



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. 84 of 2010
Appeal Case No. 1274 of 2010
Appeal Case No. 1275 of 2010
Appeal Case No. 1278 of 2010
Appeal Case No. 1279 of 2010
Appeal Case No. 1287 of 2010
Appeal Case No. 1319 of 2010

1. Sh. Bachna Ram S/o Sh. Pyare Lal,
#480, Laxman colony, Thanesar (Kurukshetra).
2. Dr. Rajiv Vats, #1382, Sector-13, Urban Estate, Kurukshetra.
3. Mrs. Gurminder Kaur, #1403, Sector-1, Part II, Urban Estate,
Shahabad (M), Distt. Kurukshetra.
4. Ms. Ruby, #1385, Sector-7, Urban Estate, Kurukshetra.
5. Sh. Dharm Singh, #2533, Sheela Nagar, Kurukshetra.
6. Sh. Shyam Singh Chhokar, Advocate, #1466-A, Jyoti Nagar,
Kurukshetra.
7. Mrs. Rekha Aggarwal, #1555/5, Jyoti Nagar, Kurukshetra.

.....Applicant(s)

Versus

The Principal, Gita Girls Senior Secondary School, Kurukshetra.

.....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, Gita Girls Senior Secondary School, Kurukshetra is the public

Adh



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 initiated the proceedings on 20.06.2014 and 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 seeking information or the appropriate Government. The citizens who sought information were neither present to make these submission nor had they produced any material facts in support to their assertions 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. The District Education Officers are also not present to explain the stand on behalf of the appropriate Government. The Gita Girls Senior Secondary School, Kurukshetra was also not represented. The Bench decided to adjourn the matter and directed the Commission's Secretariat to serve the parties a notice, through registered post. The District Education Officer of the district was asked to appear in person alongwith record pertaining to the material facts relating to financial assistance if being provided by the State Government to the respondent Schools alongwith comments on the issue of 'control' on the said Schools.

3. The Bench heard the matter on 04.07.2014. The complainant or the appellants did not appear despite Commission's notices dated 25.06.2014 served on them through registered post. Mrs. Vandna Gupta, District Education Officer, Kurukshetra alongwith Shri Sunil Kumar, Section Officer appeared to represent the appropriate Government. Mrs. Sunita Chawla, Principal, Gita Girls Senior Secondary School, Kurukshetra (henceforth called school) alongwith Shri Padamkant Dwivedi, Advocate were present.

4. Mrs. Sunita Chawla, Principal and Shri Padamkant Dwivedi, learned counsel prayed that the facts submitted before the Hon'ble Punjab & Haryana High Court while filing Letters Patent Appeal No. 1420, 1422, 1407, 1423, 1421, 1424 and 1419 of 2011 in CWP No. 11360, 11364, 11369, 11366, 11361, 11370 and 11359 of 2010 be treated as part of arguments to dispose of the pending complaint and appeals. The Learned Counsel submitted that the School in question was constructed over land measuring 3 Bighas gifted by Shri Inder Sain son of Lala Amar Nath to Hindu Educational Society, Kurukshetra for construction of Gita Primary School registered in April, 1956. The society constructed the School building by collecting donations. No grant was received from the Government or any other Government agencies for acquisition of land or raising of the school building. The School started teaching in the year 1958 and was upgraded to High School and later to Senior Secondary level in 1972 and 1994 respectively. The learned counsel submitted that the School is not receiving any regular grant from the Government or any



other Government agency. In 2007-2008, the School was granted Rs.15,00,000 as matching grant for renovations/additions in the school building by the Director of Panchayats, Haryana under Haryana Matching Grant for Development Works Scheme. This amount was inclusive of share deposited by the School. As per this scheme private girls schools are entitled to matching grant for development works by contributing and depositing equal amount in the Government Treasury. A grant of Rs.4 lac was sanctioned under MPLAD Scheme for the purchase of computers in the same year.

