

Bombay High Court

Adiwasi Vividha Karyakari ... vs State Information Commissioner ... on 4 January, 2019

Bench: Manish Pitale

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WP2481

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.2481 of 2016

(Adiwasi Vividha Karyakari Sahakari Sanstha Ltd. And another .vs. State Information Commissioner, State Information Commission, M.S. Nagpur and another.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. A.P. Thakare, Advocate for Petitioners.

CORAM : Manish Pitale, J.

DATED : January 04, 2019.

By this writ petition, the petitioners have challenged orders dated 20.12.2014 and 30.07.2015 passed by the respondent no.1- State Information Commissioner.

2. The respondent no.2 had filed an application under the provisions of the Right to Information Act, 2005 before the petitioner no.1 Sanstha, which is a society registered under the provisions of the Maharashtra Cooperative Societies Act, 1960, of which the petitioner no.2 is the Secretary. The respondent no.2 sought information from the petitioners in respect of gas connection on the basis that the petitioner no.1 Society was a Sub-dealer of one Pushparaj Gas Agency.

3. It was the case of the respondent no.2 that the petitioners failed to supply information under the provisions of the said Act and that, therefore, they were liable for consequential orders under the said Act.

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4. As the petitioners did not supply information, the respondent no.2 had filed an appeal before the respondent no.1-State Information Commissioner, praying for appropriate orders against them. By impugned order dated 20.12.2014, the respondent no.1 allowed the appeal directing the petitioners to supply information as sought by respondent no.2 within a period of 15 days and further the respondent no.1 asked for an explanation from the petitioners as to why action should not be taken against them under Section 20 (1) of the Right to Information Act, 2005.

5. By impugned order dated 30.07.2015, the respondent no.1 allowed the complaint filed by respondent no.2 on the ground that the petitioners had failed to supply the information despite earlier order dated 20.12.2014. The respondent no.1 directed the petitioners to pay amount of Rs.10,000/- to respondent no.2 towards physical and mental harassment and further held the petitioners liable to pay amount of Rs.25,000/- under Section 20(1) of the Right to Information Act, 2005, as they had failed to give the necessary information after expiry of period of more than 1 ½ years.

6. The petitioners have filed the present writ petition challenging the aforesaid two impugned orders. On 28.04.2016, while issuing notice and granting ad interim stay in favour of the petitioners, this Court observed that the primary argument raised on behalf of 3 WP2481-16.odt the petitioner was that the petitioner no.1 was not covered under the definition of "public authority" under Section 2(h) of the Right to Information Act, 2005.

7. The respondents were served with notice issued by this Court but they have chosen not to appear and oppose the writ petition. Hence the writ petition is taken up for final disposal.

8. As noted above, the principal contention raised on behalf of the petitioner is that the petitioner no.1 is not covered under the definition of "public authority" given in Section 2(h) of the said Act. According to the petitioners, since the petitioner no.1 is only a society registered under the Maharashtra Cooperative Societies Act, 1960 and its primary objective is to provide loans to its members who are farmers, there is no manner in which it can be said to be a "public authority". It is submitted on behalf of the petitioners that the petitioner no.1 society has been working as a sub-dealer of one Pushparaj Gas Agency, Chandrapur for distribution of gas cylinders and that it has no concern with the information sought by the respondent no.2 in respect of his grievance pertaining to consumer card, with which only the gas company or the Pushparaj Gas Agency would be concerned. On this basis, it was submitted that the very initiation of proceedings by respondent no.2 under the provisions of the said Act was misplaced and consequently the impugned orders have been passed by the respondent no.1 without any jurisdiction.

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9. A perusal of the definition of Public Authority under the said Act shows that Section 2(h) of the said Act defines the same, which reads as follows:-

"2(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 organisation substantially financed, directly or

indirectly by funds provided by the appropriate Government."

10. A bare perusal of the aforesaid definition clearly shows that for a body to be included in the definition of public authority, it has to be substantially financed and controlled by the Government or that it should be an institution of self-government established under the Constitution, Parliament or State Legislature. Since the petitioner no.1 in the present case does not fall within any of the aforesaid categories, the petitioners are justified in contending that the impugned orders passed by the respondent no.1 in the present case were without jurisdiction.

11. In this context, the learned counsel appearing for the petitioners is justified in relying upon the 5 WP2481-16.odt judgment of this Court in the case of Dr. Panjabrao Deshmukh Urban Co-operative Bank Ltd. .vs. the State Information Commissioner and ors. (Writ Petition No. 5666 of 2007 decided on 13.01.2009). In paragraph 9 of the said judgment, it has been held as follows:-

"9. In the present case, admittedly, the share capital of the petitioner bank was not provided by the Government nor it is getting any financial assistance by the Government. No director of the petitioner-Bank is appointed by the Government nor the Government has any direct control or interference in functioning and management of the Bank. There are number of Co-operative banks/societies in the State of Maharashtra and they are Registered under the Maharashtra Co-operatives Societies Act. Admittedly, the petitioner- Bank does not have any monopoly nor it has any State protection. As stated in Shamrao Vithal Co-op. Bank v. Padubidri (supra), the Co-operative bank is not discharging any governmental function and the functions of the bank can be carried out by any private individual or by institution registered under the appropriate law. Admittedly, the petitioner-Bank was also not originally government department which was reregistered as Bank. In the present case, there is nothing to show that the State exercises any direct or indirect control over the affairs of the Bank for deep and pervasive control on the basis of which it can be said that the, petitioner-bank is 'State' or 'public authority'. As pointed out earlier in the present matter we have to find out whether the petitioner- Bank is controlled by the government, if 'yes', it will be 'public authority', and. if 'no', it will not be 'public authority' 6 WP2481-16.odt because none of the other requirements to make a institution a 'public authority' are available in the present case, 'Control' does not mean 'regulatory or statutory control'. In the case of Ajay Hasia v. Khalid Mujib Sehravardi reported in AIR 1981 SC 487 three Judges Bench of the Supreme Court had laid down the law and it was reiterated by the Constitution Bench of the Supreme Court in the case of Pradeep Kumar Biswas v. Indian Institute of Chemical Biology:-

[2002]5 SCC 111 and the observations of the Supreme Court in Pradeep Kumar v. Indian Institute were reiterated in the case of S.S. Rana v. Registrar, Co-op. Societies, as quoted above. Thus, it is clear that the control must be particular to the body in question and it must be deep and pervasive. If this is found then such body is 'State' within the meaning of Article 12 of the Constitution of India or a 'public authority' within the meaning of Section 2(h) of the Right to Information Act. When the control is merely regulatory; whether under statute or otherwise, it would not serve to make the body a 'State' or 'public authority'. In view of the Full Bench authority of this Court in the case of S.V. Coop. Bank v. Padubidri and in view of law laid down by the Supreme Court in several authorities, it is clear that, in absence of existence of deep and pervasive control with reference to the institution, it cannot be called a 'State' or 'public authority' within the meaning of the Right to Information Act."

12. Applying the aforesaid position of law to the facts of the present case, it becomes clear that the respondent no.1 misdirected itself in entertaining the appeal filed by the respondent no.2 and in passing the 7 WP2481-16.odt impugned orders dated 20.12.2014 and 30.07.2015 because the said orders were clearly without jurisdiction in view of the fact that the petitioner no.1 is not covered under the definition of "public authority" under Section 2(h) of the said Act.

13. In the light of the above, the present writ petition is allowed. The impugned orders dated 20.12.2014 and 30.07.2015 passed by the respondent no.1 State Information Commissioner are quashed and set aside.

JUDGE halwai