



Sh. Gurpreet Singh,
S/o Sh. Sampuran Singh,
R/o House No. 364/30D, New Atam Nagar,
Jagraon, Distt. Ludhiana.

Complainant

Versus

Public Information Officer,
O/o Asian Educational Institute,
Patiala.

Respondent

Complaint Case Nos.930 and 931 of 2018

Date of RTI Application	Date of Reply, if any of SPIO	Date of First Appeal made, if any	Date of order, if any of FAA	Date of Second Appeal/ Complaint
18.07.2018/03.08.2018	13.08.2018	Nil	Nil	27.08.2018

Present: Sh. Gurpreet Singh, Complainant in person.
Sh. Gurwinder Singh, Clerk, O/o Asian Educational Institute, Patiala – for Respondent.

ORDER

The following order was passed by the Commission on 14.02.2019:

“Since the complainant and the respondent are the same, and the issues involved are identical, the single order shall dispose both the complaints. The cases have been transferred from the bench of Dr. Pawan Kumar Singla, Ld. SIC by Ld. CIC.

Vide his application dated 18.07.2018 complainant has sought an attested copy of his service book having been maintained in the institution and the information relating to his termination from the services. He has put in five years of service as Assistant Professor. His grouse is that his services have been terminated without assigning any reason or holding an enquiry. The respondent has submitted a written reply wherein a plea has been taken that theirs is a private self-financed institution and they are not covered under the definition of Public Authority and as such they are not obliged to part with the information.



-2-

Complaint Case Nos.930 and 931 of 2018

The complainant, on the other hand, has put in a detailed representation a copy of which has been handed over on spot to the proxy of the respondent wherein he says that the institution has availed of various grants and concessions from the government which suggests it to be substantially financed by the appropriate government. Before a final call is taken the Commission directs the respondent to comment on the submission made by complainant if it so desires with an advance copy to the complainant before the next date of hearing.”

The matter has been taken up today. The Parties have stuck to their respective stand. The complainant says that the respondent is a charitable Trust and has been exempted under Section 12 A of Income Tax Act. He has cited an excerpt of order of full bench of the Central Information Commission titled -- Sh. Rakesh Aggarwal vs CBDT; CIC/LS/A/2009/00190 which he has reproduced as under:

“We have given a serious thought to the matter. We have also taken note of the preamble of the RTI Act which aims at promoting transparency and accountability in the working of the every Public Authority. In this context, it would be apt to advert to Sub Section 15 of Section 2 of the IT Act which defines “charitable purpose”. This sub section is extracted below:- “15. ‘Charitable purpose’ includes relief of the poor, education, medical relief and advancement of any other object of general public utility.”

“Needless to say, avowed purpose for which these institutions/entities come into existence is charity. Charity and secrecy are contradiction in terms. Any charitable institution should have no secrets and should be open to public for all purposes, including its finances. In other words, in our opinion, it will be in the larger public interest if the identity of the charitable trusts/institutions/entities which are granted exemption from income tax under the statutory provisions are placed in the public domain. Hence, in exercise of powers under section 25(5) of the RTI Act we hereby recommend that

Contd...page...3



-3-

Complaint Case Nos.930 and 931 of 2018

the identity of the charitable trusts/institutions/entities which have been granted exemption from income tax under section 10 & wider section 11/12 of the Income Tax Act is placed in public domain by way of suo-moto disclosure by the CBN DT in terms of section 4(1)(b) r/w. section 4(2) of the RTI Act.”

Terming it as a substantially funded Institute he pleads it to be declared as a Public Authority within the definition of the Act and issue directions to them to provide information sought by him.

The respondent, on the other hand, again reiterated that they are a private self-financed Institution and are not covered under the definition of Section 2(h) of the RTI Act. Cent per cent recurring or non-recurring expenditure is being done by the Institute from its own resources. During the period of 2012-13 to 2015-16 their Institute worked as an Agency for implementation of Central Government Projects like: (a) DST INSPIRE Project; and (b) Other Research Projects. The grant related to these Projects has been for specific functions. Their Institute has merely been a coordinating Agency. They finally submit that being an independent Institute they are not covered under the provisions of the RTI Act and as such they are not obliged to part with the information under the RTI Act as asked for by the complainant.

Hon'ble Supreme Court of India has set forth the law with reference to the Institutions who can be considered as a Public Authorities for being substantially funded by the Government. In its judgment passed in Thalappalam Ser. Coop. Bank Ltd. and others Versus State of Kerala and others, it has been held:

Contd...page...4



-4-

Complaint Case Nos.930 and 931 of 2018

SUBSTANTIALLY FINANCED

*“The words “substantially financed” have been used in Section 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.*

*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 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*

Contd...page...5



-5-

Complaint Case Nos.930 and 931 of 2018

considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; sold; 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.

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).”

The judgment cited by the complainant apparently pertains to year 2009 and the one of Supreme Court referred to above was passed in 2013 and shall obviously have an overriding effect. In view of the aforesaid principle laid down by the Hon'ble Supreme Court of India, the respondent cannot be considered to have been substantially financed by an appropriate government. It is also admitted that it is not a product of the Constitution or has been created by an Act of the Parliament or the State Assembly or a Notification issued by the Government of India. The Commission as such does not find substance in the argument advanced by the complainant and

Contd...page...6



-6-

Complaint Case Nos.930 and 931 of 2018

declares it not to be a Public Authority. Nonetheless it hastens to add even if it is not within the statutory obligation of the respondent, the propriety and ethics demand that the complainant is apprised of his personal record. Hopefully they shall act conscientiously and do the needful.

Disposed.

26.03.2019

**Sd/-
(Yashvir Mahajan)
State Information Commissioner**