

# PUNJAB STATE INFORMATION COMMISSION

Red Cross Building, Near Rose Garden,  
Sector 16, Chandigarh.

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Whatsapp No. 62848-20189



Smt. Kamaldeep Kaur, W/o Dr. Hassan Sardar,  
Mofar Residence,  
Village Mansa Khurd, Khaila Side, Post Office,  
Tehsil & Distt. Mansa.

.....Appellant

Vs.

Public Information Officer  
O/o Mai Bhago Degree College (Girls),  
Ralla, Mansa.

First Appellate Authority  
O/o Mai Bhago Degree College (Girls),  
Ralla, Mansa.

.....Respondents

## Appeal Case No. 2012 of 2022, 4266 of 2021 & 2815 of 2021.

### ORDER

This Order may be read with reference to the previous Order dated 25.07.2022 vide which the order was kept reserved.

2. The appellant, Smt. Kamaldeep Kaur vide RTI application dated 25.08.2021 had sought some information from the PIO, O/o Mai Bhago Degree College (Girls), Ralla, Mansa. After that, the appellant filed First Appeal with the First Appellate Authority (hereinafter called FAA) on 20.10.2021 and Second Appeal was filed in the Punjab State Information Commission on 21.04.2022 under Section 19 of the Right to Information Act, 2005 (hereinafter called RTI Act). Notice of hearing was issued to the parties for 02.06.2022.

3. On 02.06.2022, Dr. Hassan Sardar, husband of the appellant appeared on her behalf and Dr. Parminder Kaur, Principal of Mai Bhago Degree College (Girls), Ralla, Mansa was also present. The representative of the appellant stated that no information was provided by the respondent. The respondent stated that Mai Bhago Degree College (Girls), Ralla, Mansa is a private college and not getting any financial aid from the government, so as per the RTI Act, it is not a public authority. Thereafter, an opportunity was granted to the appellant to submit cogent evidence before the next date of hearing to prove that the respondent college comes within the ambit of the definition of public authority. The representative of the appellant further stated that two more appeal cases of similar nature i.e. Appeal Case no.2815 of 2021 titled as Smt. Kamaldeep Kaur Vs PIO, O/o Mai Bhago Degree College (Girls), Ralla, Mansa and 4266 of 2021 titled as Dr. Hassan Sardar Vs PIO, O/o Principal, Mai Bhago Degree College (Girls), Ralla, Mansa, were also pending for hearing before the Ld. State Information Commissioner, Sh. Khushwant Singh. As such, both the cases were clubbed with the present case and the case was adjourned to 24.06.2022.

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## **Appeal Case No. 2012 of 2022, 4266 of 2021 & 2815 of 2021.**

4. On 24.06.2022, both the parties were present. The applicant sent her submission to the Commission, which was taken on record and a copy of the same was sent to the respondent along with the order, to file rejoinder, if any. The respondent was further directed to send the copy of the Constitution of private management committee namely Punjabi Educational Society, Ralla which runs the Mai Bhago Degree College (Girls), Mansa, before the next date of hearing and the case was adjourned for 18.07.2022.

5. On 18.07.2022, both the parties were present. The respondent had not sent the copy of the Constitution of Punjabi Educational Society, Ralla, the private management committee which runs the Mai Bhago Degree College (Girls), Mansa. Therefore, the respondent was again directed to send the copy of the Constitution of Punjabi Educational Society, Ralla, to the Commission before the next date of hearing. The appellant also sent an e-mail dated 18.07.2022, which was taken on record and the case was adjourned for 25.07.2022.

6. On 25.07.2022, in compliance with the previous orders, the respondent sent the copy of the Constitution of Punjabi Educational Society, Ralla, the private management committee of the Mai Bhago Degree College (Girls), Mansa, which was perused and taken on record. The appellant had also sent an e-mail dated 25.07.2022 along with an attachment of Case No. CIC/CC/A/2015/001881-SA titled as Bal Krishan V. PIO, Council for Indian School Certificate Examinations, decided by Prof. M. Sridhar Acharyulu (Mahabhushi Sridhar) on 1.11.2016. The relevant para of the citation submitted by the appellant is as under :-

