



Product S.No.411391132

This judgement ranked 24 in the hitlist.

Principal, Nirmala Institute of Education Goa v. State of Goa (Bombay)(D.B.)(Goa Bench) : Law Finder Doc Id # 417979

2013 AIR (Bombay) 28 : 2013(2) AIR Bom.R 1216 : 2013(128) AIC 545

BOMBAY HIGH COURT

(D.B.)(Goa Bench)

Before :- A.P. Lavande and U.V. Bakre, JJ.

Writ Petition No. 345 of 2006. D/d. 10.12.2012.

Principal, Nirmala Institute of Education Goa - Petitioner

Versus

State of Goa - Respondent

For the Petitioner :- S.G. Dessai, Senior Advocate, V. Parsekar, Advocates.

For the Respondent :- S. Narvekar, Addl. Government Advocate.

Right To Information Act, 2005, Sections 19(3) and 2 (h) - Refusal to furnish information - Appeal against - Maintainability of - Unless a Body or an institution is declared and notified to be a public authority in terms of Section 2 (h) of Act such authority is not covered under Act and since order was issued by State Government subsequently Non-Govt. sided colleges were not covered under Act and, as such, State Information Commission had no jurisdiction to entertain appeal - Appeal is not maintainable.

[Paras 6 and 7]

JUDGMENT

A.P. Lavande, J - Heard Mr. S.G. Dessai, learned Senior Counsel for the Petitioner, Mr. S. Narvekar, learned Additional Government Advocate for Respondent no.1 and Mr. L. Raghunandan, learned counsel for respondent no.2. None appears on behalf of respondents no.3 and 4.

2. By this petition, the petitioner takes exception to orders dated 22/6/2006 and 13/7/2006 passed by respondent no.2.

3. The petitioner is the principal of Nirmala Institute of Education, at Panaji, imparting education in D.Ed., B.Ed. and M.Ed. which was at the relevant time an aided institution. By communications dated 2/1/2006 and 14/2/2006, respondents no.3 and 4 sought

certain information from the petitioner in relation to B.Ed staff members. Since some staff members requested the petitioner not to supply certain personal information, the petitioner supplied information except personal information to respondents no.3 and 4. Aggrieved by the refusal of the petitioner to furnish the said information, respondents no.3 and 4 preferred appeal under Section 19(3) of the Right to Information Act, 2005 ("The Act", for short) before respondent no.2. The appeal was contested by the petitioner. However, the respondent no.2 by order dated 22/6/2006 directed the petitioner herein to designate P.I.O and the first appellate authority in respect of institution and in any case within a period of seven days from the date of the order. The respondent no.2 also directed the petitioner to provide all information sought by the respondents no.3 and 4 within seven days.

4. The information directed to be supplied by respondent no.2 was not furnished to respondents no.3 and 4. On the contrary, the petitioner by communication dated 29/6/2006 brought it to the notice of respondent no.2 that she could not give certain personal details which were not covered under the Act. Taking serious note of the said communication, respondent no.2 invoked Section 20 of the Act and by order dated 13/7/2006 issued show cause notice to the petitioner calling upon her as to why contempt proceedings should not be initiated against her. Aggrieved by both these orders, the petitioner has filed the present petition.

5. The petitioner has relied upon order dated 21/7/2006 passed by the State Government which has been gazetted. By the said order, the Government of Goa has brought several non-Government aided Colleges affiliated to the Goa University including Goa University under the purview of the Right to Information Act, 2005 and designated the authorities mentioned therein as Appellate Authority, Public Information Officer and Assistant Public Information Officer. The institute of which the petitioner is the principal appears at serial no.17.

6. It is the contention of Mr. S.G. Dessai, learned Senior Counsel for the petitioner that unless a Body or an institution is declared and notified to be a public authority in terms of Section 2 (h) of the Act such authority is not covered under the Act and since the order was issued by the State Government only on 21/7/2006, Nirmala Institute of Education was not covered under the Act and, as such, respondent no.2 had no jurisdiction to entertain the appeal purportedly filed u/s 19(3) of the Act and consequently to pass order dated 22/6/2006 and also order dated 13/7/2006, which was issued on the footing that the order dated 22/6/2006 was not complied with.

