

PUNJAB, STATE INFORMATION COMMISSION
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Sh Gurdip Singh, S/o Sh Chanan Singh,
215-Ajit Nagar, Sultarnwind Road,
Amritsar..

... Appellant

Public Information Officer,
President, Chief Khalsa Diwan,
GT Road, Amritsar.

First Appellate Authority,
President, Chief Khalsa Diwan,
GT Road, Amritsar.

...Respondent

Appeal Case No.1362/2018

Present: Sh.Basant Singh advocate for the Appellant
Sh.Manish Prabhakar, Advocate on behalf of the PIO/Respondent

ORDER:

The appellant, through RTI Application dated 25.10.2017 had sought information regarding the appointment of Sh.Bhaskar as a teacher in the main branch of Sri Guru Harkishan Sr. Secondary School, Amritsar, concerning the office of Chief Khalsa Dewan, Amritsar. But no information was provided to the appellant despite appeal before the higher authority on 30.12.2017.

The case first came up for hearing before the Bench of Sh.Khushwant Singh, State Information Commissioner on 20.06.2018, 01.08.2018, 26.09.2018, 13.11.2018, 07.01.2019, 25.02.2019, 30.04.2019, 25.07.2019, 23.10.2019, 09.06.2020, 28.07.2020 & 09.09.2021.

On the date of hearing on **09.09.2021**, the case was adjourned and referred to the Chief Information Commissioner for adjudication by a larger bench.

Accordingly, the case was allotted to a larger bench consisting of Sh.Avtar Singh Kaler, Sh.Khushwant Singh and Sh.Maninder Singh Patti, State Information Commissioners as per the order of the Chief Information Commissioner dated 03.11.2021.

The case came up for hearing before the Bench consisting of **Sh.Avtar Singh Kaler, Sh.Khushwant Singh and Sh.Maninder Singh Patti** on 15.12.2021. Shri Gurdip Singh, appellant, alongwith counsel Sh.Basant Singh and Sh.Manish Prabhakar, Advocate on behalf of the PIO/respondent, appeared at that hearing respectively. After hearing both the parties, the judgement was reserved.

In the meantime, one of the Members of Bench Sh.Avtar Singh Kaler demitted office on completion of his tenure, the order could not be pronounced.

Now the case has come up for hearing today before a newly formed larger Bench consisting of **Sh.Khushwant Singh, Sh.Maninder Singh Patti and Sh.Amrit Partap Singh Sekho, State Information Commissioners.**

Sh.Basant Singh, Advocate on behalf of Appellant and Sh.Manish Prabhakar, Advocate on behalf of the Respondent are present.

The replies of both the parties are placed on record verbatim.

The reply filed by the counsel for the appellant during the hearing on **15.12.2021** is reproduced hereunder:

The appellant approached the office of Director General Punjab School Education Board, SAS Nagar, Mohali and sought certain information to enable him to comply with the order of this Honorable Commission to submit written arguments for getting the Chief Khalsa Diwan Charitable Society, a Public Authority under the Act. The information provided by the said Board is detailed below

- (i) Copy of agreement setting therein the terms and conditions the of handing over Adarsh Schools to Chief Khalsa Dewan along with Copy of Lease Deed for demising of land for school both dated 30th of October,2009 relating to school situated **at Naushehra Pannua** as per Exhibit A&A1
- (ii) Copy of agreement setting therein the terms and conditions the of handing over Adarsh Schools to Chief Khalsa Dewan along with Copy of Lease Deed for demising of land for school both dated 30th of October,2009 relating to school situated at **Ucha, Distt Kapurthala**, as per Exhibit B& B1
- (iii) Copy of agreement setting therein the terms and conditions the of handing over Adarsh Schools to Chief Khalsa Dewan along with Copy of Lease Deed for demising of land for school both dated 30th of October,2009 relating to school situated at **Dhandra, Distt-Ludhiana**, as per Exhibit C& C1
- (iv) A sheet evidencing therein the details of funds received by Chief Khalsa Diwan, Amritsar from the Government as per Exhibit D&D1
- (v) A sheet revealing therein the name of the bank, Account no and name of beneficiary of recipient of funds from the Government, as per Exhibit E&E1

Arguments advanced in favour of declaring Chief Khalsa Diwan, Amritsar ,a Public Authority under the Act I.e.

