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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4264 OF 2008

Karmaveer Kakasaheb Wagh Education
Society, Amrutdham, Panchwati, Nashik
Through its Secretary,
Devram S/o.Shankar Shinde,
Age-74 years, Oçcu-Service,
R/o.Amrutdham, Panchwati, Nashik,
District Nashik.

PETITIONER

VERSUS

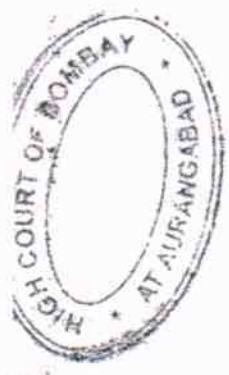
1. The Assistant Charity Commissioner
Kharwanda Park, Nashik,
District Nashik.
2. Vilas Sahebrao Gadakh,
At and Post : Sukane,
Tq.Niphad, District : Nashik.
3. The State of Maharashtra,

RESPONDENTS

Mr.V.D.Hon. advocate for petitioners.
Mr.K.B.Chaudhary, for respondent no.1 and 3
Respondent no.2 absent even though duly served.

(CORAM : A.V.POTDAR, J.)

DATE : 09/07/2009



ORAL JUDGMENT :

1. By the present writ petition under Article 227 r.w. 226 of The Constitution of India, the petitioner has challenged the order passed in Appeal No.2007/RMA/APL/CR/1258, passed by The State Information Commissioner, Aurangabad bench at Aurangabad, dated 16/06/2008, by which the appeal was partly allowed and directions were given to the Public Relation and Information Officer of the first respondent to furnish the information to the appellant therein, who is respondent no.2 in the present writ petition within the period of 7 days. Also directions were given to the petitioners to appoint Public Information Officer within the period of 7 days.

2. Rule.

3. Rule made returnable forthwith. By consent of the parties, writ petition is heard at the stage of admission itself.

4. In brief, the facts gave rise to file the present writ petition can be summarized as the petitioner is registered under the provisions of Bombay Public Trust Act, 1950 and also registered under the Societies Registration Act. The second respondent preferred an application under the provisions of Right to Information Act to the Secretary of the petitioner seeking the information from the petitioner trust. Reply was given by the petitioner after receipt of this application and it was informed that as there was no General Body Meeting, therefore the copy of the proceedings of the alleged General



Body Meeting can not be supplied. Second respondent has challenged this communication dated 29/08/2006 before the Assistant Charity Commissioner, first respondent in this writ petition. After hearing the parties, the claim of the second respondent was dismissed/denied by the first respondent. It appears that and as alleged to harass the petitioner, again 2nd respondent filed fresh application of the similar nature. This application was replied by the petitioner that the provisions of Right to Information Act are not attracted as the petitioner is not covered or financed by the Government and coming within the provisions of Section 2(h) of Right to Information Act. Again the 2nd respondent filed appeal no.11/2007 before the Assistant Charity Commissioner challenging the communication of the petitioner dated 26/09/2006. It further appears that the Assistant Charity Commissioner after hearing the parties, came to the conclusion that as the 2nd respondent has not mentioned the purpose for which the information is sought, therefore rejected the application of the 2nd respondent. 2nd respondent has challenged this order by filing an appeal u/s.19 of the Right to Information Act before the State Information Commissioner, bench at Aurangabad. The State Information Commissioner has passed the order dated 16/06/2008, the impugned order under the present writ petition.

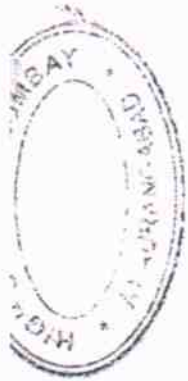


5. Heard advocate for applicant petitioner, followed by the arguments of learned AGP for respondent no.1 and 3. Respondent no.2 who has applied under the Right to Information Act is absent

even though duly served. Considering the submissions across the bar the only point for consideration is whether the provisions under the Right to Information Act are applicable to the petitioner institution or not. In support of the submissions of petitioner, reliance is placed upon the reported judgment in 2009(3) Mh.L.J. 365 in the matter of Dr.Panjabrao Deshmukh Urban Co-operative Bank Ltd., Amravati versus State Information Commissioner, Vidarbha Region Nagpur and others. It is observed in para no.12 and 13 of the said cited judgment that Right to Information Act is not applicable to the institutions, who are not public authority within the meaning of section 2(h) of the Right to Information Act. It is not under dispute that the petitioner is a trust registered under the provisions of the Bombay Public Trust Act as well as also registered under the provisions of Maharashtra Co-operative Societies Act. There is nothing on record to show that the petitioner is a public authority within the meaning of section 2(h) of The Right to Information Act. If the petitioner is not a public authority within the meaning of section 2(h) of The Right to Information Act, then the provisions under the Right to Information Act are not applicable to the petitioner institution. Once this legal proposition is clear that the provisions under the Right to Information Act are not attracted and applicable to the petitioner institution, then the order passed by the State Information Commissioner vide order dated 16/06/2008 is the order passed under the provisions of the Right to Information Act under the assumption that the provisions of Right to Information Act are applicable to the petitioner institution. Once it is held that the



provisions under Right to Information Act are not applicable to the institution of the petitioner, then the order passed by the State Information Commissioner is nullity in the eye of Law and if it is so, then the order dated 16/06/2008, the impugned order under this writ petition is required to be quashed and set aside and accordingly it is quashed and set aside.