7. Mr. Narvekar, learned Additional Government Advocate submitted that in view of the fact that the institute of which the petitioner is the principal along with other institutes was brought under the purview of the Act by order dated 21/7/2006 issued by the State Government which was later on gazetted. The Nirmala Institute of Education was not covered under the Act prior to 21/7/2006 and consequently, the respondent no.2 had no jurisdiction to pass orders dated 22/6/2006 and 13/7/2006.

8. In view of the concession made on behalf of respondent no.1 the order dated 22/6/2006 and order 13/7/2006 which was passed on the ground that order dated 22/6/2006 was not complied with, are liable to be quashed and set aside and hereby quashed and set aside.

9. Rule is made absolute in the aforesaid terms with no order as to costs.

Petition allowed.

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Writ Petition No.13676 of 2010

Date of Decision: August 04, 2010

Kuldeep Singh

.....PETITIONER(S)

VERSUS

State of Punjab & Another

.....RESPONDENT(S)

. . .

CORAM: HON'BLE MR. JUSTICE AJAI LAMBA

PRESENT:- Mr. H.C. Arora, Advocate, for the
petitioner.

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AJAI LAMBA, J (Oral)

1. This civil writ petition has been filed under Article 226/227 of the Constitution of India, praying for issuance of a writ in the nature of certiorari, quashing Order dated 29.3.2010 (Annexure P-4) passed by the State Information Commission, Punjab (for short, 'Commission').

2. It seems that petitioner, Kuldeep Singh, made two applications, Annexure P-1 and P-2 seeking information in relation to certain activities of Chaudhary Balbir Singh Senior Secondary Public School, Arya Samaj Road, Hoshiarpur (for short, 'School'). The information was not given and therefore, the matter was carried to the

Commission.

3. The Commission has held that access to information in relation to the said School cannot be allowed under the Right to Information Act, 2005 (for short, 'Act') as it is an unaided private body. The scope of the Act does not cover such a body.

4. Learned counsel for the petitioner contends that the School is rendering service to public by way of imparting education, therefore, the conclusion drawn by the respondent-Commission is wrong, illegal and against spirit of the Act.

5. Learned counsel has placed reliance on Full Bench judgment of this Court in *AIR 1998 Punjab and Haryana 1, Ravneet Kaur vs. The Christian Medical College, Ludhiana* and Division Bench judgment of this Court in *2008(2) SCT 543, D.A.V. College Trust and Management Society & others vs. Director of Public Instructions (Colleges) U.T., Chandigarh & others*.

6. I have considered the impugned order passed by the Commission in the context of the argument of learned counsel for the petitioner.

7. Before examining the issue in the context of the facts of the case, provisions of Sections 2(h) and 2(j) of the Act need to be taken note of:-

“(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;

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- (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;"

8. On perusal of impugned order dated 29.3.2010 (Annexure P-4), I find that respondent No.1-Commission has gone into every aspect of management of respondent No.2-School in the context of definition of 'Public Authority' under Section 2 (h) of the Act. It has been found that there is no Government nominee in the management committee of the School. It has been found as a matter of fact that the School was set up and is being run as a private institution. The School has not received any aid from the Government. The land purchased by the School is from private parties and not on concessional rate from the Government.

9. The issue has been considered in the right perspective, in so much as, in Para 10 of the impugned order, it has been said that unless it is proved that the School was 'owned', 'controlled' or

`substantially financed' directly or indirectly by funds provided by the appropriate Government, it cannot be held to be a `Public Authority' within the meaning of Section 2(h) of the Act. Having considered all the aspects of the case, it has been found that the School is not a `Public Authority' as it is neither owned nor its management is run or controlled by Government. The School has not received fund/ aid directly or indirectly from the Government. The School, in form and substance, is a private body.

10. No material has been placed before this Court, in context of what has been said by the Commission, to indicate that the respondent-School would be a `Public Authority' as defined under Section 2(h) of the Act.

11. Reliance has been placed on a Division Bench judgment of this Court in D.A.V. College Trust and Management Society & Others vs. Director of Public Instructions (Colleges) U.T., Chandigarh & Others, 2008(2) SCT 543 by learned counsel for the petitioner.