Whether non-governmental organizations 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.3.. '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 –
 - (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;

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.

1. Chief Khalsa Diwan has been given land free(De-Facto), on Heavy discount by the State(Instrumentality of the State within the meaning of definition of State under Article 12 of our Constitution)detailed below:-

2.

(i) 10 Acres, 6 kanals , 15 Marlas for school situated at Naushehra Panua as per Exhibit A1

(ii) 10 Acres, 7 Kanals, 3 Marla for school situated at Ucha, Distt Ludhiana as per Exhibit B1

(iii) 3 Acres, 1 Kanal,for school situated at Dhandra, Distt Ludhiana as per Exhibit C1 (covered area from area enumerated 16 Bigha of land)

The total area of these schools comes to 23 Acres, 15 Kanals appox and lease is for 99 years and the lease rent is stated to be Rs 50/-p.a. only per school which is on heavy discount which has been **declared SUBSTANTIAL FINANCING by Honorable Supreme Court of India in Civil Appeal no 9828 of 2013 in DAV COLLEGE TRUST AND MANAGEMENT SOCIETY & ORS V DIRECTOR OF PUBLIC INSTRUCTIONS &ORS adjudicated on Sep 17, 2019 .**

Virtually this land is given free as rent payable for three schools's land Rs 50+Rs50+Rs50=Rs150/-p.a. for 23 acres of land is ridiculous and carry no meaning.

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. ”

2 Another aspect of SUBSTANTIAL Financing is whether the NGO can carry on its activities EFFECTIVELY without getting finance from the Government.

The answer to this test is NO .

As per agreements the ratio of contribution by the State for operational expenditure is 70% and for Capital expenditure is 50%, clauses 4, of agreements vide Exhibit A, B, C.

A sum of Rs 1,76,03,163 /- has been given by the State for capital expenditure Exhibit E1

A sum of Rs 6,13,93,323 /- has been given by the State for operational expenditure Exhibit E2

If the land given and funds given ,supra, are taken back, the Chief Khalsa Diwan cannot run these schools. Hence it meets the declaration enunciated by the Honorable Supreme Court in the judgment as herein referred below.

If this contribution is withdrawn by the State, CKD is unable to carry out its activities EFFECTIVELY.

By necessary construction and implication the Evidence is apparently available because no Adarsh school is being run by CKD independently without any support from the Government otherwise an institution which is formed for the furtherance of education and which has exposure of Adarsh schools definitely might had run such schools without aid from the Government.

Giving such huge funds has been declared SUBSTANTIAL FINANCING by Honorable Supreme Court of India in Civil Appeal no 9828 of 2013 in DAV COLLEGE TRUST AND MANAGEMENT SOCIETY & ORS V DIRECTOR OF PUBLIC INSTRUCTIONS & ORS adjudicated on Sep 17, 2019 .

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

3. The purpose and objects of RTI legislation require compliance. The commission has been duly apprised about the malfunctioning of CKD as appearing in a section of Press which is prayed to be taken as judicial notice as per Indian Evidence Act as this is settled law to take Suo Motu Cognizance on reports of News Papers and social media. The purpose of the Act has been elucidated as below.

An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority WHEREAS the Constitution of India has established democratic Republic;

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;

Honourable Supreme Court of India in Civil Appeal no 9828 of 2013 in DAV COLLEGE TRUST AND MANAGEMENT SOCIETY & ORS V DIRECTOR OF PUBLIC INSTRUCTIONS & ORS adjudicated on Sep 17, 2019 has given the following observations in this regard,

20. The principle of purposive construction of a statute is a well recognized 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;

The Honorable Commission vide its order dated 07.01.2019 had categorically ordered the respondent to submit fresh affidavit for clarification on four points serially numbered from 1 to 4 therein the order dated 07.01.2019 but the respondent has not complied the order despite pointing out at every subsequent hearing dates by this Honorable commission and has attracted Contempt of Court as per contents of sec 18(3) of RTI Act.

