Before Rajesh Bindal & B.S. Walia, JJ.

PARAMJIT SINGH—*Appellant*

versus

THE STATE INFORMATION COMMISSION AND OTHERS—*Respondents*

L.P.A. No.1136 of 2017

January 29, 2018

Right to Information Act, 2005—S.2(h)—Public Authority—Applicant seeking information from a public authority within S. 2(h) of the Act has to prove that the body falls within definition of public authority.

Held that if the working of the hospital is considered, nothing has been placed on record to show that it is a body owned or substantially financed by the appropriate Government and the control of the body is of such a degree that it amounts to control over the management and affairs of the hospital. Hence, it will not fall even within the term 'controlled' by the appropriate Government.

(Para 12)

Further held that burden to prove that the body is a 'public authority' within the meaning of Section 2(h) of the Act, from whom information can be sought under the Act, is always on the applicant who seeks information. In the case in hand, the appellant had not been able to establish this fact.

(Para 15)

Ajay Pal Singh Saini, Advocate
for the appellant.

RAJESH BINDAL, J.

(1) The order passed by the learned Single Judge dismissing the writ petition has been impugned in the present intra-court appeal. Challenge in the writ petition was to the order dated 20.7.2016 passed by the State Information Commission (for short, 'the Commission'), whereby the application filed by the appellant seeking information from B.L. Kapoor Hospital managed by Lahore Hospital Society was rejected holding that the hospital is not a public authority covered under the provisions of the Right to Information Act, 2005 (for short, 'the

Act').

(2) Briefly, the facts of the case are that the appellant filed application dated 26.7.2012 to the hospital under the Act seeking certain information. The information was refused by the hospital claiming that it does not fall within the definition of 'public authority' under the Act. Aggrieved against the same, the appellant preferred appeal before the Commission, which was allowed by the Commission vide order dated 4.6.2013 directing the hospital to furnish information to the appellant. The order was impugned by the hospital by filing CWP No. 14669 of 2013, which was disposed of on 22.4.2014, in terms of the detailed order passed in LPA No. 1174 of 2011—Punjab Cricket Association v. State Information Commission, Punjab and another, decided on 12.12.2013. The matter was remitted back to the Commission for consideration afresh. For ready reference, the directions contained therein are extracted below

> "Accordingly, while allowing the appeals, the following directions are issued:-
>
> (i) The orders passed by the State Information Commission (SIC) and the learned Single Judge in all these appeals are set aside. The matter is remanded to the SIC to decide the same afresh.
>
> (ii) The interim order shall continue till the disposal of the appeals by the SIC,
>
> (iii) All the pleas available to the appellants herein shall be allowed to be raised before the SIC. The SIC shall decide the matter afresh keeping in view the judgment of the Apex Court in ***Thalapalam Ser. Coop Bank Limited's*** case (supra) within six months from the date of receipt of a certified copy of this order.
>
> (iv) Each case shall be decided separately by referring to the facts involved therein.
>
> (v) The SIC shall not be influenced by anything which has been observed herein while deciding the matter afresh."

(3) Thereafter, the matter was considered afresh by a five-Member Bench of the Commission and vide order dated 20.7.2016, it was opined that the hospital is not a public authority under the provisions of the Act as the Government has neither substantial control

over it nor it is substantially financed by the Government. The aforesaid order passed by the Commission was challenged by filing CWP No. 22748 of 2016—Paramjit Singh v. State Information Commission, Punjab and others, which was dismissed on 4.11.2016. The order has been impugned in the present intra-court appeal.

(4) Learned counsel for the appellant, while referring to definition of 'public authority', as contained in Section 2(h) of the Act, submitted that the respondent-hospital is controlled and substantially financed by the Government, hence, covered within the definition of 'public authority'. In support of the argument, he submitted that the land, on which the hospital has been set up, was granted on lease by the State for 33 years at a very meager amount. He further submitted that regularly the State had been releasing grants to the hospital, hence, even financially supporting the same. In view of the aforesaid two factors, it would fall within the definition of 'public authority' under the provisions of the Act, hence, liable to furnish information, if sought. Another argument raised and dealt with by the learned Single Judge in the writ petition was that the respondent-hospital has been registered as charitable institution and granted exemption under the Income-tax Act, 1961.

(5) After hearing learned counsel for the appellant, we do not find any merit in the present appeal.

(6) An important fact, which deserves to be noticed is that the appellant is an ex-employee of the hospital, whose services were terminated.