12. Reference to the said judgment by learned counsel is de hors the controversy in so much as D.A.V. College Trust and Management Society has been found to be a `Public Authority' because undisputedly, it was receiving substantial grant-in-aid from Chandigarh Administration as has been recorded in Para 3 of the Judgment. In Para 4 of the said judgment, the Court has taken into account the

case of *Ravneet Kaur (supra)* to say that the other aspect of the matter is that because institution such as DAV College and The Christian Medical College, Ludhiana discharge public functions, it cannot be regarded as a private individual limiting the powers of the Court in issuing directions including prerogative writs. The matter has however been further explained by way of saying "once the institution like the petitioners are performing public functions affecting the life of a huge segment of the society and in addition are receiving substantial grant-in-aid then it cannot be argued that it is not a 'public authority'". For exact reference, Para 4 of the said judgment is reproduced hereunder:-

"4. There is another aspect of the matter. In another context, a five Judges Full Bench of this Court in the case of *Ravneet Kaur v. The Christian Medical College, Ludhiana, 1997(3) SCT 210: AIR 1998 Punjab and Haryana 1*, has considered the question as to whether the functions discharged by a private Christian Medical College, Ludhiana or functions or private functions. The Full Bench has taken a view that since the institutions discharge public functions, it cannot be regarded as a private individual limiting the powers of the Court in issuance of directions including prerogative writs. It has further been held that imparting of education is a public function irrespective of any financial aid. Once the institutions like the petitioners are performing public functions affecting the life of a huge segment of the society and in addition are receiving substantial grant-in-aid then it cannot be argued that it is not a 'public authority'. Therefore, for the additional reason, detailed in *Ravneet Kaur's* case (*supra*), the writ petition would not survive and the question posed has to be answered against the petitioners."

13. From the above, it thus follows that the case of *Ravneet Kaur (supra)* or the case of *D.A.V. College*

Trust and Management Society (supra) would not be good precedent to direct respondent No.2 to supply the information in so much as the said respondent might be imparting education and performing public functions, however, is not receiving substantial grant-in-aid.

14. The Act has been enacted for setting out the practical regime of right to information for citizens to secure access to information under the control of 'public authorities', so as to promote transparency and accountability in the working of every 'public authority'. Since the Act provides a right to information for citizens to secure information only from 'public authorities', respondent No.2 not being a 'public authority' cannot be directed to supply information. If such directions are issued, the rights of private institutions/ persons would be adversely effected. Independence of such private institutions would not be maintained, which certainly is not the objective of framing of the Act.

15. In view of the above, I find no fault in the order passed by the State Information Commission so as to call for invoking extraordinary writ jurisdiction to review the impugned order on judicial side.

16. The petition is accordingly dismissed.

August 04, 2010
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(AJAI LAMBA)
JUDGE

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?



Product S.No.411391132

This judgement ranked 22 in the hitlist.

Asian Education Charitable Society v. State of Uttarakhand (Uttarakhand) : Law Finder Doc Id # 217792

2010 AIR (Uttaranchal) 72 : 2011(1) R.C.R.(Civil) 514 : 2010(5) All. LJ 139

UTTARAKHAND HIGH COURT

Before :- Sudhanshu Dhulia, J.

Writ Petition No. 2038 of 2009. D/d. 9.2.2010.

Asian Education Charitable Society and another - Petitioners

Versus

State of Uttarakhand and Ors. - Respondents

For the Petitioners :- Mr. V.K. Kohli, Senior Advocate, assisted by Mr. I.P. Kohli, Advocate, Mr. Ramji Srivastava, Mr. T.S. Bindra and Mr. Arvind Vashisth, Advocates.

For the State Information Commission :- Mr. Vipul Sharma, Advocate.

For the State of Uttarakhand :- Mr. K.P. Upadhyay, Addl. Chief Standing Counsel.

Right to Information Act, 2005, Sections 2 (h) and 2 (j) - Schools or institutions privately funded and which is not owned or controlled by Government do not come within definition of 'public authority' - Further held:-

The private body which is not created by any notification or order of the Government not is it owned or controlled by the Government or substantially financed by it cannot come within the definition of a "public authority".