6. Rule thus made absolute as indicated above, and writ petition stands disposed of with no order as to costs.

sd/-xxx
(A.V.POTDAR, J.)

khs/JULY 2009/wp4264-08

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~~Rushikantkar~~

(Sau.K.H.Shekatkar)
P.A. to Hon'ble Judge

sd/r

for Dy. Registrar

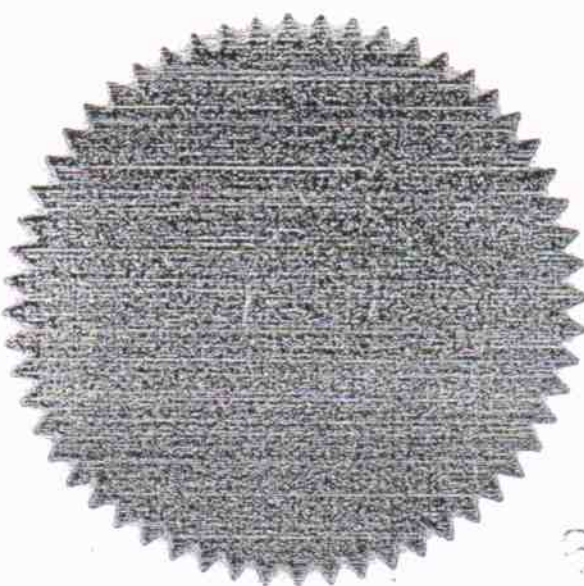
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[Signature]

Assistant Registrar
High Court of Judicature of Bombay
Bench at Aurangabad

17/07

18/7



2009-08-18
18/7/09

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :

NAGPUR BENCH : N A G P U R.

WRIT PETITION No. 5132 OF 2008

1. Nagar Yuwak Shikshan Sanstha,
having its office at Hingna Road,
Wanadongri, Nagpur.
Through its Secretary.
2. Yeshwantrao Chavan College of Engineering,
Hingna Road, Wanadongri, Nagpur,
through its Principal. ... PETITIONERS.

-VERSUS -

1. Maharashtra State Information Commission,
Vidarbha Region, Nagpur,
Having its office at Ravi Bhawan,
Civil Lines, Nagpur.
2. Rajkumar Shyamrao Bhoyar,
Secretary,
Yeshwantrao Chavan College of Engineering
Non-teaching staff Employees Union,
Hingna Road, Wanadongri, Nagpur. ... RESPONDENTS.

....
Mr. Shashank Manohar Advocate for the Petitioners.
Mr. Rohit Sharma h/f Mr. Anand Parchure Advocate for the Respondents.
....

CORAM : A.B. CHAUDHARI, J.
RESERVED ON : 31.7.2009.
PRONOUNCED ON : 20th AUGUST, 2009.

J U D G M E N T :

Rule. Rule returnable forthwith. Heard finally by consent of learned counsel for rival parties.

2. By the present petition, the petitioners have put to challenge the order dated 1.9.2008 passed by the State Information Commissioner, Vidarbha Region, Nagpur, in Appeal No. 1772/07 holding that the Right to Information Act, 2005 is applicable to the petitioners.

3. In support of writ petition, Mr. Shashank Manor, learned counsel for petitioners, vehemently argued that petitioner no.1 which is a Public Trust registered under the provisions of Bombay Public Trusts Act and petitioner no.2- an unaided Engineering College do not at all fall within the meaning of definition of 'Public Authority' as defined under Right to Information Act. He argued that none of these petitioners were created or established or constituted by any law made by the State legislature, as assumed by the State Information Commissioner in his impugned order. Further, none of the petitioners have been financed either directly or indirectly by the funds provided by the appropriate government. The reimbursement made by such governments under their

respective schemes is for the students and not for the petitioners towards the fees recoverable from backward class students or other instrumentation provided by the appropriate government. He then argued that grant of permission to start petitioner no.2- college from the Director of Technical Education or from AICTE or from Nagpur University cannot mean that there is any control since these are the regulatory controls in the matter of admissions, affiliations etc. provided by their respective laws and there is no direct or indirect control as contemplated by the definition. He then argued that the impugned order is clearly illegal and deserves to be quashed and set aside.

