 1973 (DSEAR) to be uploaded on the website of the Directorate of Education. However, there was no stay regarding the directions relating to total number of seats under economically weaker sections quota etc. The Commission has previously held in a number of decided cases that information which can be accessed by the appropriate Government from a private body under provisions of any prevailing law of the land, can be disclosed to any information seeker under the RTI Act, 2005. The complainant is seeking directions to the respondent school to disclose the information suo-moto or on request directly made to them. The Commission agrees with the contention of the complainant that any suo-moto disclosure of information of this kind would pave the way for better transparency and efficiency. However, it will not be appropriate for the bench to issue any such directions to the respondent school under the RTI Act. Any direction of this kind issued by the Directorate of Education to the private schools under its supervision would be a welcome step and is desirable. The Bench observes that the information regarding



admission to weaker section of society is accessible by the Director of Education under the prevailing law and can be disclosed to the information seekers.

Order reserved and pronounced on the 30th day of April, 2015.

The order be communicated to the parties.

11. The Commission's Secretariat is directed to send a copy of this order to the Director, Elementary Education, Haryana in addition to the parties for information and necessary action.

Place: Chandigarh

Date: 30.4.2015


(Yoginder Paul Gupta)

State Information Commissioner


(Urvashi Gulati)

State Information Commissioner.