[Paras 9 and 17]

JUDGMENT

Sudhanshu Dhulia, J. - Heard Mr. Ramji Srivastava, Mr. T.S. Bindra, Mr. V.K. Kohli, Senior Advocate and Mr. Arvind Vashisth, Advocate for the petitioners and Mr. Vipul Sharma and Mr. K.P. Upadhyay, Addl. Chief Standing Counsel for respondents.

2. A common question of law is involved in all these petitions. All the petitioners before this Court are Societies or schools run by societies. Each claims that the School is entirely private funded and since they are not "public authority" as defined under Section 2(h) of the Right to Information Act, 2005 (*from hereinafter referred to as the Act*), cognizance cannot be taken against them by Public Information Officers as well as by the State Information Commission, under the Act.

3. Section 2 (h) of the Act, which defines "public authority" reads as follows :

"(h) "public authority" means any authority or body or institution or 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;"

4. Section 2 (f) of the Act, which defines "information" reads as follows :

"(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;"

5. Section 2 (i) of the Act, which defines "record" reads as follows :

"(i) "record" 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 advice;"

6. Section 2 (j) of the Act, which defines "right to information" reads as follows :

"(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;"

7. The petitioners would contend that they are neither a body constituted under the Constitution or Parliament or State Legislature. They are also not a body, which has been constituted vide any notification issued or order made by the appropriate Government. They are also not owned, controlled or even substantially financed directly or indirectly by funds provided by the appropriate Government. Hence they are not "public authorities".

8. For the petitioners to come within the purview of Section 2 (h) of the Act, what is necessary is that the body should be formed vide a notification issued or an order made by the appropriate government and either it should be owned, controlled or substantially financed by funds provided by the appropriate government. Three things are, therefore, necessary. First the body itself should be formed by a notification or an order made by the appropriate government. Secondly, it should be either owned or controlled by the Government and if it is not owned or controlled, then it should at least be "substantially financed", from government funds.

9. The petitioners contend that the Schools never came into existence vide any notification or order made by the government, nor is it owned or controlled by the government or even financed, leave aside "substantially financed", by the government, as it receives no funds or financial aid of any kind from the government. There cannot be any dispute about the fact that the private body, which is not created by any notification or order of the Government, nor is it owned or controlled by the government or substantially financed by it cannot come within the definition of a "public authority" as defined under the Act. None of these petitioner own their existence to a notification of the government, nor are they owned or controlled by the government and here even the "control" exercised by the Government should be "deep and pervasive" control inasmuch as the management committee of the School should be controlled by and large by government nominees or by government authorities, which is not the case at present and therefore, there is no ownership or control by the Government on these schools as all these schools are self- financed institution and do not receive any amount of aid from the Government. During the pendency of these writ petitions before this Court the State Information Commission, in other similar matters pending before it in Appeal has passed a detail order dated 3.11.2009 (which has been placed on record by the petitioners and has been examined by the Court), by which the present controversy is by and large settled, only some of the edges remain to be smoothed. In fact, vide its order dated 3.11.2009 the Commission has rightly held that the institutions, such as the petitioners, cannot be called a "public authority" as defined under Section 2 (h) of the Act and therefore, this grievance of the petitioners stands redressed by the order of the Information Commission itself. This is also the view of this Court that these institutions are not "public authorities" as they are not owned or controlled or financed by the Government, nor they do own their existence by a notification or order of the Government, therefore, so far as this part, as to whether the petitioners are "public authorities" is concerned, the same stands settled and it is held that institutions, such as the petitioners are not "public authorities", under the Right to Information Act, for reasons already stated above.

10. There is, however, another aspect to these writ petitions, which is that though the petitioners may not be a "public authority" as defined under Section 2 (h) of the Act yet whether the Education Department of the Government or any other Government Department, being a public authority, through its Information Officer or the appellate authority under the Act can compel the petitioners to furnish information, which is being sought from these public authorities. For example in case Public Information Officer in the Department of Secondary Education of Government of Uttarakhand is requested with an information which pertains to any of the petitioner school, the question would be, can

the Public Information Officer of such a public authority compel the petitioners to furnish this information to that public authority ? The answer to this is also to be found in the Act itself. Petitioners here would fall under the category of the "third party" and the "third party" has been defined under Section 2 (n) of the Act, which reads as follows :

"(n) "third party" means a person other than the citizen making a request for information and includes a public authority."