25. *The CISCE has to disclose this information on their own, in any means of their convenience, to act like a trustee to keep up the trust of the people and provide the details sought. Fighting tooth and nail for hiding this general information such as conditions of affiliation or employment details will not go well with the high reputation of any organization. The CISCE has an obligation to be transparent and cannot escape accountability which is ordained by the Societies Registration Act and their memorandum of Association. They have a duty as a registered society and as a trustee or a public body to publish its objects, working to fulfil those objects, rules of the Society along with annual lists, reports, statement of income and expenditure as audited etc to help any person to seek, verify and question them, in true spirit of transparency and accountability. Reading Section 2(f) Right to Information Act, together with Section 19 of Societies Registration Act, the Commission directs the respondent authority CISCE to provide the*

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## **Appeal Case No. 2012 of 2022, 4266 of 2021 & 2815 of 2021.**

*information sought by the appellant within one month from the date of receipt of this order and also direct them to periodically update their disclosures as per Section 4 of Right to Information Act."*

Whereas in subsequent decision of Central Information Commission in Case No. CIC/MOHRD/A/2019/116213 titled as Varun Mishra vs Chief Executive & Secretary, Council for Indian School Certificate Examination has held that the ICSE is not a public authority as defined under Section 2(h) of the RTI Act, 2005 by giving reference to judicial decisions i.e. CISCE vs. Ajay Jhuria, LPA No. 6171/2011 (Delhi High Court); A. Pavitra vs. UOI & Ors., WPC No. 603381/2014 (Allahabad High Court).

It is pertinent to mention Dinesh Sinha and Others vs. The Council for the Indian School Certificate Examinations and Others, Writ Petition No.12549(W) of 216 (Calcutta High Court), in which it was held that :-

*" this Court is, thus, of the view that the Council is not a public authority or body or Institution of self-government established or constituted under the Constitution, under the law enacted by the Parliament or by the State Legislature or body owned, controlled or substantially financed, directly or indirectly by the fund provided by the appropriate Government. Therefore, it does not come within the purview of a public authority under [Section 2\(h\)](#) of the said Act."*

7. The appellant has also referred to Section 19 of the Registration of Societies Act in his submission dated 25.07.2022 :-

*"The CISCE has an obligation to be transparent and cannot escape accountability which is ordained by the Societies Registration Act and their memorandum of Association. They have a duty as a registered society and as a trustee or a public body to publish its objects, working to fulfil those objects, rules of the Society along with annual lists, reports, statement of income and expenditure as audited etc to help any person to seek, verify and question them, in true spirit of transparency and accountability."*



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That it is relevant to mention Section 19 of the Societies Registration Act, 1860, which is as under :-

*19. Inspection of documents - Any person may inspect all documents filed with the Registrar under this Act on payment of a fee of one rupee for each inspection; and any person may require a copy or extract of any document or any part of any document, to be certified by the registrar, on payment of two annas for every hundred words of such copy or extract; and such certified copy shall be prima facie evidence of the matters therein contained in all legal proceedings whatever.*

8. That the Commission is of the view that Section 19 is not applicable in these appeal cases since the issue involved herein is whether Mai Bhago College, Ralla comes within the ambit of the definition of 'Public Authority' U/s 2(h) of the RTI Act, 2005 or not.

9. The respondent, Mai Bhago Degree College, Ralla has filed reply vide letter dated 27.05.2022 along with written submission dated 27.11.2021, wherein it has been mentioned that the Hon'ble Punjab and Haryana High Court in Civil Writ Petition No. 13676 of 1010 titled as Kuldeep Singh Vs. State of Punjab, in which it was held that private unaided school are not a public authority and cannot be directed to supply information under RTI Act.

10. That the respondent also submitted the following :-

*" That the private management committee of replying college has purchased land from private parties to establish this institution. That the replying college is unaided college which is not governed or controlled by any government. The college is not funded directly or indirectly by any government or public authority. That the replying college is neither owned nor its management run or controlled by government. It has also not received any funds/aid directly or indirectly from government as such our college is private body moreover, there is no such correspondent provision Indian Law to allow access to information held by private bodies."*

11. That the respondent also mentioned the Order dated 29.03.2010 passed by the Punjab State Information Commission, in Complaint Case No.3308 of 2009. The relevant para of the Order is as under :-

9. **Section 2 (h) of the Right to Information Act, 2005 defines the term, 'public authority'.**

