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Sh. Gaganpreet Singh Advocate, (9814098153)

Chamber No 8039, 8th Floor,
 New Court Complex, Ludhiana.

.....Appellant/Complainant

Versus

Public Information Officer

O/o Dayanand Medical College & Hospital,
 Ludhiana.

.....Respondent

First Appellate Authority

O/o Chief Incharge, Dayanand Medical College & Hospital,
 Ludhiana.

Appeal Case No. 3984 of 2020
(Cisco Webex Proceedings)

ORDER

To be read in the continuity of previous order dated 30.06.2021 vide which the decision was reserved.

Decision announced on 09.08.2021.

Factual Matrix

1. The present Second Appeal arises from the RTI Application dated 25.08.2020 filed by the Appellant/Complainant vide which he has sought information pertaining to the PPE Kits purchased by DMC Hospital Ludhiana.
2. On 25.08.2020 the Appellant/Complainant had filed an RTI Application seeking details of PPE kits purchased by the Respondent – DMC Hospital, Ludhiana. The description of the information sought by the Appellant/Complainant is as follows:
 - i. *Certified Copies of all the purchase bills vide which the PPE Kits have been purchased by DMC from January, 2020 till date.*
 - ii. *Copy of the relevant pages of Stock Register pertaining to the entry of PPE kits.*
 - iii. *Number of PPE Kits purchased by DMC since January, 2020 till date and also the price of each PPE Kit.*
3. On 27.08.2020, the Respondent informed the Appellant that the information sought by him vide the RTI Application dated 25.08.2020 could not provide as DMC Medical College and Hospital, Ludhiana is an unaided private institution and is not receiving any aid from the Government.
 Therefore it does not fall within the definition of Public Authority as defined u/s. 2(h) of the Right to Information Act.
4. On 30.09.2020, upon being aggrieved by the reply dated 27.08.2020, the Appellant filed the first Appeal before the Chief/In charge of DMC Medical College & Hospital.

5. However vide Reply dated 08.10.2020 the Respondent reiterated its stand taken in the Reply dated 27.08.2020 and refused to furnish the information sought by the Appellant on the same ground i.e., DMC Medical College and Hospital, Ludhiana is an unaided private institution and is not receiving any aid from the Government. Therefore it does not fall within the definition of Public Authority as defined u/s. 2(h) of the Right to Information Act.
6. Aggrieved by aforesaid replies of the Respondent to his RTI Application and the First Appeal respectively, the Appellant filed the present Second Appeal before this Commission on 09.12.2020.

Submissions advanced by the Appellant

7. The Appellant has contended before this Commission that the Respondent is in fact liable to provide the information sought by him in his RTI Application dated 25.08.2020 on the ground that DMC Medical College and Hospital is taking 100% exemption from Income Tax Department u/s. 80(g) since 01.04.2014.
8. The Appellant has further contended that the Respondent is also taking 25% exemption on monthly electricity bill from PSPCL and a penalty of Rs.4.02. Crores was waived on the ground that the DMC Hospital is a charitable institution and serving the people of State.
9. The Appellant has further contended that the Respondent is taking 100% exemption from payment of house tax from the Municipal Corporation, Ludhiana. It has also been contended that Respondent has also taken 100% exemption from the payment of Stamp Duty on Sale Deeds registered without paying any Stamp Duty.
10. He has also submitted that the Respondent has availed exemption of more than 17 Crores worked out as 25% extra surcharge for uninterrupted power supply from PSPCL.
11. Lastly Appellant has also sought to rely upon the Judgment passed by the Hon'ble Supreme Court in the case of *D.A.V. College Trust and Management Society & Ors. v. Director of Public Instructions & Ors.* reported as (2019) 9 SCC 185. While relying upon the aforesaid Judgment the Appellant has submitted that the Judgment of the Hon'ble Supreme Court in the case of *Thalapallam Service Cooperative Bank Limited & Ors. v. State of Kerala & Ors.* reported as (2013) 16 SCC 82 whereby while interpreting the word 'substantially financed' it has been held that merely providing subsidies, funds, grants, exemption, privileges cannot be held to be providing funding to a substantial extent, has been reversed by the Hon'ble Supreme Court in the case of *DAV College Trust (Supra)*.