11. Third party information has been defined under Section 11 of the Act, which reads as follows :

"11. Third party information -(1) Where a Central Public Information Officer or the State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information :

Provided that except in the case of trade commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub- section (1) to a third party in respect of any information on record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision."

12. This Section 11 of the Act would apply where petitioners have already given certain information to a public authority, let us say the Department of Education or any other State department. In case the petitioners attach any confidentiality to such an information, they must inform the public authority of their intentions and the public authority thereafter, whenever it wants to disclose such an information to any citizen, must give a prior notice under Section 11(1) of the Act to the "third party", which is the petitioners in the present case and under Section 11(1) of the Act, when this notice has been given, the petitioners shall have an opportunity to represent before the public authority. In case the public authority still decides to go ahead and furnish such an information under Section 11 (3) of the Act, this decision must be communicated to the

third party who then has a right to file an appeal against this decision under Section 19 of the Act read with Section 11(4) and then a right to file a second appeal. Apart from this, the "third party" also has a remedy to directly approach the State Information Commission under Section 18 (1) (f) of the Act.

13. There is another aspect to this. Section 8 lays down certain exception where the public authority is not obliged to give information to a citizen. Section 8(1) (j), which is presently being considered, reads as follows :

"8. Exemption from disclosure of information -(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, -

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i)

(j) information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2)

(3)"

14. The above provision states that such information, which is personal in nature or the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual is not liable to be given to the citizens, unless the State Public Information Officer or the Appellate Authority, as the case may be, is satisfied that there is an overwhelming public interest in disclosure of such an information. There is, therefore, only a slight discretion with the State Public Information Officer (or the Central Public Information Officer, as the case may be) while taking a decision on this aspect and the determining factor is "public interest". In case the public interest demands that confidentiality has to be maintained, the information should not be given, on the other hand if the public interest demands that the information must be disclosed, even though the information may be of a private nature,

the Public Information Officer must disclose such an information. However, it would be in the interest of justice that the same procedures be adopted as it is adopted under Section 11 of the Act, which relates to a "third party information" and the Public Authority must serve a prior notice to the individual such as the petitioners before taking a decision on disclosure of such an information.

15. It must also be stated here that in case the petitioners or such similarly situated institutes, are otherwise bound to furnish any information under any law, which is in force in the State of Uttarakhand, then they must do so. In fact, this aspect has also been dealt with by the State Information Commission in its order dated 3.11.2009, where apart from holding these institutes such as the petitioners not a "public authority", they must furnish this information if they are legally bound to furnish such information, under any other law presently in force. It is also necessary to state at this juncture that institutes such as the petitioners have been established to provide education in the State of Uttarakhand. They are as such performing a public function. Therefore, in case public interest demands that certain information be furnished by these schools to the public authorities, such information, subject to the limitation prescribed in the Act itself, and as stated above, must be furnished.

16. But can the Public Information Officer compel the petitioners to furnish information to citizen or to any other public authority, even though such an information is not already on record of the Public Information Officer ? In other words, can the Public Information Officer compel the petitioners to furnish certain information from the records of the petitioners office, even though such an information has not been furnished under any provisions of law by the petitioners before this public authority ? The answer to this would be in negative, as it would be an invasion on the privacy of these Institutes, or individual and the Institutes not being a public authority, as it has already been held above, cannot be compelled to furnish information. Moreover, in case such an "information" is not already there with such this Public Authority, it cannot be an information "which is held", by the public authority and therefore, it would not be covered under the definition of "right to information" given under Section 2(j) of the Act. Section 2(j) of the Act reads as under:

"(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;"

17. Under the aforesaid definition, "right to information" means an information which is accessible under this Act, and "which is held" by or under the control of any public authority. Since such an information is not already "held by" a public authority, the public authority cannot compel the private individual such as the petitioner to furnish such an information under the Act.

18. All these writ petitions are disposed of accordingly.

No order as to costs.

Petition disposed of.

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