REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9828 OF 2013

D.A.V. COLLEGE TRUST AND
MANAGEMENT SOCIETY & ORS. ...APPELLANT(S)

VERSUS

DIRECTOR OF PUBLIC
INSTRUCTIONS & ORS. ...RESPONDENT(S)

With

CIVIL APPEAL NOS. 9844-9845 OF 2013

CIVIL APPEAL NOS. 9846-9857 OF 2013

CIVIL APPEAL NO. 9860 OF 2013

J U D G M E N T

Deepak Gupta, J.

Whether non-governmental organisations substantially financed by the appropriate government fall within the ambit of 'public authority' under Section 2(h) of the Right to Information Act, 2005 is the issue for consideration in this case.

The Right to Information Act (for short 'the Act') was enacted by Parliament in the year 2005, for the purpose of setting out a practical

regime of right to information for citizens to secure access to information. The relevant portion of the Objects & Reasons of the Act reads as follows:-

> "…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; …"

3. Under the Act, a public authority is required to maintain records in terms of Chapter II and every citizen has the right to get information from the public authority. 'Public authority' is defined in Section 2(h) of the Act which reads as follows:-

> "…
> (h) "public authority" means any authority or body or institution of self-government established or constituted –
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> (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. The appellants before us are all colleges or associations running the colleges and/or schools and their claim is that Non-Governmental Organisations (NGOs) are not covered under the Act. According to the appellants, the objective of the Act was to cover only Government and its instrumentalities which are accountable to the Government. It has also been urged that the words 'public authority' mean any authority or body or institution of self-government and such body or institution must be constituted under the Constitution, or by any law of Parliament, or by any law made by the State Legislature or by a notification issued or order made by the appropriate Government.

5. It is urged that unless a specific notification is issued, in terms of clause (d), no body or institution outside the ambit of clauses (a) to (c) of Section 2(h) can be deemed to be public authority. It is further urged that there are 4 types of public authorities as pointed out above, i.e., those set up (a) under the Constitution, (b) by an Act of Parliament, (c) by any law made by State Legislature, or (d) by notification issued or order made by the appropriate Government. No other authority can be considered a public authority. Since the

appellants do not fall under any of the above mentioned 4 categories, they cannot be termed to be public authority.

6. As far as definition of public authority is concerned this Court has dealt with the matter in detail in ***Thalappalam Service Cooperative Bank Ltd. and Ors.*** v. ***State of Kerala and Ors***.[1] It would however, be pertinent to mention that in that case the Registrar of Cooperative Societies had issued a Circular No. 23 of 2006 directing that all cooperative societies would fall within the ambit of the Act. This notification was challenged before this Court. Dealing with Section 2(h) of the Act, this Court in the aforesaid judgment held as follows:-

> "**30.** The legislature, in its wisdom, while defining the expression "public authority" under Section 2(*h*), intended to embrace only those categories, which are specifically included, unless the context of the Act otherwise requires. Section 2(*h*) has used the expressions "means" and "includes". When a word is defined to "mean" something, the definition is prima facie restrictive and where the word is defined to "include" some other thing, the definition is prima facie extensive. But when both the expressions "means" and "includes" are used, the categories mentioned there would exhaust themselves. The meanings of the expressions "means" and "includes" have been explained by this Court in *DDA* v. *Bhola Nath Sharma* (in paras 25 to 28). When such expressions are used, they may afford an exhaustive explanation of the meaning which for the purpose of the Act, must invariably be attached to those words and expressions.
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> **31.** Section 2(*h*) exhausts the categories mentioned therein. The former part of Section 2(*h*) deals with:
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> (*1*) an authority or body or institution of self-government established by or under the Constitution,
>
> (*2*) an authority or body or institution of self-government established or constituted by any other law made by Parliament,

1 (2013) 16 SCC 82

(*3*) an authority or body or institution of self-government established or constituted by any other law made by the State Legislature, and

(*4*) an authority or body or institution of self-government established or constituted by notification issued or order made by the appropriate Government.

32. The Societies, with which we are concerned, admittedly, do not fall in the abovementioned categories, because none of them is either a body or institution of self-government, established or constituted under the Constitution, by law made by Parliament, by law made by the State Legislature or by way of a notification issued or made by the appropriate Government. Let us now examine whether they fall in the latter part of Section 2(*h*) of the Act, which embraces within its fold:

(*5*) a body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate Government,

(*6*) non-governmental organisations substantially financed directly or indirectly by funds provided by the appropriate Government."

