

HIGH COURT OF JAMMU & KASHMIR AND LADAKH

AT SRINAGAR

Reserved on : 20.04.2022 Pronounced on : 27.04.2022

WP(C) No. 795/2022 CM No. 1963/2022

Tyndale Biscoe School and others ...Petitioner(s)

V/s

Union Territory of J&K and others ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

Reference / transcription PDF — not a certified court copy.

1. The petitioners are private unaided educational institutions being run and administered by Tyndale Biscoe & Mallinson Society registered under the Jammu & Kashmir Societies Registration Act, 1998 (Samvat) 1947 A.D. The petitioners are primarily aggrieved of the action of the respondents for forcing, pressuring and compelling the petitioner-schools to provide information to various persons under the Right to Information Act, 2005 ["the Act of 2005"]. The petitioners have made reference to few communications of Chief Education Officer, Srinagar, who is also a designated Public Information Officer under the Act of 2005, whereby the Public Information Officer aforesaid has called upon the petitioners to provide point-wise information in reference to the applications made by different persons seeking information with regard to affairs of the petitioner-schools under the Act of 2005.

2. The petitioners claim that in response to the different communications issued by the Chief Education Officer, Srinagar, the petitioners have written back that the private unaided schools, as the petitioners are, do not come within the purview of the expression "public authority" as defined under Section 2(h) of the Act of 2005 and, therefore, they are not bound to disclose or provide any information to the applicant(s) seeking information by invoking the Act of 2005.

3. Ms. Asifa Padroo, learned AAG appearing for the respondents has contested the contention of Mr. Sethi, learned Senior Counsel appearing for the petitioners by submitting that the petitioners, who are performing a public duty of imparting education and have established their institutions on the lands provided by the government on nominal prices, are nonetheless public authority within the meaning of Section 2(h) of the Act of 2005, therefore, the Chief Education Officer, Srinagar has committed no illegality in calling upon the petitioners to respond to the applications moved by some information seekers under the Act of 2005.

4. Having heard learned counsel for the parties and perused the material on record, it is seen that the petitioner-schools being run by Tyndale Biscoe and Mallinson Society are unaided private schools, though, established and recognized under the J&K School Education Act, 2002. The Society is admittedly not receiving grant in aid and is not otherwise substantially financed by the Government and that being so, it is difficult to bring the petitioners within the purview of the term "public authority" as defined under Section 2(h) of the Act of 2005.

5. It may not be out of place to set out the definition of "public authority" as given in Section 2(h) of the Act of 2005 herein below:-

"2(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 organization substantially financed, directly or indirectly by funds provided by the appropriate Government."

6. The Society, which is running and administering the petitioner-schools is not an authority, body or institution of self-government established or constituted by or under the Constitution or by any law made by Parliament or State

Legislature. There is also no notification issued or order made by the appropriate Government to declare the Society an institution of self-government. Apart from this, the Society may have established its educational institutions on the lands provided by the government on concessional rates, yet it would not be correct to presume or hold that the petitioner-schools are substantially financed by the Government. The terms "means" and "includes" used in Section 2(h) of Act of 2005 makes it abundantly clear that Section 2(h) is restrictive and embraces only such categories as are specifically enumerated in it.

7. Hon'ble the Supreme Court was confronted with identical issue in the case of D.A.V. College Trust and Management Society and others v. Director of Public Instructions and others, (2019) 9 SCC 185. The question before the Supreme Court was whether D.A.V. College Trust and Management Society, a non-governmental organization, was a public authority, as defined under Section 2(h) of the Act of 2005 and, therefore, bound to provide information to the information seeker under the Act of 2005.

Hon'ble the Supreme Court after considering the matter at some length concluded that the educational societies like the D.A.V. College Trust and Management Society do not fall in any of the categories enumerated from (a) to (d) of Sub Section (h) of Section 2 of the Act of 2005.

8. With regard to the question as to whether the petitioners-Societies before the Supreme Court would be: (i) bodies owned, controlled or substantially financed directly or indirectly by the funds provided by the appropriate Government and (ii) non-governmental organizations substantially financed directly or indirectly by the funds provided by the appropriate Government, Hon'ble the Supreme Court held that the petitioners-Societies before it were not the bodies owned, controlled or substantially financed directly or indirectly by funds provided by the appropriate Government but they were found non-governmental organizations substantially financed directly or indirectly by funds provided by the appropriate Government and fall within the definition of public authority given in Sub-clause (ii) of Section 2(h) of the Act of 2005.