4. *Per contra*, Mr.Rohit Sharma holding for Mr. Anand Parchure argued that petitioner no. 2 could not have been started without the permission of Director of Technical Education or AICTE and the affiliation by Nagpur University which clearly shows that these authorities have full control over the working of petitioner no.2 including making of admissions, fees structure, grant of permission to open new courses and therefore there is material to show that there is control. He then argued that the land which was allotted to petitioner no.1 for constructing building for petitioner no. 2- college was allotted by the State Government on a nominal lease amount. The land which belongs to Government has been leased out and therefore it can be said that the

Government has given its property by leasing out its lands to petitioners no.1 and 2. If that is so, the petitioners ought to be held to be public authority. The admissions of the students are made in the petitioner no.2-college through Common Entrance Test and the petitioner no.2 does not have any authority to admit the students on its own. To add to this, under various schemes the Central Government as well as the State Government provide for finance to the petitioner no.2 for undertaking various schemes introduced by the Central Government or the State Government for upliftment of the education standard. Even the fees are reimbursed to the students belonging to backward classes and such amounts are paid to petitioner no.2 by Central/State Government. In fact the petitioners appointed Public Information Officer in terms of the directions issued by the Director. He, therefore, urged this Court to uphold the order of State Information Commissioner.

5. I have heard learned counsel for rival parties and I have also gone through the impugned order. The definition of public authority as given under the Act reads thus :

“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.”

6. Upon perusal of the provisions of the Bombay Public Trusts Act it is clear that this Act does not on its own establish or constitute any public trust. It is nobody's case that petitioner no.1 was constituted or established under the provisions of the Bombay Public Trusts Act. Similar is the case with petitioner no.2 since the same has also not been established or constituted under any of the provisions of the Act of legislature or Act of Parliament. It is not in dispute that in respect of petitioners there is no notification as contemplated by clause (d). Reliance placed by learned counsel for respondent no.2 about 'control' in the matter of admissions, fees, regulations etc. in my opinion is misplaced. In my opinion the word 'control' used in the definition is in a sense of control over the management of the petitioners. The control in making admissions, deciding fees structure or implementing reservation

policy, if any, or asking the petitioners to implement a scheme of Central/State Government in respect of higher education or research and development is not the control in that sense. The term 'control' used in the definition is for control over the management and affairs and the running of the petitioners and its institutions. There is nothing on record to show that either of the two institutions, namely petitioners are being run insofar as its management and affairs are concerned either directly or indirectly by the Government. Therefore, the control over fees structure, admissions, new courses etc. will have to be distinguished from the term 'control' that is contemplated by the definition. I, therefore, hold that none of the petitioners are controlled by the appropriate government.

7. Insofar as petitioner no.1- public trust is concerned, the same is also not controlled in strict sense of the term, as I have discussed herein before. Petitioner no.1- public trust is not run by the Government either directly or indirectly and its management and affairs are controlled by the trustees. No doubt, public trusts are subject to regulatory measures to be found in the Bombay Public Trusts Act. But that does not mean that either the Charity Commissioner or the appropriate government controls this public trust by virtue of the fact that such public trust is registered under the Bombay Public Trusts Act and regulatory

provisions are made applicable. And that by itself cannot be said to be control over the management and its affairs either directly or indirectly. The regulation of fees structure or permission to start new courses or admissions to the college by the Government and its machinery is again not a control to run petitioner no.2- college or the management and affairs of petitioner no.1- trust. Similarly, reimbursement of fees towards reserved category students or projects required to be undertaken by the Engineering College sponsored by the Central/State Government cannot be said to be financed for the benefit of petitioners 1 and 2. These benefits of reimbursement etc. are ultimately for the benefits of the students and people at large and not only for the benefit of the college or financing the affairs of the college. At any rate, the aspect regarding finance is qualified by the word 'substantially financed'. There is absolutely no material on record that both the petitioners have been substantially financed by the appropriate government either directly or indirectly. On the contrary, the entire infrastructure and the salary of the staff etc. is substantially financed by petitioner no. 1 itself. This term 'substantially financed' has been repeatedly used by the Parliament with a view to exclude such institutions which are financed directly or indirectly with a small or a little contribution of funds by the appropriate government. The Parliament has deliberately used the word

'substantially' and this court finds that there is wisdom in doing so. In Shri Ram Krishna Dalmia & ors. v. Shri Justice S.R. Tendolkar & ors. - AIR 1958 SC 538 the Supreme Court has had to say in para 11 -

(a)

(b)

(c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

8. For all the above reasons, I am of the opinion that none of the petitioners are covered by the definition of public authority within the meaning of Section 2(h) of the Right to Information Act. Consequently, the impugned order will have to be quashed and set aside. In the result, I make the following order.

9. Writ petition is allowed. Impugned order made by the State Information Commissioner, Nagpur, on 1.9.2008 in Appeal No.1772/07 is quashed and set aside. It is held that the provisions of Right to Information Act do not apply to any of the petitioners. Rule is made absolute in above terms. No order as to costs.

JUDGE