7. At this stage we may note that in the ***Thalappalam case*** (supra) there was an order issued directing that cooperative societies would fall within the ambit of the Act. The validity of this order was challenged on the grounds that the cooperative societies were neither bodies owned, controlled and/or substantially financed by the government nor could they be said to be NGOs substantially financed, directly or indirectly, by funds provided by the appropriate Government.

8. It is a well settled statutory rule of interpretation that when in the definition clause a meaning is given to certain words then that meaning alone will have to be given to those words. However, when the definition clause contains the words 'means and includes' then

both these words must be given the emphasis required and one word cannot override the other.

9. In ***P. Kasilingam*** v. ***P.S.G. College of Technology & Ors.***[2] this Court was dealing with the expression 'means and includes', wherein Justice S.C. Agrawal observed as follows:-

> "**19.** ...A particular expression is often defined by the Legislature by using the word 'means' or the word 'includes'. Sometimes the words 'means and includes' are used. The use of the word 'means' indicates that "definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition". (See : *Gough* v. *Gough*; *Punjab Land Development and Reclamation Corpn. Ltd.* v. *Presiding Officer, Labour Court*.) The word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words "means and includes", on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions". (See : *Dilworth* v. *Commissioner of Stamps* (Lord Watson); *Mahalakshmi Oil Mills* v. *State of A.P.* The use of the words "means and includes" in Rule 2(*b*) would, therefore, suggest that the definition of 'college' is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(*b*) and other educational institutions are not comprehended. Insofar as engineering colleges are concerned, their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTE from time to time..."

This judgment was followed in ***Bharat Coop. Bank (Mumbai) Ltd***. v. ***Coop. Bank Employees Union***[3] and ***Delhi Development Authority*** v. ***Bhola Nath Sharma (Dead) by L.Rs. and Ors***.[4]

2 (1995) Supp 2 SCC 348
3 (2007) 4 SCC 685
4 (2011) 2 SCC 54

10. It is thus clear that the word 'means' indicates that the definition is exhaustive and complete. It is a hard and fast definition and no other meaning can be given to it. On the other hand, the word 'includes' enlarges the scope of the expression. The word 'includes' is used to signify that beyond the meaning given in the definition clause, other matters may be included keeping in view the nature of the language and object of the provision. In ***P. Kasilingam's case*** (supra) the words 'means and includes' has been used but in the present case the word 'means' has been used in the first part of sub-section (h) of Section 2 whereas the word 'includes' has been used in the second part of the said Section. They have not been used together.

11. One of the arguments raised before us is that the words "self-government" occurring in the opening portion of Section 2(h) will govern the words 'authority', 'body' or 'institution'. It is urged that only such authorities, bodies or institutions actually concerned with self-governance can be declared to be public authorities. This objection has to be rejected outright. There are three categories in the opening lines viz., (a) authorities; (b) bodies; and (c) institutions of self-government. There can be no doubt in this regard and, therefore, we reject this contention.

12. The next contention is that a public authority can only be an authority or body or institution which has been established or constituted (a) under the Constitution; (b) by any law of Parliament; (c) by any law of State Legislature or (d) by notification made by the appropriate Government. It is the contention of the appellants that only those authorities, bodies or institutions of self-government which fall in these four categories can be covered under the definition of public authority. It is also contended that in the ***Thalappalam case*** (supra) the Court did not consider the effect of clause (d) on the remaining portion of the definition.

13. On the other hand, on behalf of the respondents it is urged that the reading of Section 2(h) clearly shows that in addition to the four categories referred to in the first part, there is an inclusive portion which includes (i) body owned, controlled or substantially financed; (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.

14. The Section, no doubt, is unartistically worded and therefore, a duty is cast upon us to analyse the Section, find out its true meaning and interpret it in a manner which serves the purpose of the Act.