**Section 2 (h) is reproduced below:-**

2(h) "public authority" means any authority or body or institution of self-government established or constituted:-

(a) by or under the Constitution;

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- (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;

10. *The plain language of the Section makes it clear that unless it is proved that the school was 'owned', 'controlled' or 'substantially financed' directly or indirectly by funds provided by the appropriate Government, it cannot be held to be a public authority within the meaning of Section 2 (h). From the facts placed on record, as discussed in the proceeding paragraphs, it is obvious that the respondent school is not a public authority. It is neither owned nor is its management run or 'controlled' by government. It has also not received funds / aid, directly or indirectly from government. It is, in form and substance, a private body.*

12. That the respondent submitted in the reply that it is a private unaided educational institution being run by Private Management namely Punjabi Educational Society, Ralla and replying college is not receiving any grant-in-aid from any government and neither owned, controlled or substantially financed directly or indirectly by funds provided by the Government. It was further submitted in the reply that there is no government nominee in the management committee of replying college to run its affairs. As such, replying college is not a public authority as defined in Section 2(h) of the RTI Act, 2005.

13. The Hon'ble Supreme Court of India has explained the meaning of the term 'controlled' as used under Section 2(h)(d)(i) of the RTI Act, 2005 in case titled as Thalappalam Service Coop. Bank Ltd. Vs. State of Kerala, (2013), which is as under :-

*"34. We are of the opinion that when we test the meaning of expression "controlled" which figures in between the words "body owned" and "substantially financed", the control by the appropriate government must be a control of a substantial nature. The mere 'supervision' or 'regulation' as such by a statute or otherwise of a body would not make that body a "public authority" within the meaning of Section 2(h)(d)(i) of the RTI Act. In other words just like a body owned or body substantially financed by the appropriate government, the control of the body*

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*by the appropriate government would also be substantial and not merely supervisory or regulatory.....*

35. We are, therefore, of the view that the word “controlled” used in [Section 2\(h\)\(d\)\(i\)](#) of the Act has to be understood in the context in which it has been used vis-a-vis a body owned or substantially financed by the appropriate government, that is the control of the body is of such a degree which amounts to substantial control over the management and affairs of the body.

### **SUBSTANTIALLY FINANCED**

36. The words “substantially financed” have been used in [Sections 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.

37. 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.

38. 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.... "



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14. The Constitution of the Punjabi Educational Society, Ralla has been perused minutely. It is observed that it contains no provision which will indicate any control- substantially or otherwise of the Govt. both Central and State. However, it is pertinent to mention para (ix) of the Constitution of the said society, which is as under :-

(ix) To issue appeal and application for money and funds in furtherance of the said objects and to accept gifts, donations to receive subscriptions/ contributions and **grants from the Government both Central and State**, from Individuals and institutions, in any shape of movable and/or immovable property.

However, the respondent submitted that the college has not received any grant from the Central or State Government, since the inception of the college.

15. The appellant, Ms. Kamaldeep Kaur has filed Appeal Case No.2012 of 2022 and 2815 of 2021 and her husband Dr. Hassan Sardar has filed Appeal Case No.4266 of 2021. In all the three cases the information sought by the appellants as mentioned in their e-mail dated 18.07.2022 is under :-

ਵਿਸ਼ਾ:-1: ਉਕਤ ਹਵਾਲਾ ਪੱਤਰ 01 02 ਅਤੇ 03, Indian Constitution Article 21 ("Protection of Life and Personal Liberty"), Transparency and Accountability under RTI Act, P.S.I.C. Chd, AC No. 1405 of 2020 dt. 03.11.2020, Honorable Punjab and Haryana High court Chd, CWP 1509 of 2013 Decision March 01, 2013 Society Act 1860, UGC, Punjabi University Patiala and Higher Education under Punjab Government ਦੀ ਲੋਅ ਵਿਚ ਸ਼੍ਰੀਮਤੀ ਕਮਲਦੀਪ ਕੌਰ ਐਡਵਾਕ ਸਹਾਇਕ ਪ੍ਰੋਫੈਸਰ, ਮਾਈ ਭਾਗੋ ਕਾਲਜ ਰੱਲਾ (ਮਾਨਸਾ) ਅਤੇ ਡਾ. ਹਸਨ ਸਰਦਾਰ, ਸਹਾਇਕ ਪ੍ਰੋਫੈਸਰ ਪੰਜਾਬੀ ਯੂਨੀਵਰਸਿਟੀ ਪਟਿਆਲਾ ਦੇ ਨਾਲ ਸਬੰਧਤ ਮੰਗੀ ਜਾਣਕਾਰੀ ਮੁਹਾਈਆ ਕਰਵਾਉਣ ਸਬੰਧੀ ਬੇਨਤੀ।