5. The school has a total sanctioned strength of 42 teaching and non teaching staff. There are 28 teachers and 14 non teaching employees employed by the School. The school has not been receiving any regular grant from the Government or any other Government agency except 75% grant-in-aid from the Government against salary of two teachers and three non-teaching employees. In year 2008-09, a grant of Rs.10 lac approximately was received whereas the total budget of the school during the year 2008-2009 was approximately Rs.54.73 lac. Similarly, in the year 2009-2010, a grant of Rs.4.76 lac approximately was received whereas the total budget of the school during the year 2009-2010 was approximately Rs. 50 lacs.

6. Mrs. Vandna Gupta, District Education Officer, Kurukshetra alongwith Shri Sunil Kumar, Section Officer represented the District Education Office. She certified that the facts submitted by the school are based on record. However, she submitted that the School is under the supervisory control exercised by the appropriate Government under the Haryana Education Act, 1995. She did not file any arguments in writing.

7. The Complainant or the appellant did not appear before the Commission despite notices dated 25.06.2014 served on them through registered post. They also did not submit any material facts or written argument to establish that the School in question is either substantially financed or controlled, directly or indirectly, by the appropriate Government.

8. The learned counsel of the school 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 person who is seeking information from a body or non-governmental organization. The absence of the information seeker proves that he has nothing to submit in this regard. They have neither submitted any material facts in writing to establish that the school is receiving financial assistance directly or indirectly from the appropriate Government to the extent that it becomes substantially funded by the Government nor there is any record to show that the school is controlled by the appropriate Government or any of its instrumentalities. The grants received from the Government including one time grant in some particular years are not substantial to declare the school as Government funded school or a public body substantially funded by the Government. The respondent School 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. The appropriate Government's control under the Haryana Education Act, 2005 over admissions, fee structure, course content, stipulating minimum qualifications and mode of recruitment of staff, implementation of reservation policy of the Government is supervisory in nature and it cannot be treated as control. The simple fact that all private schools in State of Haryana are governed by the Haryana Education Act, 1995 will not make all these schools public authorities under RTI Act, 2005. Private shops which are subject to the provision of the Punjab Shops and Commercial Act, 1968, all private factories subject to the provisions of the Factories Act, 1948 and all private Industries subject to the provisions of the Industrial Disputes Act, 1947 are not public authorities under the RTI Act, 2005.

Decision:-

9. The Bench perused the material facts presented by the parties and heard the arguments put forth during hearing. The content and grounds of the complaint and appeals were considered by the Bench in the absence of the complainant and appellants. The Commission perused the judgement of the Apex Court dated 7.10.2013 in Thalappalam Ser. Coop. Bank Limited and others Vs. State of Kerala and others while deciding the issue



whether the school under consideration is a 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. The question whether there is any material 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 learned counsel appearing on behalf of the 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 assertion of the complainant or the appellants is that the school is public authority and liable to furnish information as stipulated by the provisions of the RTI Act, 2005. The Bench observed that the complainant or the appellants have neither appeared nor submitted any material evidence to establish that Gita Girls Senior Secondary School is directly or indirectly substantially funded by the appropriate Government or any of its instrumentalities. The Apex court has held that 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 Bench observed that this is not the situation in the instant case. The grants received by the school in question is meager in nature and does not meet the yard stick by the Apex Court.

The Bench further observed that the word 'controlled' used in Section 2(h) (d)(i) of the RTI Act has to be understood in the context it has been used. There is a clear distinction between mere 'supervision' or 'regulation' and 'control'. The control of the appropriate Government over private schools under the Haryana Education Act, 1995 is merely regulatory or supervisory in nature and does not amount to 'control' as defined under Section 2(h)(d)(i) of the RTI Act, 2005.

After detailed deliberation and examination of the material facts, the Bench concludes that the school 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 school 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 above cited complaint/appeals are decided accordingly.

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

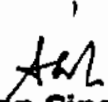
To be communicated.

Place: Chandigarh

Date: 20.8.2014


(Yoginder Paul Gupta)

State Information Commissioner


(Sajjan Singh)

State Information Commissioner.


(Naresh Gulati)

State Chief Information Commissioner

Attested

Law Officer
State Information Commission,
Haryana, Chandigarh.