(7) Relevant provisions of Section 2(h) of the Act are reproduced hereunder:

> "2. **Definitions.-** In this Act, unless the context otherwise requires,-
>
> (a) "appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly-
>
> (i) by the Central Government or the Union territory administration, the Central Government;
>
> (ii) by the State Government, the State Government;
>
> (b) to (g) xx xx xx

(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;

(i) to (n) xx xx xx"

(8) For the purpose of making out his case, learned counsel for the appellant thought to rely upon inclusion (i) in the definition of 'public authority' as contained in Section 2(h) of the Act, which reads as 'body owned, controlled or substantially financed directly or indirectly by funds provided by the appropriate Government'. The words 'appropriate Government' have been defined in Section 2(a) of the Act, which reads as under:

"2. Definitions:- In this Act, unless the context otherwise requires:-

(a) "appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly-

(i) By the Central Government or the Union territory administration, the Central Government;

(ii) By the State Government, the State Government;

xx xx xx

Body owned by the appropriate Government

(9) The term 'body owned by the appropriate Government' came

up for consideration before Hon'ble the Supreme Court in ***Thalappalam Service Cooperative Bank Limited and others*** versus ***State of Kerala and others***[1] and it has been held therein that a body owned would mean having ultimate control over the affairs of a body. Relevant para thereof is extracted below:

> "35. A body owned by the appropriate Government clearly falls under Section 2(h)(d)(i) of the Act. A body owned, means to have a good legal title to it having the ultimate control over the affairs of that body, ownership takes in its fold control, finance etc. Further discussion of this concept is unnecessary because, admittedly, the societies in question are not owned by the appropriate Government."

(10) The In the case in hand, there is no dispute that the hospital in question is not owned by the appropriate Government.

Body controlled by the appropriate Government

(11) The aforesaid term was also examined by Hon'ble the Supreme Court in Thalappalam Service Cooperative Bank Limited and others' case (supra) and while considering earlier judgments defining the term 'control', which is of a very wide connotation and amplitude, it was opined that the control must be of a substantial nature. Mere 'supervision' or 'regulation' as such by a statute or otherwise of a body would not make that body a 'public authority'. Relevant paras thereof are extracted below:

> "44. xx xx xx
>
> The powers exercised by the Registrar of Cooperative societies and others under the Cooperative Societies Act are only regulatory or supervisory in nature, which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled. The management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Cooperative Societies Act and not on the authorities under the Cooperative Societies Act.
>
> 45. We are, therefore, of the view that the word

[1] (2013) 16 SCC 82

> '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."
>
> [Emphasis supplied]

(12) If the working of the hospital is considered, nothing has been placed on record to show that it is a body owned or substantially financed by the appropriate Government and the control of the body is of such a degree that it amounts to control over the management and affairs of the hospital. Hence, it will not fall even within the term 'controlled' by the appropriate Government.

Substantially financed

(13) The words 'substantially financed' also came up for consideration in the aforesaid judgment of Hon'ble the Supreme Court and it has been opined that merely providing subsidies, grants, exemptions, privileges etc. cannot be said to be providing funding to a substantial extent, unless it is established that the body concerned practically runs only with State funding. Relevant para thereof is extracted below:

> "48. Merely providing subsidies, 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)."

(14) In the case in hand, from the income and expenditure account of the hospital for the year ending 31.3.2008, what had been pointed out was that the hospital received grant from the State to the extent of Rs.15,39,000/- on account of family planning, out of the total receipts of Rs.2,41,36,263/-, which was too meager an amount. It could not be established that in the absence of the aforesaid amount, the hospital would have closed. Hence, it cannot be opined that it is substantially financed by the appropriate Government.

(15) The burden to prove that the body is a 'public authority' within the meaning of Section 2(h) of the Act, from whom information can be sought under the Act, is always on the applicant who seeks information. In the case in hand, the appellant had not been able to establish this fact.

(16) A Division Bench of Delhi High Court in ***Union of India through the Secretary, Ministry of Law and Justice*** versus ***Subhash Chandra Aggarwal***[2] opined that office of Attorney General of India is not a 'public authority' within the meaning of Section 2(h) of the Act.

(17) For the reasons mentioned above, we do not find any merit in the present appeal. Accordingly, the same is dismissed. Consequently, the applications for condonation of delay in filing/re-filing the appeal are also dismissed.

Sanjeev Sharma, Editor

[2] 2017(237) DLT 491