Submissions advanced by the Respondent

12. The Respondent – DMC Medical College & Hospital, Ludhiana, submitted their Written Statement to the present Appeal on 18.01.2021. A survey of the said Written Statement shows that the Respondent has reiterated the stand taken in replies to the RTI Application filed by the Appellant, wherein they have stated that since the Respondent Medical

College & Hospital is being run by the Managing Society, from its own affairs and resources and is not receiving any aid from the Government Authorities, therefore it does not fall within the definition of a 'Public Authority' as defined u/s. 2(h) of the Right to Information Act, 2005.

13. Reliance has also been placed on the Full Bench decision of this Commission in **Complaint No. 298 of 2012** titled as *Rohit Sabharwal s. Public Information Officer, Office of Dayanand Medical College & Hospital*,

Ludhiana, Complaint No. 1191 of 2012 titled as Dr. Sandeep Kumar Gupta

v. Public Information Officer, Office of Dayanand Medical College & Hospital and **Complaint No. 3240 of 2013** titled as *Jadgish Chander v. Public Information Officer, Office of Dayanand Medical College & Hospital*. All the

three cases mentioned hereinabove were decided vide common judgment dated 05.04.2016, wherein the Full Bench of this Commission has held that DMC Medical College & Hospital is not a 'Public Authority' as defined in Section 2(h)(d)(ii) of the RTI Act 2005.

14. Thereafter the Respondent has also submitted detailed Written Submissions on 24.05.2021 before this Commission. A survey of the said Written Submissions filed by the Respondents shows that the Order dated 05.04.2016 passed by the Full Bench of this Commission holding that the Respondent does not fall within the definition of 'Public Authority' under the Act of 2005, has been challenged before the Hon'ble Punjab & Haryana High Court vide CWP No. 8796 of 2016 titled as *Rohit Sabharwal v. State Information Commission, Punjab & Anr.* and CWP No. 11008 of 2016 titled as *Dr. Sandeep Kumar Gupta v. State Information Commission, Punjab & Anr.* It has been submitted that although the said Writ Petitions are pending before the Hon'ble High Court, however no such interim order has been passed by the Hon'ble High Court staying the operation of the Order dated 05.04.2016 passed by the Full Bench of this Commission.

15. It has been further submitted by the Respondent that as per the Judgment of the Supreme Court in the case of *Thalapallam Service Cooperative Bank Limited (Supra)* which has been followed in the case of *DAV College Trust (Supra)*, it has been clearly held that the funding to the Institution/NGO in

question shall be to the extent that the said Institution/NGO practically runs by such funding and in absence of the same, it would struggle to exist and if such institution/NGO is dependent on the finances of the Government only then the same can be declared to be 'Public Authority' under the Right to Information Act.

16. The Respondent has also sought to distinguish the Judgment of the Hon'ble Supreme Court in the case of *DAV College Trust (Supra)* on facts by submitting that in the said case the DAV College Trust & Managing Society was receiving a grant-in-aid from the State Government to the extent of 44% of the expenditure of the College as explained in para 32 of

the said Judgment. Further in addition to the grant-in-aid, the said College was also receiving a further grant to the extent of 95% of the expenditure for the salaries of teaching and non-teaching staff of the College, as the same was borne by the State Government upto the extent of 95% as explained in para 33 & 35 of the aforesaid Judgment.

