

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)

Central Information Commissioner

CIC/CC/A/2014/002171

Sheoji Kumar Parak v. PIO, DAV College Managing Committee

Important Dates and time taken:

RTI: 04.09.2014	FAO: Nil	SA: 13.11.2014
Disposed of	Hearing: 10.11.2016	Decided on: 28.11.2016

Parties Present:

1. Appellant: Present.

Public authority: Mr. Vikram Singh, Asst. Law Officer, DAV CMC.

2. FACTS:

1. The appellant sought to have following information:

- Copy of advertisement issued by DAV CMC, New Delhi for appointment of PIO and FAA.
- Financial aid received by DAV trust and management society, Jharkhand etc.

2. There was no reply from the PIO and no response to First Appeal.

Decision:

3. The appellant, Mr. Sheoji Kumar Parak, is a chemistry teacher in the DAV school and was transferred from Jharkhand to Odisha in 2008; because of which the appellant sought the copy of list of seniority-wise staff members, and the copy of appointments of PIOs and FAAs from DAV College Managing Committee.

4. Mr. Vikram Singh Gutia, Assistant Law Officer of DAV CMC claims that he has joined two days before on contract, and attended hearing to represent "DAV CMC is only a society and not public authority under RTI Act". He sought

adjournment. Neither the PIO nor any other officer from DAV CMC is present. The law officer also says he does not have any instruction except asking for time and doesn't even know whether there is a PIO for this School Management. He could not answer the question about who will pay costs to the other party and costs involved in video conferencing, etc as hearing could not go on because of seeking adjournment without any basis.

5. The appellant brought to the notice of the Commission that Punjab and Haryana High Court has already declared DAV as a public authority and hence, they have a duty to appoint PIOs and FAAs.

6. The order of the Punjab and Haryana High Court in ***DAV College Trust and Management Society V. Director of Public Instruction*** [AIR 2008 P & H 117]case is as follows:

1. The short issue raised in this petition is as to whether the D.A.V. College, Sector 10, Chandigarh could be regarded as 'public authority' within the meaning of Section 2(h)(d) of the Right to Information Act, 2005 (for brevity 'the Act').

2. There are colleges with the name of D.A.V. College, Sector 10, Chandigarh, M.C.M.D.A.V. College, Sector 36, Chandigarh and a school with the name of D.A.V. Senior Secondary School, Sector 8, Chandigarh. These institutions are established by the society and are admittedly getting financial aid to the extent of 95% from the Union Territory, Chandigarh. It is claimed that grant-in-aid was initially to the extent of 95% which has come down to 45%. The grievance aired by the petitioner is that the Director of Public Instructions, U.T. Chandigarh has initiated proceedings against the petitioners under the Act whereas the petitioners do not fall within the expression 'public authority' as used in Section 2(h)(d) of the Act. It is claimed that the petitioners cannot be considered to have been receiving substantial financial aid from the government or government resources. In respect of petitioner No. 4 i.e. D.A.V. Senior Secondary School, Sector 8, Chandigarh respondent No. 2 vide order dated 10-10-2001/3-12-2007 (Annexure P/1) has already expressed its opinion that it is a 'public authority' within the meaning of Section 2(h)(d)of the Act. Members of the public had sought information from the petitioners by moving applications to the Public Information Officer. On 25-9-2007 (Annexure P.2), one Arun Aggarwal, respondent No. 5 has sought information regarding annual fee structure for various Classes/Programmes/Diplomas/Certificate courses/ Add-on courses offered by the D.A.V. College, Sector 10, Chandigarh along with many other informations. Likewise, on 26-9-2007 (Annexure P.3), one Shri Avanindra Chopra, respondent No. 6, has requested for supply of information concerning advertisement / notices issued by the D. A. V. College, Sector 10, Chandigarh in respect of college admissions for the session 2007-08. One Sat Pal Kharwal, respondent No. 7 on 26-2-2007 (Annexure P.4) had also requested for supply of some information. However, the petitioners, in their reply sent to respondent No. 5 has taken the stand that the Act does not apply to their institution as it is not a 'public authority'. Respondent No. 1 on 10-9-2007 advised the petitioner to comply with the provisions of the Act as the petitioner is getting 95% grant-in-aid from the

Chandigarh Administration. The view of respondent No. 1 is expressed in the following terms:

In view of the above provisions, it is clear that the DAV College, Chandigarh being an Aided College getting 95% grant-in-aid from the Chandigarh Administration is controlled and substantially financed by the Government and as such the college authorities are bound to comply with the provisions of the Act.

We operate in an era of transparency and accountability and it is expected that all our decision must stand the test of public scrutiny. Issues relating to annual fee structure for various courses, leave encashment, contributory provided fund deductions etc. are not covered by the provisions of Section 8 of the Act which provides exemption from disclosure of information.