ਸ਼੍ਰੀ ਮਾਨ ਜੀ

ਉਪੋਕਤ ਹਵਾਲਾ ਪੱਤਰ 1 ਅਤੇ ਵਿਸ਼ਾ ਦੇ ਧਿਆਨ ਹਿੱਤ ਹੇਠ ਲਿਖੇ ਅਨੁਸਾਰ ਹੈ।

1 Appeal Case no: 2815 of 2021 ਰਾਹੀਂ 10 ਕਿਊਰੀਆਂ ਬਾਬਤ ਤਸਦੀਕਸ਼ੁਦਾ ਦਸਤਾਵੇਜ਼ ਦੀ ਮੰਗ ਕੀਤੀ ਹੋਈ ਹੈ ਜਿਸ ਦਾ ਸਬੰਧ ਸਿੱਧੇ ਰੂਪ ਵਿਚ ਸ਼੍ਰੀਮਤੀ ਕਮਲਦੀਪ ਕੌਰ ਐਡਵਾਕ ਸਹਾਇਕ ਪ੍ਰੋਫੈਸਰ ਦੇ ਨਿੱਜੀ ਦਫ਼ਤਰੀ (salary accounts, Income tax etc) ਅਤੇ ਬਤੌਰ ਅਧਿਆਪਨ (Appointment/Teaching Time Table/Service duties etc) 07 ਸਾਲ ਤੋਂ ਵੱਧ ਸਮੇਂ ਦੇ ਰਿਕਾਰਡ ਨਾਲ ਹੈ।

2 Appeal Case 2012 of 2022 ਰਾਹੀਂ 1 ਅਤੇ 2 ਕਿਊਰੀਆਂ ਬਾਬਤ Salary Bank Account ਵਿਚੋਂ Return Salary Transaction ਮੁਤਾਬਿਕ ਤਨਖਾਹਾਂ ਬਾਬਤ Action Taken Report with proceeding ਅਤੇ ਦਫ਼ਤਰੀ ਕਲਰਕ ਵਿਜੇ ਕੁਮਾਰ ਖਿਲਾਫ਼ ਕਾਊਨੀ ਕਾਰਵਾਈ/ ਲਏ Action, ਕਿਊਰੀ 3 ਤੋਂ ਕਿਊਰੀ 06 ਤੱਕ ਸਰਕਾਰੀ/ਸੰਵਿਧਾਨਿਕ ਨਿਯਮਾਂ ਦੇ ਧਿਆਨ ਹਿੱਤ ਸ਼੍ਰੀਮਤੀ ਕਮਲਦੀਪ ਕੌਰ ਐਡਵਾਕ ਸਹਾਇਕ ਪ੍ਰੋਫੈਸਰ ਦੇ ਨਿੱਜੀ Teaching Service record ਨਾਲ ਹੈ।