17. While distinguishing its case from the Judgment of *DAV College Trust (Supra)* on facts, the Respondent has submitted that it is not receiving any grant-in-aid for its expenditures, from the State or Central Government and as such the facts of the aforesaid case cannot be made applicable to the present case.
18. It has also been submitted by the Respondent that such exemptions are also available to the Respondent are also available to all charitable institutions, mosques, temples, churches, dharmshalas, gurudwaras, charitable hospitals, orphanages, therefore no special treatment is being given to the Respondent as such. It has been further submitted that the intention behind such exemptions is not to provide the funds to the institute for its own expenditure, therefore grant of such exemptions cannot be termed as substantial financing.
19. The Respondent has also submitted that since the Full Bench of this Commission vide its Judgment dated 05.04.2016 has already held that the Respondent is not a 'Public Authority' and therefore the same is binding upon this Bench and the said Order cannot be revised or reversed in the present Appeal.

Decision

20. Heard the arguments and submissions advanced by the respective parties and have also gone through the documents available on the file.
21. The Appellant in the instant matter had sought certain information pertaining to purchase of PPE Kits by the Respondent – DMC Medical College and Hospital vide RTI Application dated 25.08.2020. However, the Respondent had refused to furnish the said information on the ground that it is not covered under the definition of a 'Public Authority' as provided u/s. 2(h) of the Right to Information Act, 2005 as it is an unaided private charitable institution being run and managed by its Managing Society and is not receiving any aid from the State or the Central Government. The Managing Society of Dayanand Medical College & Hospital is managing its affairs from its own resources.
22. Upon a careful examination of the arguments advanced and the Written Submissions made by the parties, the first and foremost issue which comes up for consideration before this Commission is whether this Bench can delve upon the issue of applicability of Right to Information Act of 2005 upon the Respondent Medical College & Hospital when the Full Bench of this Commission vide Judgment dated 05.04.2016 in the case of *Rohit Sabharwal (Supra)* has already held that Dayanand Medical College and Hospital, Ludhiana does not fall within the definition of a 'Public Authority' as provided under the RTI Act. Before commenting on the issue any further, it would be profitable to reproduce the relevant excerpt from the aforesaid Judgment of the Full Bench of this Commission:

“Decision

“The issue before the Full Bench of the Commission is whether the respondent (DMC & Hospital, Ludhiana) institute is a public authority or not. In view of the Judgment of Supreme Court of India in Thalappalam Ser. Coop. Bank Ltd. and Others vs. State of Kerala and others vis-à-vis provision of Section 2(h)(d)(ii) of the RTI Act, a body can be held a public authority if it is substantially financed directly or indirectly by the appropriate government. The case of the complainant hinges upon the thrust that the respondent (DMC & Hospital) is substantially financed by the appropriate government in terms of exemptions availed by the respondent. Therefore the issue before the Commission to decide is whether the exemptions availed by or granted to the respondent by the appropriate government do contribute to the level of terming such exemptions as substantially financed by the appropriate government.

We find that the quantum or extent of exemption if not granted or availed, shall not render the respondent hospital in a struggle to exist. We further ascertain that the quantum of exemptions is just moderate and that the finances stated to have been saved on account of exemptions availed by the respondent are insufficient to practically run the respondent (DMC & Hospital). The amount of exemptions granted by the govt. to the respondent is quite meager as compared to the annual expenditure incurred, it is far from the bulk expenditure and looks like just a dwarf before the giant.

*In view of the aforementioned, the arguments advanced by the complainant are not sufficient that the respondent (DMC & Hospital) is substantially financed by the appropriate government by means of getting exemptions from paying extra tariff for interrupted supply, exemption from paying registration fee and stamp duty on sale deeds of land purchased, allotment of land as block which was a grave yard of that period, given at the **collector’s rate and not** at subsidized one and again without carrying any development.- works and leaving the land for roads, parks or for other public utilities etc., exemption from paying house tax to MC Ludhiana and exemption under Section 80-G of the Income Tax Act. Contrarily, we agree with the contentions of the respondent that such exemptions are availed by all charitable private hospitals and are not specifically by the respondent hospital as it is part of the government policy and that these exemptions are neither of the magnitude that these are practically instrumental in running the respondent hospital nor without these exemptions the respondent would struggle to exist.*

We are of the considered opinion that the arguments by the Id. Counsel of the complainant and the documents placed on record fall too short to meet the parameters laid down by the Hon’ble Supreme

Court of India in Thalappalam Ser. Coop. Bank Ltd. and Others v/s. State of Kerala & others in Civil Appeal No. 9017 of 2013 decided on 07.10.2013 to declare the respondent (DMC & Hospital) as, a Public Authority. Therefore, we are inclined to hold that the respondent (DMC & Hospital) is not a Public Authority as defined in Section 2(h) (d) (ii) of the RTI Act, 2005.