15. If we analyse Section 2(h) carefully it is obvious that the first part of Section 2(h) relates to authorities, bodies or institutions of self-government established or constituted (a) under the Constitution; (b) by any law of Parliament; (c) by any law of State Legislature or (d) by notification made by the appropriate Government. There is no dispute with regard to clauses (a) to (c). As far as clause (d) is concerned it was contended on behalf of the appellants that unless a notification is issued notifying that an authority, body or institution of self-government is brought within the ambit of the Act, the said Act would not apply. We are not impressed with this argument. The notification contemplated in clause (d) is a notification relating to the establishment or constitution of the body and has nothing to do with the Act. Any authority or body or institution of self-government, if established or constituted by a notification of the Central Government or a State Government, would be a public authority within the meaning of clause (d) of Section 2(h) of the Act.

16. We must note that after the end of clause (d) there is a comma and a big gap and then the definition goes on to say 'and includes any –' and thereafter the definition reads as:

> "(i) body owned, controlled or substantially financed;
> (ii) non-Government organisation substantially financed,

directly or indirectly by funds provided by the appropriate Government;"

The words 'and includes any', in our considered view, expand the definition as compared to the first part. The second part of the definition is an inclusive clause which indicates the intention of the Legislature to cover bodies other than those mentioned in clauses (a) to (d) of Section 2(h).

17. We have no doubt in our mind that the bodies and NGOs mentioned in sub-clauses (i) and (ii) in the second part of the definition are in addition to the four categories mentioned in clauses (a) to (d). Clauses (a) to (d) cover only those bodies etc., which have been established or constituted in the four manners prescribed therein. By adding an inclusive clause in the definition, Parliament intended to add two more categories, the first being in sub-clause (i), which relates to bodies which are owned, controlled or substantially financed by the appropriate Government. These can be bodies which may not have been constituted by or under the Constitution, by an Act of Parliament or State Legislature or by a notification. Any body which is owned, controlled or substantially financed by the Government, would be a public authority.

18. As far as sub-clause (ii) is concerned it deals with NGOs substantially financed by the appropriate Government. Obviously,

such an NGO cannot be owned or controlled by the Government. Therefore, it is only the question of financing which is relevant.

19. Even in the ***Thalappalam case*** (supra) in para 32 of the judgment, this Court held that in addition to the four categories there would be two more categories, (5) and (6).

20. The principle of purposive construction of a statute is a well-recognised principle which has been incorporated in our jurisprudence. While giving a purposive interpretation, a court is required to place itself in the chair of the Legislature or author of the statute. The provision should be construed in such a manner to ensure that the object of the Act is fulfilled. Obviously, if the language of the Act is clear then the language has to be followed, and the court cannot give its own interpretation. However, if the language admits of two meanings then the court can refer to the Objects and Reasons, and find out the true meaning of the provisions as intended by the authors of the enactment. Justice S.B. Sinha in ***New India Assurance Company Ltd***. v. ***Nusli Neville Wadia and Anr.***[5] held as follows:-

> "**51**. ...to interpret a statute in a reasonable manner, the court must place itself in the chair of reasonable legislator/author. So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act is fulfilled; which in turn would lead the

5 (2008) 3 SCC 279

beneficiary under the statutory scheme to fulfil its constitutional obligations as held by the court inter alia in Ashoka Marketing Ltd."

Justice Sinha quoted with approval the following passage from Barak's treatise on Purposive Interpretation in Law,[6] which reads as follows:-

"**52.** ...Hart and Sachs also appear to treat 'purpose' as a subjective concept. I say 'appear' because, although Hart and Sachs claim that the interpreter should imagine himself or herself in the legislator's shoes, they introduce two elements of objectivity: First, the interpreter should assume that the legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and second, the interpreter should accept the non-rebuttable presumption that members of the legislative body sought to fulfil their constitutional duties in good faith. This formulation allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted reasonably."

21. Justice M.B. Lokur speaking for the majority in ***Abhiram Singh*** v. **C.D. *Commachen (Dead) by L.Rs. and Ors***.[7] held as follows:-

"**39**. ...Ordinarily, if a statute is well drafted and debated in Parliament there is little or no need to adopt any interpretation other than a literal interpretation of the statute. However, in a welfare State like ours, what is intended for the benefit of the people is not fully reflected in the text of a statute. In such legislations, a pragmatic view is required to be taken and the law interpreted purposefully and realistically so that the benefit reaches the masses..."

