

STATE INFORMATION COMMISSION, PUNJAB
SCO No. 32-34, SECTOR 17-C, CHANDIGARH

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Maj. Charanjit Singh Rai,
House No.1593, Sector-33-D,
Chandigarh

Complainant

Versus

Public Information Officer,
O/o Principal,
M.G.N. Public School,
Adarsh Nagar,
Jalandhar.

Respondent

COMPLAINT CASE NO.1941/2015

Present: Maj. Charanjit Singh Rai, Complainant in person.
None on behalf of the Respondent.

ORDER

The order was reserved on 26.07.2017 for pronouncement.

It is a long standing case. Way back on 06.05.2015 the complainant had made a request to the respondent to enlighten him about the information available in public domain which they were obliged to make under Section 4 of the RTI Act, 2005. Having failed to receive an appropriate response the complainant made a complaint approached the Commission under Section 18 of the Act for appropriate decision.

In the course of hearing the respondents have taken a stance that they are not a Public Authority under the meaning of the Section 2(h) of the Act. In their detailed reply made to the Commission on 24.02.2016 the respondents submitted that they are not a Public Authority neither they have been declared as such by any competent forum. Resultantly, they are not obliged to act on the application of the complainant. They further submit that they cannot be brought under the ambit of the Act as they do not fulfill any of the conditions comprising a Public Authority as enunciated under

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the Act. The school, according to them, is not getting any financial aid directly or indirectly from the Government. Neither it is under the control of the Government. It is purely a private Institution constituted from the private resources. The respondents have also enclosed along a copy of their Memorandum of Aims and Objectives and its Constitution registered with the Registrar of Firms & Societies, Punjab, Chandigarh, which discloses the names of the Board of Trustees.

The Complainant, on the other hand, has submitted that the Trust is a registered body under the Registration of Societies Act, 1860 and discharging public functions in the field of education. All the administrative and financial powers are vested with the Chairman of the Trust which reflect the unitary character of the Trust. He asserts that the Trust is substantially funded by the Government as it receives 95% Grant-in-Aid from the Punjab Government for the following Institutions run by it :-

1. MGN College of Education, Jalandhar.
2. G.N.College of Education for Women, Kapurthala.
3. MGN Sr. Secondary School for Girls, Jalandhar.
4. MGN Sr. Secondary School, Jalandhar.
5. MGN Sr. Secondary School, Jalandhar Cantt.

Besides it has been mentioned that the Trust was allotted six acres of prime land on a nominal annual rent of Rs.600/- by the Jalandhar Improvement Trust which is an extended arm of the Government. Similarly the land to one of its Public Schools has also been sold to the Trust on concessional rates by PUDA. It is also the case of the complainant the cantonment land has been leased to it for 33 years for MGN Senior Secondary School at Jalandhar. The MGN Educational Trust comprising of its constituents

according to complainant is also exempted under Section 6 (12) of the I.T. Act.

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In its reply the respondents have admitted the aforementioned facts about the assistance available to them from the Government and its agencies. The question before this forum is to determine as to whether the respondents are a Public Authority within the meaning of Section 2(h) of the Act in the light of the aforesaid facts and admitted without demur by the respondents. **Section 2(h) (d) of the RTI Act** says as under :-

2. Definitions : ---

Xx xx xx xx

(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;

XX XX XX XX

Admittedly Clause a to c and d (i) of Section 2 (h) of the Act are not attracted. However, we shall have to examine if it steers itself clear of the ambit of Section (d) (ii) of the Act reproduced above.

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The appropriate Government in the instant case obviously is the Government of Punjab. Hon'ble Supreme Court of India in its judgment passed in CIVIL APPEAL NO. 9017 OF 2013 (Arising out of SLP (C) No.24290 of 2012) titled Thalappalam Ser.Coop.Bank Ltd. & ... vs State Of Kerala & Ors on 7 October, 2013 has clinched the issue by giving a ruling on the subject. It shall be desirable to reproduce the relevant portion:

“SUBSTANTIALLY FINANCED

*36. The words “substantially financed” have been used in Sections 2(h)(d)(i) & (ii), while defining the expression public authority as well as in Section 2(a) of the Act, while defining the expression “appropriate Government”. A body can be substantially financed, directly or indirectly by funds provided by the appropriate Government. The expression “substantially financed”, as such, has not been defined under the Act. “Substantial” means “in a substantial manner so as to be substantial”. In *Palser v. Grimling* (1948) 1 All ER 1, 11 (HL), while interpreting the provisions of Section 10(1) of the Rent and Mortgage Interest Restrictions Act, 1923, the House of Lords held that “substantial” is not the same as “not unsubstantial” i.e. just enough to avoid the de minimis principle. The word “substantial” literally means solid, massive etc. Legislature has used the expression “substantially financed” in Sections 2(h)(d)(i) and (ii) indicating that the degree of financing must be actual, existing, positive and real to a substantial extent, not moderate, ordinary, tolerable etc.*

37. 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 '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

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something without value or merely nominal. Synonymous with material.' The word 'substantially' has been defined to mean 'essentially; without material qualification; in the main; in substance; materially.'

In the 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.

38. Merely providing subsidiaries, 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\(h\)\(d\)\(i\)](#)”.

In the aforementioned findings the Hon'ble Supreme Court of India says that the funding has to be substantial to the extent that the body practically runs by such funds but for which the authority would struggle to exist. In the final lines of Para 38 it says that the private Educational Institution getting 95% Grant-in-Aid from the appropriate Government may answer the definition of Public Authority under Section 2(h) (d) (ii) of the Act. The Trust indisputably is availing the 95% grant

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towards the salary of the staff. It is also admitted a prime land on which the various Institutions are being run has been allotted on a nominal lease. We can foresee that but for the above grants-in-aid and other concessions towards land allotment respondents would not have been able to run the Institutions in its present form. It is thus manifestly clear that the respondents are substantially being financed by the State Government directly as well as indirectly. The Trust in its constituent units as such squarely fits in the definition of a Public Authority under Section 2(h) (d) (ii) of the Act. The respondent Trust, therefore, is hereby declared as a Public Authority under Section 2(h) of the Act and is directed to designate a Public Information Officer and First Appellate Authority besides taking all measures as enshrined under Section 4 of the RTI Act and arrange to furnish the information to the complainant as asked for within a month from the date of receipt of this order positively.

Disposed.

Sd/-

29.08.2017

**(Yashvir Mahajan)
State Information Commissioner**

**CC: The Principal Secretary to Government, Punjab,
Department of School Education, Punjab Civil Secretariat – 2,
Sector – 9, Chandigarh, with the advice that appropriate directions be passed to all the
educational Institutions who avail 95% grant-in-aid on the salary of their staff to take
similar action in terms of this order.**

**CC: The Director of Public Instructions, Punjab,
(School Education), Pb. School Education Board Complex,
Phase VIII, SAS Nagar (Mohali) for information and n/a.**