In Para 5 of the affidavit dated 05-01-2019 false averment has been made that The Chief Khalsa Diwan is not getting regular grant in aid from the Govt. for running any of the Institutions Whereas information obtained from Office of Director General Punjab School Education Board as per Exhibit and Exhibit has clearly demonstrated that Chief Khalsa Diwan has received the grant in aid from the Government. These incorrect averments have attracted cause of action under sec 340 of cr pc to proceed against the deponent as per offence committed under sec 195 of IPC

PRAYER CLAUSE

On the basis of the arguments advanced, it is fully established that CKD conforms to the salient features of the Act coupled with judgment of the Hon'ble Supreme Court of India and comes under the definition of Public Authority as per Sec 2(h) (d) (ii) of the RTI Act as

- (i) It is substantially financed, directly as well as indirectly by funds provided by the appropriate Government
- (ii) Objectives and purpose of the Act require that disclosure is warranted where instances of malfunctioning have been reported; huge deployment of funds of the Government is involved, to pave the way for informed citizenry to preserve Constitutional values and to bring probity, transparency and accountability in public life.

It is prayed that keeping in all the above in view, a speaking order based on each argument be passed to declare CKD a public authority under the Act to meet the ends of justice and to uphold the Rule of Law.

The appellant had also submitted some documents regarding handing over land by the Punjab School Education Board on lease to the CKDCS for running Adarsh Schools at Naushehra Panuan, District Tarn Tarn, land at Ucha Distt.Kapurthala, at Dhandra, Distt.Ludhiana, which were taken on record.

The reply of the respondent submitted during the hearing on 15.12.2021 by way of an affidavit is reproduced hereunder:

1. That Chief Khalsa Diwan Charitable Society (CKDCS) is a Charitable Society which runs schools, and colleges to impart education to the society and beside that runs Birdhghar (Old Destitute Home). This Society runs hospitals also and main object of the society is to do the Charity and to promote Sikh Culture and serve the Nation and Community in the field of Education.
2. That motive of the CKDCS is to promote education in the society specifically for the poor section of the society. The CKDCS opened the schools mostly in rural and backward areas where the children were deprived of education but now due to the society they are in competition with the students of reputed schools of urban areas.
3. That CKDCS provided all modern facilities to the students of their schools and started smart schools and maintain their standard equivalent to costly schools of urban areas by charging less fees in comparison to those schools. Despite of the fact that CKDCS do not get any financial aid whatsoever from any quarter, yet all modern facilities are provided to the children. Their Schools have spacious Buildings, big Playgrounds, well equipped Libraries and

Laboratories are provided with modern techniques of Education like Audio Visual Aids. The staff is well qualified and experienced and best possible guidance is given in Curricular and Co-curricular activities. The focus is on the overall development of the children and imparts a qualitative education that molds the young minds and provides a launching pad to seek a brilliant and bright future.

4. That CKDCS has the motive to promote the education but not to get income from it. The State Government is also impressed from the standards of education maintained by it and the goals achieved by CKDCS in rural areas. After watching the functioning of the CKDCS in education field, the State Government requested to run three schools in the name and style of Adarsh Public School.

5. That all the below mentioned three Adarsh Schools are entrusted by the Government of Punjab to Chief Khalsa Diwan Charitable Society only for the purpose of running the schools but not for getting any income from them. These three Adarsh Schools are located at following places:

1. Naushehra Pannuan, District Tarn Taran
2. Ucha Pind District Kapurthala
3. Dhandra District Ludhiana

These aforesaid three schools are running as per the agreement made by the Punjab Education Development Board with the Chief Khalsa Diwan Society and few conditions of the agreement mentioned here below describe the nature and purpose of the agreement.

- I. According to 2 (v) (i) of agreement in all these aforesaid Adarsh Schools NO FEE OR FUNDS are to be taken from the students.
- II. According to 2 (iv) the Board shall be at liberty to CLAIM DAMAGES FOR THE LOSS, if any, cause to it as a result of non performance of obligations under this agreement by the Chief Khalsa Diwan operational cost even as per the agreement the Chief Khalsa Diwan is to run the schools by taking 70% grant from Government of Punjab and 30% from its own pocket
- III. According to Clause 4 (Financial Arrangements) of Agreement. In these schools the Government has provided the land but the EXPENSES ON THE CONSTRUCTION OF THE BUILDING OF THESE ADARSH SCHOOLS IS TO BE BORNE OF 50:50 BASIS and the contribution of the board is restricted to a maximum of Rs. 2.5 crore per school or 50% of the total capital cost, whichever is less.
- IV. According to Clause 4 (Financial Arrangements) of Agreement. The operational COST FOR RUNNING THE ADARSH SCHOOLS IS ON 70:30 BASIS upto 2000 students and beyond the strength of 2000 students the total expenses would be borne by Chief Khalsa Diwan.

