

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)

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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?