What was held by the Supreme Court is summed up in paras 15, 16, 17, 18 and 22, which for facility of reference are reproduced hereunder:-

"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' 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 subclause (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.

.....

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) 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."

9. From the judgment of Hon'ble the Supreme Court (supra), it clearly comes out that Section 2(h) essentially deals with the categories including the two mentioned in Sub Clauses (i) and (ii). So far as the petitioners are concerned, they are educational institutions established by a Society registered under the Jammu & Kashmir Societies Registration Act and, therefore, are not an authority or body or institution of self-government either established or constituted by or under the Constitution. The Society, which runs and administers the petitioner-schools is also not a body constituted by any law made by Parliament or State Legislature.

10. It is also not disputed before this Court that the petitioners are not established or constituted by any notification or order made by the appropriate Government. That being the position obtaining in the matter, it is a foregone conclusion that the petitioners are not governed by any of the categories mentioned in Clause (a) to (d) of Section 2(h) of the Act of 2005. This brings the discussion to find out as to whether the petitioners would fall within the categories (i) and (ii) of Section 2(h) of the Act of 2005.

There should be no doubt that the Society or for that matter the petitioners are run and administered by the Society not owned, controlled or substantially financed by the Government. It would be farfetched to contend that the private unaided educational institutions being run by a society or trust are either owned or controlled by the government. As is held by the Supreme Court in the case of D.A.V. College (supra), a Society which may not be owned or controlled by the Government may be an NGO and it would fall within the definition of "public authority" given in Sub-clause (ii) of Section 2(h) of the Act of 2005, provided it is substantially financed directly or indirectly by the funds provided by the appropriate Government.

The expression "substantially" used in Section 2(h) of the Act of 2005 has also been elaborately explained in the judgment. 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. It was, thus, concluded by the Supreme Court that "substantial funding" would mean the funding of the institution where educational institution is getting more than 50% of the funds required for its running. It was, however, clarified that whether or not an NGO or body is substantially financed by the Government is a question of fact to be determined on the facts of each case. Para 27 of the judgment in D.A.V. College (supra) is noteworthy in this regard and is reproduced hereunder:-

"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."

11. When the case on hand is examined in the light of discussion made above and the law laid down by the Supreme Court, it is seen that the petitioner-schools and the Society, which runs and administers them, are not substantially financed directly or indirectly by the Government. Merely providing of land to the Society on concessional rates to encourage establishment of educational institutions of eminence and repute cannot amount to providing substantial finance to the petitioner-Institutions. I am, therefore, of the considered view that private unaided educational institutions, as the petitioners are, who are not owned, controlled or substantially financed directly or indirectly by funds provided by the Government, do not fall within the definition of "public authority" as defined in Section 2(h) of the Act of 2005 and, therefore, not bound to provide information to the Public Information Officer of the education department or to the information seeker(s) under the Act of 2005.

12. Having held thus, another important question that crops up for consideration is whether Public Information Officer appointed by the department of education can provide information in his possession or which can be legally accessed by him pertaining to a private unaided educational institution, which may not be a "public authority" under Section 2(h) of the Act of 2005 and if yes to what extent.

To find answer to this question, it is necessary to advert to the definition of word "information" and "right to information" given in Section 2(f) and 2(j) of the Act of 2005, which for facility of reference are reproduced hereunder:-

"(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."

"(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;"

13. So far as definition of information given in Section 2(f) is concerned, it means any information in any form including records, documents, memos, e-mails, etc. including the information relating to any private body which can be accessed by a public authority under any law for the time being in force. As per Section 2(j), the expression "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 inspection of work, documents, records, taking notes, extracts or certified copies of documents or records; taking certified samples of material; obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printout mode etc.

14. Definition of the two expressions, i.e. "information" and "right to information" given in Section 2(f) and 2(j) of the Act of 2005 when considered in juxtaposition and interpreted in harmony with each other would unequivocally and clearly manifest that not only the information which is held by the public authority can be accessed under the Act of 2005 but such information as is under the control of such authority, too, can be accessed.

Information relating to any private body which can be accessed by a public authority under any other law for the time being in force can also be accessed by the information seeker under the Act of 2005. There is no doubt that in terms of Section 22, Act of 2005 has been given overriding effect over any other law for the time being in force or instrument having effect by virtue of any law other than the Act of 2005. It is, thus, axiomatic that if a public authority has a right and is entitled to access information from a private body under any other law, it is information as defined in Section 2(f) of the Act of 2005. The term "held by or under the control of any public authority" used in Section 2(j) of the Act of 2005 will include information to which a public authority has right to access from a private body under any other law.

