

Allahabad High Court

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Dhara Singh Girls High School ... vs State Of Uttar Pradesh Through Its ... on 24 January, 2008

Equivalent citations: AIR 2008 All 92

Author: R Tiwari

Bench: R Tiwari

JUDGMENT

Rakesh Tiwari, J.

1. Heard learned Counsel for the petitioner, learned Counsel for the respondents, learned Standing Counsel for the State and perused the record.

2. This writ petition has been filed for issuance of a writ, order or direction in the nature of mandamus commanding the respondents not to compel the petitioner's institution to give information as sought by respondent No. 5.

3. Further a writ of mandamus is also sought for restraining the respondents from taking any action against the petitioner's institution for not giving information to respondent No. 5 as directed by the District Inspector of Schools, Ghaziabad.

4. The ground on the basis of which the relief sought is that the petitioner is a private institution which has been recognized by the Madhyamik Shiksha Parishad receiving grant-in-aid by the State Government does not fall within the ambit of Section 2(g) of the Right to Information Act, 2005, hereinafter referred to as the Act, hence the institution cannot be compelled to give information which has been sought by respondent No. 5 by moving an application to the DIOS and no action can be taken against the petitioner under the aforesaid Act. Reliance has been placed by the learned Counsel for the petitioner upon an interim order dated 12.9.2007 passed by this Court in Writ Petition No. 41818 of 2007 which is as under:

Connect with Writ Petition No. 13211 of 2007.

Learned Standing Counsel has accepted notice for the respondent Nos. 1 and 2.

Issue notice to the respondent No. 3 fixing a date immediately after six weeks.

All the respondents may file counter affidavit by the next date.

In the connected writ petition, it has been contended that the Committee of Management of private institution which has been recognized by Madhyamik Shiksha Parishad and is receiving grant-in-aid from the State Government does not answer description of 'public authority' as per Section 2(h) of Right to Information Act as such institution in question cannot be compelled to answer before the aforementioned authority.

As the issue raised in the present writ petition is identical to the issue raised in the aforementioned writ petition, as such, the petitioner is also entitled to grant of interim order as has been granted in the connected writ petition.

Accordingly, it is provided that till the next date of listing no action shall be taken against the petitioner under the Right to Information Act, 2005.

He has urged that in another similar writ petition No. 13231 of 2007, C/M Sri Gandhi Smarak and Anr. v. State of U.P. and Ors. this Court has also passed an order dated 13.3.2007 on the point whether such private institutions fall within the ambit of 'public authority' as defined under Section 2(h) of the Right to Information

Act, 2005, though they may have been recognized by the Madhyamik Shiksha Parishad and are receiving grant-in-aid from the State Government, the Court has held that such institutions as aforesaid do not answer description of 'public authority' as defined under Section 2(h) of the Act. The order dated 31.3.2007 is also an interim order of this Court which has been appended as Annexure-7 to the writ petition.

5. A perusal of the two interim orders aforesaid dated 13.3.2007 and 12.9.2007 show that the Court has noted the contentions of learned Counsel for the petitioners that the private institutions have been recognized by the Madhyamik Shiksha Parishad and are receiving grant-in-aid did not conform description as of 'public authority' as defined in Section 2(h) of the Right to Information Act, 2005 which was only issue raised by the petitioner at the time of admission. An interim order which is passed at the time of admission pending proceedings to be complied with in order to balance the equities during the pendency of the petition is not a final adjudication of dispute. It is not a judgment and has no persuasive value.

6. It appears from the record that respondent No. 5 had sought certain information from the petitioner's institution regarding appointment of Principal of "Deepmala" and with regard to the income and expenditure etc. Since the nature of information sought is relevant, the letter of respondent No. 5 seeking information under the Right to Information Act, 2005 appended as Annexure-1 and Annexure-3 are quoted below.

Annexure No. 1

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2- iz/kkuk;/kid ds in dh foHkkx }kjk fjDr in ij fu;qfDr ds fy, txg fdl fnukad dks fudkyh x;h \

3- iz/kkuk;/ikd dk in fdldh txg fjDr gqvk \ fu;qfDr ds le; izk/kkuk;/kid dk vuqHko fdrus o"kZ gksuk pkfg, ,oa iz/kkuk;/kid dh mez fdruh gksuh pkfg, \

4- iz/kkuk;/kid nhiekyk dh fu;qfDr ds le; Ldwy izca/kd desVh ds p;u lfefr esa dkSu&dkSu inkf/kdkjh Fks \

5- izk/kkuk;/kid nhiekyk dh fu;qfDr ds le; f'k{kk foHkkx ds inkf/kdkjh dkSu&dkSu Fks \

6- iz/kkuk;/kid nhiekyk dk izk/kkuk;/kid in dk vuqeksnu f'k{kk foHkkx ds fu;ekuqlkj fdl vf/kdkjh ds gLrk{kj ls fdl fnukad dks fd;k x;k \

7- iz/kkuk;/kid dh fu;qfDr ds le; nhiekyk dk ch-,M+- ds ckn vuqHko fdrus o"kZ dk Fkk \ ,oa fdl Ldwy dk v;/kid vuqHko Fkk ,oa mez D;k Fkh \

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Annexure No. 3

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1- /kkjk flag xYIZ twfu;j gkbZLdwy xqjh xkft;kckn dh Nk=kvks ls Qhl ds :i esa jsMdzkl dh /kujkf'k yh tkrh gS A izfr o"kZ Nk=kvks dh la[;k dk fooj.k o"kZ 1988 ls 2007 rd A