6. That beside these aforesaid conditions the responsibility to run the school is upon the Chief Khalsa Diwan Charitable Society and in case of short of the funds the society fulfill the needs and all requirements of the school. On the perusal of the budget of the last few years it transpires that the Government is not very regular in disbursement of funds.

7. That the Department of Education of Punjab was feeling difficult to run these aforesaid Adarsh Schools, hence the Government specifically requested to the Society to run these schools as the Chief Khalsa Diwan Charitable Society has vast experience in running the schools. Accordingly the Education Development Board executed an agreement with the Society to run these Adarsh Schools. According to the agreement the Government of Punjab would give the land on lease to the Society for construction of the school building and to run the school without charging school fee or funds from the students. Similarly operational cost of the school would also be in proportion of 70:30 with the Society. The burden to meet with the

expenses of the school is basically upon the Society only because the grants are not given timely by the Government. In view of the facts above it becomes crystal clear that the Adarsh Schools are not source of income of The Chief Khalsa Diwan Charitable Society rather it's liability.

8. That Chief Khalsa Diwan Charitable Society has already submitted a detailed affidavit whereby specifically declared that these three Adarsh Schools are neither owned by Chief Khalsa Diwan Charitable Society nor is getting any income from these schools. These schools are entrusted to the Chief Khalsa Diwan Charitable Society by the Government of Punjab just for the purpose to run these schools. The Chief Khalsa Diwan Charitable Society just with the motive to serve the education to the public is running these schools on the persuasion of the Government of Punjab.

9. That Chief Khalsa Diwan Charitable Society is not getting any income from these schools hence the question of substantial finance does not arise. The funds of these schools are used exclusively upon these schools only, rather the Society also spend 30% on its operational cost hence these schools are liability upon the Chief Khalsa Diwan Charitable Society.

10. That allegations of the appellant regarding malfunctioning of the Chief Khalsa Diwan Charitable Society is absolutely false, baseless and without any proof and evidence. This Chief Khalsa Diwan Charitable Society run by the members and these members are elected for a certain period thereafter, again the new elected members take over the society and run it hence the aspersions of malfunctioning of the society does not sustain as now the society is run by the newly elected members of spotless character.

11. That in view of the allegations levelled by the appellant this appeal is liable to be dismissed as all the false allegations are levelled upon the Chief Khalsa Diwan Charitable Society.

12. That this Chief Khalsa Diwan Charitable Society is a registered society with a Registrar Joint Stock Company, Punjab and has neither been created by legislation or an executive order.

13. That Chief Khalsa Diwan Charitable Society is not public authority as defined under Section 2(h) of the Right to Information Act, 2005.

14. That there is no control of the Government as well as S.G.P.C. over Chief Khalsa Diwan Charitable Society.

15. That no land has been allotted or given on concessional rate to the Chief Khalsa Diwan Charitable Society. If any concession in the registration fee or stamp fee is given to the CKDCS then that may not be considered as concessions because being the Charitable Society it comes under Endowment Act hence no special treatment is given to this Society.

16. That no financial aid is given to the Chief Khalsa Diwan Charitable Society on regular basis.

17. That Chief Khalsa Diwan Charitable Society has its own schools namely Guru Harkrishan Public School and these schools run on the basis of the school fee from the students to impart them education and to maintain the schools. In these schools Government does not give any kind of grant and the society run them at their own.

18. That there is no member of S.G.P.C or of the Government in the management committee of Chief Khalsa Diwan Charitable Society.

19. That Chief Khalsa Diwan Charitable Society is not getting any regular grant-in-aid from the Government for running any of the institutions. As already mentioned that Adarsh Schools are not owned by Chief Khalsa Diwan Charitable Society, rather these are the liability upon the society but not the income. These schools are entrusted to the Society by the Government of Punjab.

The respondent also submitted a decision of the Supreme Court of India in CA No.9017 of 2013(arising out of SLP© No.24290 of 2012) decided on 07.10.2013 titled Thalappalam Ser.Coop.Bank Ltd. And others V/s State of Kerala and others which were taken on record.