22. Therefore, in our view, Section 2(h) deals with six different categories and the two additional categories are mentioned in sub clauses (i) and (ii). Any other interpretation would make clauses (i)

6 (2008) 3 SCC 279: Aharon Barak, Purposive Interpretation in Law, (2007) at pg.87
7 (2017) 2 SCC 629

and (ii) totally redundant because then an NGO could never be covered. By specifically bringing NGOs it is obvious that the intention of the Parliament was to include these two categories mentioned in sub clauses (i) and (ii) in addition to the four categories mentioned in clauses (a) to (d). Therefore, we have no hesitation in holding that an NGO substantially financed, directly or indirectly, by funds provided by the appropriate government would be a public authority amenable to the provisions of the Act.

23. NGO is not defined under the Act or any other statute as far as we are concerned. In fact, the term NGO appears to have been used for the first time describing an international body which is legally constituted but non-governmental in nature. It is created by natural or legal entities with no participation or representation by the Government. Even NGOs which are funded totally or partially by the Governments essentially maintain the NGO status by excluding Government representations in all their organisations. In some jurisprudence, they are also referred to as civil society organisations.

24. A society which may not be owned or controlled by the Government, may be an NGO but if it is substantially financed directly or indirectly by the government it would fall within the ambit of sub-clause (ii).

25. That brings us to the second limb of the argument of the appellants that the colleges/schools are not substantially financed. In this regard, we may again make reference to the judgment in the ***Thalapplam case*** (supra) wherein this Court dealing with the issue of substantially financed made the following observations:-

> "**47.** We often use the expressions "questions of law" and "substantial questions of law" and explain that any question of law affecting the right of parties would not by itself be a substantial question of law. In *Black's Law Dictionary* (6th Edn.) the word "substantial" is defined as
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> "*Substantial.*—Of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real; not seeming or imaginary; not illusive; solid; true; veritable. … Something worthwhile as distinguished from something without value or merely nominal. … Synonymous with material."
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> The word "substantially" has been defined to mean "essentially; without material qualification; in the main; in substance; materially". In *Shorter Oxford English Dictionary* (5th Edn.), the word "substantial" means "of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; solid; weighty; important, worthwhile; of an act, measure, etc. having force or effect, effective, thorough". The word "substantially" has been defined to mean "in substance; as a substantial thing or being; essentially, intrinsically". Therefore the word "substantial" is not synonymous with "dominant" or "majority". It is closer to "material" or "important" or "of considerable value". "Substantially" is closer to "essentially". Both words can signify varying degrees depending on the context.
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> **48.** 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 State may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD, etc. but those facilities or assistance cannot be termed as "substantially financed" by the State Government to bring the body within the fold of "public authority" under Section 2(*h*)(*d*)(*i*) of the Act. But, there are instances, where private educational institutions getting ninety-five per cent grant-in-aid from the appropriate Government, may answer the definition of public authority under Section 2(*h*)(*d*)(*i*)."

26. In our view, 'substantial' means a large portion. It does not necessarily have to mean a major portion or more than 50%. No hard and fast rule can be laid down in this regard. Substantial financing can be both direct or indirect. To give an example, if a land in a city is given free of cost or on heavy discount to hospitals, educational institutions or such other body, this in itself could also be substantial financing. The very establishment of such an institution, if it is dependent on the largesse of the State in getting the land at a cheap price, would mean that it is substantially financed. Merely because financial contribution of the State comes down during the actual funding, will not by itself mean that the indirect finance given is not to be taken into consideration. The value of the land will have to be evaluated not only on the date of allotment but even on the date when the question arises as to whether the said body or NGO is substantially financed.

27. Whether an NGO or body is substantially financed by the government is a question of fact which has to be determined on the facts of each case. There may be cases where the finance is more than 50% but still may not be called substantially financed. Supposing a small NGO which has a total capital of Rs.10,000/- gets a grant of Rs.5,000/- from the Government, though this grant may be

50%, it cannot be termed to be substantial contribution. On the other hand, if a body or an NGO gets hundreds of crores of rupees as grant but that amount is less than 50%, the same can still be termed to be substantially financed.

28. Another aspect for determining substantial finance is whether the body, authority or NGO can carry on its activities effectively without getting finance from the Government. If its functioning is dependent on the finances of the Government then there can be no manner of doubt that it has to be termed as substantially financed.