2- Nk=kvks ls fy;k x;k jsMdzkl dh /kujkf'k Ldwy ds fdl cSad [kkrs esa tek gksrh gS A

3- Nk=kvks ls fy;k x;k jsMdzkl dh /kujkf'k mDr Ldwy cSad [kkrs esa o"kZ 1988 ls 2007 rd tek izfro"kZ /kujkf'k dk fooj.k A

4- mDr Ldwy cSad [kkrs esa tek jsMdzkl dh /kujkf'k izfro"kZ fdruh /kujkf'k fdl fdl fnukad dks fudkyh x;h /kujkf'k dk fooj.k A

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7. The DIOS on the aforesaid request under the Right to Information Act, 2005 had directed the institution to provide information required by respondent No. 5. The institution did not comply with the directions of District Basic Education Officer, Ghaziabad and submitted the interim orders passed in the aforesaid two

petitions i.e. 41818/2007 and 13231/2007. The DIOS, Ghaziabad thereafter informed the petitioner that the interim orders aforesaid pertain to other institutions and not to the petitioner's institution as such he should supply the information required.

8. Aggrieved the petitioner has come up in this writ petition for restraining the DIOS from giving the information sought by respondent No. 5 and not to take any coercive action against the institution.

9. Before adverting to the controversy involved in the present writ petition the necessary provisions of the Right to Information Act, 2005 may be referred.

10. According to its objects and reasons the Right to Information Act, 2005 is an Act "to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a 'Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto." It was in the context with objects and reasons that the parliament enacted the Right to Information Act, 2005.

11. Section 2(a)(f)(h)(i) and (j) define "appropriate Government, Competent authority, Information, Public authority and Right to Information Act." which are as under:

(a) "appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly-

(i) by the Central Government or the Union territory administration, the Central Government;

(ii) by the State Government, the State Government;

(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

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

(a) by or under the Constitution;

(b) by any 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;

(i) "records" includes-

(i) any document, manuscript and file; (ii) any microfilm, microfiche and facsimile copy of a document;

(iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and

(iv) any other material produced by a computer or any other device;

(j) "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.

12. Section 3 provides for right to information to all the citizens subject to the provisions of the Act. Section 4 puts an obligation on the public authority to maintain all its records for providing information. Section 6 provides that the request for obtaining information is to be made in writing to be accompanied with such fee as prescribed. Section 7 provides procedure for disposal of request whereas Section 8 provides for exemption from disclosure of information. The exemption is provided only with regard to information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interest of the State, relation with foreign State or lead to incitement of an offence; the information which has been expressly forbidden to be published by any Court of law or tribunal or the disclosure of which may constitute contempt of Court; information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature; and information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information and so on.

13. From perusal of the objects and reasons for enacting the Right to Information Act, 2005 it is apparent that the Government desired to establish a practical regime of right to information for citizens to have accessed to information under the control of public authorities, in order to promote transparency and accountability in their working. Though the institution may be a private institution but if it is substantially financed directly or indirectly by the State Government such as by grant-in-aid for payment of salary of the teachers and staff are under the control of the 'public authority' as to monitor the expenses provided by the State Government in this regard as given in the objects and reasons of the Act, it will fall under the purview of the Right to Information Act.

14. Such institutions do not ousted Section 2(h)(d)(ii) of the Act. It is not denied by the petitioner that information sought by respondent No. 5 is not exempted information under Section 8 of the aforesaid Act, 2005 It applies to a non-government organization substantially financed directly or indirectly by funds provided by the appropriate Government by which the petitioner is covered.

15. Admittedly, the petitioner is financed by the State Government substantially and is receiving grant-in-aid from the State Government, therefore, the District Basic Education Officer has rightly sought information from the petitioner which can not be denied only on the pretext that since respondent No. 5 has filed a number of complaints against him and there is inter-se litigations between the parties, hence the institution is not obliged to provide information.

16. Sri S.K. Tyagi, learned Counsel appearing for respondent No. 5 submits that there is another aspect of the matter which may be looked into by the Court i.e. in many of the institutions the petitioner has appointed his

men by taking money and is squandering government funds, therefore, respondent No. 5 has sought information under the Right to Information Act in order to bring to the notice of the authority the fact that the petitioner is not working in a democratic manner, in accordance with the status and is squandering government money. He submits that the Management of any institution can not be permitted to put a word over the eyes of the public in the garb of protection from the Right to Information Act on the ground that it is a private institution and is not amenable to Right to Information Act which in fact is otherwise as such protection would frustrate the very object of the Act of transparency and accountability of public authority and private bodies in their functioning from public eye.

17. In my opinion, whenever there is even an iota of nexus regarding control and finance of public authority over the activity of a private body or institution or an organization etc. the same would fall under the provisions of Section 2(h) of the Act. The provisions of the Act have to be read in consonance and in harmony with its objects and reasons given in the Act which have to be given widest meaning in order to ensure that unscrupulous persons do not get benefits of concealment of their illegal activities or illegal acts by being exempted under the Act and are able to hide nothing from the public. The working of any such organization or institution of any such private body owned or under control of public authority shall be amenable to the Right to Information Act. The petitioner being an institution recognized under the provisions of U.P. High School and Intermediate Education Act, 1929 and receiving grant-in-aid from the State Government is therefore, covered under the aforesaid Act.

18. For the reasons stated above, the writ petition is dismissed. It is directed that the institution will provide information to respondent No. 5 through the DIOS, Ghaziabad within a period of 15 days from today as already much time has been consumed by the institution for not supplying the required information within the time prescribed under the Act.

19. Let a certified copy of this order be supplied to the learned Standing Counsel for information to the DIOS, Ghaziabad on free of cost.