23. Although the Full Bench decision of this Commission referred herein above was challenged by the Complainant therein, by filing a Civil Writ Petition before the Hon'ble Punjab & Haryana High Court i.e., CWP No. 8796 of 2016

titled as *Rohit Sabharwal v. State Information Commission, Punjab & Anr.*

and CWP No. 11008 of 2016 titled as *Dr. Sandeep Kumar Gupta v. State Information Commission, Punjab & Anr.* However, in view of the fact that Hon'ble High Court has not stayed the operation of the Full Bench's

decision, therefore this Bench is duly bound by the decision dated 05.04.2016 rendered by the Full Bench of this Commission holding that the Respondent – Medical College & Hospital is a not a 'Public Authority' as per the provisions of the RTI Act, 2005. Even otherwise the Hon'ble Supreme

Court, in the case of *Shree Chamundi Mopeds Ltd. v. Church of South India*

Trust Assn., reported as (1992) 3 SCC 1, while pointing out the difference

between an order of stay of operation of the Order and an order quashing the Order itself has held that the pendency of an Appeal or the grant of interim stay does not wipe out a Judgment, leave alone quash it The relevant excerpt is reproduced as follows:

While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991

does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority.

It is pertinent to mention that in the present case the Hon'ble High Court has not issued any stay order on operation of the Order dated 05.04.2016 passed by the Full Bench of this Commission, therefore this Bench is fully bound by the findings of the larger Bench which are squarely applicable to the case at hand.

24. Now coming to the contention of the Appellant regarding the Judgment of the Hon'ble Supreme Court in ***Thalappalan's Case (Supra)*** being reversed by the Hon'ble Supreme Court in ***DAV College Trust (Supra)*** case.

The said contention of the Appellant deserves to be rejected outright. Upon a careful reading of the aforesaid Judgments, it is nowhere borne out that the Hon'ble Supreme Court has reversed or set aside its own

Judgment in ***Thalappalan's case***. As a matter of fact while recording its

findings in the Judgment of ***DAV College Trust (Supra)*** case the Hon'ble

Supreme Court has made a reference to the ***Thalappalan's case*** in interpreting the meaning of the word 'substantial' and 'substantially financed'. Further, a careful reading of the ***DAV College Trust (Supra)*** case's Judgment reveals that the Supreme Court has relied upon the fact

that for determining the aspect of substantial financing it has to be seen whether the body, authority or NGO can carry on its activities effectively without getting finance from the Government. The relevant excerpt from the aforesaid Judgment is being reproduced herein below:

"28. Another aspect for determining substantial financing is whether the body, authority or NGO can carry on its activities effectively without getting finance from the Government. If the 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."

A conjoint and harmonious reading of the decision passed by the Full Bench in ***Rohit Sabharwal's case (Supra)***, the fact that Respondent not receiving any grant-in-aid from the Government, except for the exemptions discussed hereinabove, and the Judgment of the Hon'ble Apex Court in the case of ***DAV College Trust (Supra)*** this Commission is of the considered opinion that the Respondent – Medical College & Hospital is not dependent on the finances of the Government. Accordingly, the

Judgment of the Hon'ble Supreme Court in the case of ***DAV College Trust (Supra)*** would not be of any assistance to the case of Appellant.

25. In view of discussion in the forgoing paragraphs, the Commission is of the view that the present Appeal Case is liable to be dismissed.

Chandigarh
Dated: 09.08.2021

Sd/-
(Maninder Singh Patti)
State Information Commissioner, Pb