Even otherwise, the annual fee structure, being an integral part of the Prospectus, is open to all and it would be improper to withhold information on the same.

3. Similar directions have been issued by the Central Public Information Officer, office of respondent No. 1 to the petitioners for furnishing information to respondent Nos. 5, 6 and 7 (Annexures P. 8 to P. 10).

4. We have heard the learned Counsel at a considerable length and find that the petitioners are covered by the expression 'public authority' as used by Section 2(h)(d) of the Act. The afore-mentioned provision is reproduced hereunder for facility of reference:

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

(h) "public authority" means any authority or body or institutions of self-government established or constituted. -

(a) to (c) xx xx xx

(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.

5. A perusal of the definition of 'public authority' shows that 'public authority' would mean any authority or body or institution established or constituted apart from other things by the notification issued by an order made by the appropriate Government. It is to include even anybody owned, controlled, or substantially financed or non-Government Organization substantially financed directly or indirectly by the funds provided by the appropriate Government. It is undisputed that the petitioners are receiving substantially grant-in-aid from the Chandigarh Administration. Once a body is substantially financed by the Government, the functions of such body partake the character of public authority'. The definition of expression 'public authority' itself shows that 'public authority' would include any organization body owned, controlled, or substantially financed directly or indirectly by funds provided by the Government or even the non-government organization which is substantially financed. The petitioner has claimed that they are getting only 45% grant-in-aid after admitting that initially the grant-in-aid paid to them was to the extent of 95%. If on account of policy of the Government the grant-in-aid to the extent of 95% which was given initially allowing the petitioner to build up its own infrastructure and reducing the grant-in-aid later would not result into an argument that no substantial grant-in-aid is received and therefore it could not be regarded as 'public authority'. Therefore, we do not find

any substance in the stance taken by the petitioner that it is not a 'public authority'.

6. There is another aspect of the matter. In another context, a Five-Judges Full Bench of this Court in the case of *Ravneet Kaur v. The Christian Medical College, Ludhiana* has considered the question as to whether the functions discharged by a private body like Dayanand Medical College, Ludhiana or Christian Medical College, Ludhiana are public functions or private functions. The Full Bench has taken a view that since the institutions discharge public functions, it cannot be regarded as a private individual limiting the powers of the Court in issuance of directions including prerogative writs. It has further been held that imparting of education is a public function irrespective of any financial aid. Once the institutions like the petitioners are performing public functions affecting the life of a huge segment of the society and in addition are receiving substantial grant-in-aid then it cannot be argued that it is not a 'public authority'. Therefore, for the additional reason, detailed in *Ravneet Kaur's* case (*supra*), the writ petition would not survive and the question posed has to be answered against the petitioners. No other argument has been advanced.

7. For the reasons aforementioned this petition fails and the same is dismissed.

7. The above judgment confirms that the DAV is a public authority. After perusal of records and hearing, the Commission notices huge delay in responding to the RTI request pending since 2014, and the request for adjournment is without any basis, hence it is rejected. As per the RTI Act, either the PIO or an officer of that rank should represent the public authority. This responsibility cannot be abdicated by appointing a council. In this case the law officer has no knowledge about the case and except asking for a 'date', he could not be of any assistance to the Commission. This amounts to disrespect towards the RTI Act and also to the Commission. The public authority, their PIO and lawyer should understand that the second appeal under RTI Act is not routine adversarial court litigation; it is a review of decision of PIO not to disclose, in a quasi-judicial manner. A responsible public authority, its PIO or a council is not expected to avoid hearing like this by seeking next date.

8. The Commission directs Mr. Punam Suri, President of DAV, CMC to file an affidavit explaining about non-implementation of the High Court Order and reasons for deputing a Law Officer without instructions and information, and not sending the PIO or any other responsible officer of same rank. The Commission also directs Mr. Punam Suri, considering him as deemed PIO, to show cause why maximum penalty should not be imposed against him for not complying with the High Court Order to appoint PIO, for disrespecting the RTI and the Commission

by not deputing the PIO or any other officer of same rank, and for delaying the information, within 21 days from the date of receipt of this order.

9. The Commission requires under section 19 (8) (a) (ii) the respondent authority to appoint a PIO and make necessary arrangements to provide information to the appellants under RTI Act, including furnishing of point-wise information to this appellant, before 23.12.2016. Disposed of.

SD/-

(M. Sridhar Acharyulu)
Central Information Commissioner

Authenticated true copy

(Dinesh Kumar)
Deputy Registrar

Copy of decision given to the parties free of cost.

Addresses of the parties:

1. The President,
DAV College Managing Committee,
Chitra Gupta Road,
New Delhi, Delhi-110055.
2. Shri Sheoji Kumar Parak,
Mohalla-Telbhiga Rang, Bahadur Road,
Near Murli Hill, PO-Rly Station,
Dist. Gaya-823002.