The counsel for the respondent PIO also submitted copies of some decisions taken by the Commission to the effect that Chief Khalsa Diwan Charitable Society is not a public authority under section 2(h) of the RTI Act vide order dated 12.02.2019 in Appeal cases No.3377/2018, order dated 12.02.2019 in appeal case No.4099 of 2018, order dated 12.05.2014 in complaint case No.228 of 2014, order dated 13.08.2019 in CC No.3119 of 2009, order dated 03.04.2008 in CC No.2384 of 2007, order dated 08.11.2010 in CC No.2992 of 2010 and order dated 07.01.2019 in CC No.649 of 2019. These were taken on record.

Decision:

It may be mentioned that currently, Chief Khalsa Diwan is not a public authority , and the matter before the commission is that whether the evidence produced by the appellant by terms of a reply cited above qualifies it to be declared a public authority as per the definition of section 2 (h)of the RTI Act.

Section 2 (h) is reproduced below-Section 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;

It may also be mentioned that via Appeal cases (order dated 12.02.2019 in appeal case No.3377/2018, order dated 12.02.2019 in appeal case No.4099 of 2018, order dated 12.05.2014 in complaint case No.228 of 2014, order dated 13.08.2019 in CC No.3119 of 2009, order dated 03.04.2008 in CC No.2384 of 2007, order dated 08.11.2010 in CC No.2992 of 2010 and order dated 07.01.2019 in CC No.649 of 2019), the commission while disposing of the appeals has upheld Chief Khalsa Diwan’s contention of not being a public authority.

The matter under consideration before the Commission is that whether new evidence, as claimed by the appellant is pervasive enough for this bench to reconsider all the previous decisions of the commission and declare Chief Khalsa Diwan Charitable Society a public authority under section 2(h) of the RTI Act or not?

The new evidence, which incidentally has already been produced in CC-649, was disposed of by the bench of Sh. Sanjiv Garg as inconclusive evidence to declare Khalsa Diwan as a Public Authority

The evidence relied by the appellant is that the Khalsa Diwan is running three Adarsh schools, for which a sum of Rs 1,76,03,163 /- has been given by the State for capital expenditure and a sum of Rs 6,13,93,323 /- has been given by the State for operational expenditure. It has also contended that to run these Adarsh Schools, 10 Acres, 6 kanals, 15 Marlas for school situated at Naushehra Panua (ii) 10 Acres, 7 Kanals, 3 Marla for school situated at Ucha, Distt Ludhiana (iii) 3 Acres, 1 Kanal, for school situated at Dhandra, Distt. Ludhiana as per has been given by the government.

As per the appellant that if these are withdrawn the Chief Khalsa Diwan will not be in a position to run these schools.

The respondent has countered this evidence, the operational part being the following -

That Chief Khalsa Diwan Charitable Society (CKDCS) is a Charitable Society which runs schools, and colleges to impart education to the society and beside that runs Birdhghar (Old Destitute Home). This Society runs hospitals also and main object of the society is to do the Charity and to promote Sikh Culture and serve the Nation and Community in the field of Education.

That Chief Khalsa Diwan Charitable Society has already submitted a detailed affidavit whereby specifically declared that these three Adarsh Schools are neither owned by Chief Khalsa Diwan Charitable Society nor is getting any income from these schools. These schools are entrusted to the Chief Khalsa Diwan Charitable Society by the Government of Punjab just for the purpose to run these schools. The Chief Khalsa Diwan Charitable Society just with the motive to serve the education to the public is running these schools on the persuasion of the Government of Punjab.

9. That Chief Khalsa Diwan Charitable Society is not getting any income from these schools hence the question of substantial finance does not arise. The funds of these schools are used exclusively upon these schools only, rather the Society also spend 30% on its operational cost hence these schools are liability upon the Chief Khalsa Diwan Charitable Society.

Having considered the arguments, the evidence provided by the appellant and comparing it with the entire history, structure, financing and functioning of the Chief Khalsa Diwan Charitable organization, this bench concludes that the new evidence is no where close to being pervasive enough to consider declaring Chief Khalsa Diwan a public authority.

The information regarding Adarsh Schools, the same information may be sought from the concerned public authority.

The instant appeal is dismissed.

Keeping the above in view, the case is **closed**.

Sd/-
Chandigarh (Amrit Partap Sekhon)
Dated: 04.07.2022 State Information Commissioner

Sd/-
(Maninder Singh Patti)
State Information Commissioner

Sd/-
(Khushwant Singh)
State Information Commissioner

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