

Kerala High Court

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M.P. Varghese Etc. Etc. vs Mahatma Gandhi University And ... on 4 July, 2007

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ORDER

S. Siri Jagan, J.

1. The petitioners in these writ petitions are principals of private aided colleges in the State. The issue involved in all these writ petitions is common and therefore these writ petitions are disposed of by this common judgment.

2. The issue involved is as to whether aided private colleges would come within the purview of the Right to Information Act, 2005 ("the Act" for short).

3. The contention raised by the petitioners is that the aided private colleges are not authorities coming within the purview of the definition of "public authority" under Section 2(h) of the Act. They would submit that going by the scheme of the Act, the object behind the Act is to uphold the fundamental right to freedom of speech and expression. According to them, since a fundamental right can be enforced only against the Government, Governmental agencies or instrumentalities of the Government, the Act can be enforced only against such authorities. In short, they would contend that the term, "public authority" would take in only Government and those instrumentalities of State which would come within the definition of "State" under Article 12 of the Constitution of India.

4. The petitioners would further submit that although there is some control by and financial aid from the Government to these aided private colleges, the same would not amount to deep and pervasive control and substantial financing by the Government, without which these aided private colleges would not answer the definition of "public authority" under the Act. They also particularly refer to the preamble to the Act in their attempt to show that the Act is primarily intended for protection of the fundamental right to freedom of speech and expression and that the same is intended to be applicable to Governments and their instrumentalities alone who alone are accountable to the Government as stated in the preamble. Since those colleges are not accountable to the Government, they cannot be saddled with the liability to comply with the provisions of Act, is the submission made. In the above circumstances, the petitioners seek to quash the directions issued to the colleges to comply with the provisions of the Act by appointing Information Officers as stipulated in the Act and to declare that such colleges are not public authorities as defined in Section 2(h) of the Act, as also to restrain the respondents from enforcing the provisions of the Act against such colleges.

5. The Government, State Information Commission and the University who are the respondents in the writ petitions stoutly oppose the contentions and prayers of the petitioners. All of them would contend that aided private colleges in the State are substantially controlled and financed by the Government, and fully controlled by the Universities. Therefore, they come squarely within the definition of "public authority" under Section 2(h)(d) of the Act. According to them, the scope of the definition of "public authority" is much wider than that of "State" as defined in Article 12 of the Constitution of India. They also rely on the very same preamble to show that the applicability of the Act is not confined to Government and instrumentalities of Government alone, but all authorities which exercise public functions. They would submit that apart from providing of land and buildings and appointment of staff and teachers, all other facts of the management of the colleges are strictly controlled by the Government and the Universities and hence they are bodies owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government as provided in the definition of "public authority" under the Act.

6. The petitioners rely on the decision of *Ajay Hasia v. Khalid Mujub*, which is one of the earliest authorities

on the question as to the interpretation of the definition of "State" under Article 12 of the Constitution of India and would submit that only those institutions which would satisfy the tests laid down by that decision for answering the definition of "State" would come within the purview of the Act.

7. I have considered the rival contentions in detail. I shall first deal with the contention of the parties with reference to the preamble to the Act, which reads thus:

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.

WHEREAS the Constitution of India has established democratic Republic;

AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:

(Emphasis supplied)

Of course, in one part, the same certainly refers to 'Government and their instrumentalities accountable to the governed', but on a reading of the preamble as a whole, the same itself would make it abundantly clear that the scope of the Act is much wider in its applicability. The Preamble starts with the statement that the Act is intended 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 Act is intended to harmonise the conflict between the right of the citizens to secure access to information and the necessity to preserve confidentiality of sensitive information. I am not satisfied that the preamble would not in any way have the effect of indicating that the purpose of the Act is to confine its applicability to Government and instrumentalities of Government.

8. In any event, the applicability of the Act is to be determined based on the provisions of the Statute also. Section 3 of the Act lays down that subject to the provisions of the Act, all citizens shall have right to information. Section 4 of the Act lays down obligations of public authorities in the matter of supply of information. The said section requires public authorities to comply with the provisions of the Act. The term, "public authority" is defined in Section 2(h) of the Act thus:

2. Definitions.- In this Act, unless the context otherwise requires,-

xxx xxx xxx xxx

xxx xxx xxx xxx

(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 Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;

So what has to be looked into in this case is as to whether these aided private colleges are bodies owned or controlled or substantially financed, directly or indirectly by funds provided by the appropriate Government.

9. The following facts are not in dispute. After the introduction of the direct payment system, teachers and staff of all aided private colleges are paid by the Government directly. These teachers and staff are also paid pension and other retirement benefits from the exchequer. The emoluments, pattern, duties and conditions of service of the teaching and non-teaching staff of these colleges are as prescribed by the University Acts, (See for example Sections 5(xiii) and 60 of the Kerala University Act, 1974). The qualifications for admission of students to the various courses of studies and to the examination and the conditions under which exemptions may be granted are also prescribed by the Universities, (for example Section 25(v) of the Kerala University Act, 1974). The fees collected from the students are remitted to the Government. The managements are paid maintenance and other grants for the upkeep of the buildings of the college. Selection for admission of students has to be in accordance with the University Act, Statutes and Ordinances. Selection and appointment of teachers although made by the managements, have to be made strictly in accordance with the University Act, Statutes and Ordinances. Such appointments are to be approved by the University and the Government. In short, every facet of the functions of these aided private colleges is strictly controlled and financed by the Government. For coming within the definition of public authority' either control or financing by Government need be satisfied. In this case, both the conditions are satisfied. In the above circumstances, I have no doubt in my mind that these aided private colleges are bodies controlled and substantially financed directly or indirectly by the funds provided by appropriate Government. Further, these colleges deal with information relating to educational activities pertaining to students who pay fees to the Government and teachers and staff whose salaries are paid by the Government. When these colleges are financed and controlled by the Government and Universities and they are privy to information relating to students and staff, those information's do not have the character of private or sensitive information and the public have a right of access to such information so as to ensure transparency in the conduct of the management of the colleges in which the public are vitally interested. Denial of such information would be against the very object of the statute Essentially much of these information relate to students, teachers and staff of these colleges, and not to any information to any private activities of the managements of the colleges. That being so, these colleges would certainly answer the definition of public authority" under Section 2(h) of the Act.

10. Since I have already held that the applicability of the Act is not confined to bodies answering the definition of "State" under Article 12 of the Constitution of India, I do not think it necessary to advert to the Ajay Hasia' case (supra) which lays down the tests to determine which authorities would fall within the ambit of "State" under Article 12 of the Constitution of India. Farther, when the Act makes the same applicable to

'public authorities' as defined therein there is no need to give a restricted meaning to the expression 'public authorities' strait-jacketing the same within the four corners of 'State' as defined in Article 12 of the Constitution, especially keeping in mind the object behind the Act. The definition of 'public authority' has a much wider meaning than that of 'State' under Article 12. Further, the definition of "State" under Article 12 is primarily in relation to enforcement of fundamental rights through Courts, whereas the Act is intended at achieving the object of providing an effective framework for effectuating the right to information recognised under Article 19 of the Constitution of India.

In the above circumstances, I do not find any merit in these writ petitions and accordingly the same are dismissed.