3 Appeal Case no: 4266 of 2021 ਦਾ ਸਬੰਧ ਡਾ. ਹਸਨ ਸਰਦਾਰ, ਪੰਜਾਬੀ ਯੂਨੀਵਰਸਿਟੀ ਬਾਬਾ ਜੋਗੀਪੀਰ ਨੇਬਰਹੁੱਡ ਕੈਂਪਸ ਰੱਲਾ ਜ਼ਿਲ੍ਹਾ ਮਾਨਸਾ ਨਾਲ ਹੈ ਜਿਨ੍ਹਾਂ ਦੇ ਕਾਲਜ ਵਿਖੇ ਦਫ਼ਤਰੀ ਰਿਕਾਰਡ ਨਾਲ ਛੇੜ ਛਾੜ ਅਤੇ ਪਤਨੀ ਨਾਲ ਨਾਲ ਹੋਈ ਬੇਇਨਸਾਫ਼ੀ ਬਾਬਤ ਮਸਲੇ ਨੂੰ ਦਬਾਉਣ ਹਿੱਤ ਖੁਦ ਐਮ ਡੀ ਕੁਲਦੀਪ ਸਿੰਘ ਅਤੇ ਕਾਰਜਕਾਰੀ ਪ੍ਰਿੰਸੀਪਲ ਸ਼੍ਰੀਮਤੀ ਪ੍ਰਮਿੰਦਰ ਕੁਮਾਰੀ ਮਾਈ ਭਾਗੋ ਕਾਲਜ ਰੱਲਾ ਜ਼ਿਲ੍ਹਾ ਮਾਨਸਾ ਵੱਲੋਂ ਮਿਲੀ ਭੁਗਤ ਨਾਲ ਕੀਤੀਆਂ over-confidence ਹੋ ਚੁੱਕੀਆਂ ਸ਼ਿਕਾਇਤਾਂ, ਜਿਸ ਦਾ ਸਬੰਧ Violation of CrPc Section 144 dated 29.8.2020(Saturday) Total Curfew & Weekend Lockdown as per State Punjab Government Covid Instruction ਦੇ ਨਾਲ ਵੀ ਹੈ ਬਾਬਤ Transparency and Accountability ਦੇ ਧਿਆਨ ਹਿੱਤ RTI Act ਰਾਹੀਂ ਜਾਣਕਾਰੀ ਦੀ ਮੰਗ ਕੀਤੀ ਹੋਈ ਹੈ।

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16. From the above, it thus follows that the case of CISCE is not applicable as submitted by the appellant in so much as the said respondent might be imparting education and performing public functions, however, the Government has neither substantial control over it, nor is there any substantial financing by both the Central and State Govt.

17. That it is pertinent to mention the Judgement passed by the Hon'ble Supreme Court of India in case titled as Thalappalam Service Coop. Bank Ltd. vs State of Kerala, (2013), in which it was held that :-

" BURDEN TO SHOW:

*40. The burden to show that a body is owned, controlled or substantially financed or that a non-government organization is substantially financed directly or indirectly by the funds provided by the appropriate Government is on the applicant who seeks information or the appropriate Government and can be examined by the State Information Commission or the Central Information Commission as the case may be, when the question comes up for consideration. A body or NGO is also free to establish that it is not owned, controlled or substantially financed directly or indirectly by the appropriate Government."*

The appellant has not been able to establish that the Mai Bhago Degree College, Ralla is a Public Authority as defined U/s Section 2(h) of the RTI Act, 2005.

18. Undoubtedly, the RTI Act, 2005 has been enacted for setting out the practical regime of right to information for citizens to secure access to information under the control of 'public authorities', so as to promote transparency and accountability in the working of every 'public authority'. Since the Act provides a right to information for citizens to secure information only from 'public authorities', respondent college in the instant case, not being a 'public authority' cannot be directed to supply information. If such directions are issued, the rights of private institutions/ persons would be adversely affected.

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Having said this, the Commission observes that though technically the respondent may not come under the purview of the RTI Act, 2005, yet it cannot escape the provisions of the Societies Registration Act, 1860 because it is a fact stated by the respondent that the College run by private management committee namely Punjabi Educational Society, Ralla, is registered under Societies Registration Act, 1860.

It is pertinent to quote an excerpt from the decision of Central Information Commission in Case No. CIC/CC/A/2015/001881-SA decided on 1.11.2016 :-

*"A society may not be a public authority under RTI Act, but it is a public body, by virtue of their registration, which means they cannot keep their affairs out of public. They cannot plead privacy, or refuse to give their addresses etc, if they are the governors of the society. Every person has a right to verify the claims of these society leaders examine their performance and question them. A registered society cannot claim itself to be aloof or away from the social obligations, it has entrusted to itself by their rules and registration. They have to file annual list of managing body with full details of contacting addresses (Section 4)."*

The Commission would further like to add that every authority, Public or Private, has an obligation to be transparent and accountable. Being an educational society, this responsibility increases manifold. The appellant may once again request the college authorities for her personal information and in the name of ethics, justice, equity and fair play, the college may consider, in public interest, giving personal information to an Assistant Professor, who served the college for seven years.

Order pronounced and be intimated to the parties.

Dated: 31.08.2022

Sd-  
(Suresh Arora)  
Chief Information Commissioner,  
Punjab.