15. The Society herein need not be a public authority but if the information lying with such private body can be accessed by the public authority under law, the same can be provided by public authority on an application filed by an information seeker. This, however, does not mean that such public authority shall have absolutely no say in the matter.

Section 8 of the Act of 2005, which is a non obstante provision overriding other provisions of the Act, lays down exceptions and rules when information sought is not required to be furnished. It is only such information relating to a private body as can be legally and legitimately accessed by a public authority under any other law for the time being in force, which can be provided by the public authority to the information seeker.

16. A Bench of the High Court of Delhi confronted the same issue in the case of Poorna Prajna Public School v. Central Information Commission and others, (2009) SCC Online Del 3047. The observations of the Delhi High Court made in para 8 are worth noticing and are, therefore, reproduced hereunder:-

"8. Information as defined in Section 2(f) means details or material available with the public authority. The later portion of Section 2(f) expands the definition to include details or material which can be accessed under any other law from others. The two definitions have to be read harmoniously.

The term 'held by or under the control of any public authority' in Section 2(j) of the RTI Act has to be read in a manner that it effectuates and is in harmony with the definition of term 'information' as defined in Section 2(f). The said expression used in Section 2(j) of the RTI Act should not be read in a manner that it negates or nullifies definition of the term 'information' in Section 2(f) of the RTI Act.

It is well settled that an interpretation which renders another provision or part thereof redundant or superfluous should be avoided. Information as defined in Section 2(f) of the RTI Act includes in its ambit, the information relating to any private body which can be accessed by public authority under any law for the time being in force.

Therefore, if a public authority has a right and is entitled to access information from a private body, under any other law, it is 'information' as defined under Section 2(f) of the RTI Act. The term 'held' by the or under the control of the public authority' used in Section 2(j) of the RTI Act will include information which the public authority is entitled to access under any other law from a private body.

A private body need not be a public authority and the said term 'private body' has been used to distinguish and in contradistinction to the term 'public authority' as defined in Section 2(h) of the RTI Act. Thus, information which a public authority is entitled to access, under any law, from private body, is information as defined under Section 2(f) of the RTI Act and has to be furnished."

17. In view of the foregoing analysis, this Court has arrived at following conclusions:-

i) That a private unaided educational institution established and run by an independent society, trust or managing committee, which is not substantially financed directly or indirectly by the appropriate Government does not fall within the definition of "public authority" contained in Section 2(h) of the Act of 2005.

ii) That a private educational Institution which may require recognition or is recognized by the appropriate Government under any law for the time being in force does not ipso facto become a public authority within the meaning of term given in Section 2(h) of the Act of 2005 unless it is either owned, controlled or substantially financed by the appropriate Government.

iii) Private unaided institution is not an authority or body or institution of self government established or constituted by or under the Constitution; by any other law made by the Parliament; or by any law made by the State Legislature; or by any notification issued and order made by the appropriate Government.

iv) Private unaided school/institution may not be a body under the control and substantially financed by the appropriate government, but such institution will fall within the definition of term "non-government organization" and if it is found that such non-government organization is substantially financed directly or indirectly by funds provided by the appropriate Government, it will be "public authority" within the meaning of Section 2(h) of the Act of 2005 and, therefore, obliged to provide requisite information to the information seeker within the ambit and scope of the Act of 2005.

v) Even if a private unaided institution is not a public authority still all the information as can be accessed by the public authority (Public Information Officer of the Education Department) or some other department of the Government under any other law for the time being in force can be provided by the public authority. Such information could be the one in possession of the public authority or it could be the information legally accessible or obtainable from the private body. Needless to say that the educational institution other than the one, which is a public authority, shall be entitled to deny information sought for by the Public Information Officer in terms of Section 8 of the Act of 2005.

18. In view of what is held herein above, this petition is disposed of by holding that Tyndale Biscoe & Mallinson Society, which has established and is running the petitioner-educational institutions is not a public authority, as defined in Section 2(h) of the Act of 2005 and, therefore, information in its exclusive possession cannot be accessed directly from it by the information seeker under the provisions of the Act of 2005.

Information seeker may, however, approach the public authority to obtain information relating to the petitioners and the public authority shall be bound to provide such information in relation to petitioners as may be in its possession or which can be accessed by it under any other law for the time being in force.

The public authority before supplying such information shall put the petitioners on notice and adjudicate the objection, if any, raised by it under Section 8 of the Act of 2005 or any other similar provision contained in the Act of 2005.

(Sanjeev Kumar)

Judge

SRINAGAR

27.04.2022

Whether the order is speaking: Yes

Whether the order is reportable: Yes

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