29. While interpreting the provisions of the Act and while deciding what is substantial finance one has to keep in mind the provisions of the Act. This Act was enacted with the purpose of bringing transparency in public dealings and probity in public life. If NGOs or other bodies get substantial finance from the Government, we find no reason why any citizen cannot ask for information to find out whether his/her money which has been given to an NGO or any other body is being used for the requisite purpose or not.

30. It is in the light of the aforesaid proposition of law that we now propose to examine the cases individually.

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31. This has been filed by D.A.V. College Trust and Management Society, New Delhi; D.A.V. College, Chandigarh; M.C.M. D.A.V. College, Chandigarh and D.A.V. Senior Secondary School, Chandigarh.

32. Appellant no.1 is the Society which runs various colleges/schools but each has an identity of its own and, in our view, each of the college/school is a public authority within the meaning of the Act. It has been urged that these colleges/schools are not being substantially financed by the Government in as much as that they do not receive more than 50% of the finance from the Government. Even the documents filed by the appellants themselves show that M.C.M. D.A.V. College, Chandigarh, in the years 2004-05, 2005-06 and 2006-07, has received grants in excess of 1.5 crores each year which constituted about 44% of the expenditure of the College. As far as D.A.V. College, Chandigarh is concerned the grant for these three years ranged from more than 3.6 crores to 4.5 crores and in percentage terms it is more than 40% of the total financial outlay for each year. Similar is the situation with D.A.V. Senior Secondary School, Chandigarh, where the contribution of the State is more than 44%.

33. Another important aspect, as far as the colleges are

concerned, is that 95% of the salary of the teaching and non-teaching staff of the College is borne by the State Government. A major portion of the remaining expenses shown by the College is with regard to the hostels, etc. It is teaching which is the essential part of the College and not the hostels or other infrastructure like auditorium, etc. The State has placed on record material to show that now these grants have increased substantially and in the years 2013-14, 2014-15 and 2015-16, the D.A.V. College, Chandigarh received amounts more than Rs.15 crores yearly, M.C.M. D.A.V. College, Chandigarh received amounts more than Rs.10 crores yearly and the D.A.V. Senior Secondary School, Chandigarh received grant of more than Rs.4 crores yearly. It can be safely said that they are substantially financed by the Government.

34. During the course of hearing, some information was placed on record by the learned counsel for the respondents showing how much is the fund being granted to these institutions from the year 2013-14 to 2015-16. As far as these institutions are concerned the payments received are as follows:-

Institution	**2013-14 (Rs.)**	**2014-15 (Rs.)**	**2015-16 (Rs.)**
D.A.V. College, Sector 10, Chandigarh	14,97,31,954/-	15,15,91,074/-	17,57,90,476/-

M.C.M. D.A.V. College, Sector-36, Chandigarh	10,06,91,020/ -	10,47,79,495/ -	11,33,94,771/ -
D.A.V. Sr. Sec. School, Sector-8, Chandigarh	3,97,39,280/-	4,17,85,658/-	5,06,88,770/-

35. These are substantial payments and amount to almost half the expenditure of the Colleges/School and more than 95% of the expenditure as far as the teaching and other staff is concerned. Therefore, in our opinion, these Colleges/School are substantially financed and are public authority within the meaning of Section 2(h) of the Act.

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36. As far as these cases are concerned, we find from the judgments of the High Court that the aspect with regard to substantial financing has not been fully taken into consideration, as explained by us above. Therefore, though we hold that these bodies are NGOs, the issue whether these are substantially financed or not needs to be decided by the High Court. The High Court shall give

both the parties opportunity to file documents and decide the issue in light of the law laid down by us.

37. With these observations, all the appeals are disposed of in the aforesaid terms. Civil Appeal No. 9828 of 2013 is dismissed. Civil Appeal Nos. 9844-9845 of 2013, 9846-9857 of 2013 and 9860 of 2013 are remitted to the High Court for determination whether the institutions are substantially financed or not. The High Court shall treat the writ petitions to be filed in the year 2013 and give them priority accordingly.

.....J.
(Deepak Gupta)

.....J.
(Aniruddha Bose)

New Delhi
September 17, 2019