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In the State Information Commission Kerala at Thiruvananthapuram
Present

The Honourable Mr. Commissioner Somanathan Pillai S.

Thursday, the 12th Day of October 2020

C.P. No. 190(3) of 2020

(File No. 2924/SIC-G1/2020)

Appellant :

✓ Sri. Shaji K. K.,
Kaithavalappil Veedu,
Aroor P. O.,
Cherthala, Alappuzha - 688 534.

Respondents:

- ✓ (1) The State Public Information Officer,
GHSS For Girls, Ernakulam - 682 016.
✓ (2) The State Public Information Officer,
O/o. The Regional Deputy Director of HSE,
South P. O., Ernakulam - 682 016.

Date of application u/s 6(1)	25.11.2019
Date of reply from the SPIO	06.01.2020
Date of filing complaint	19.02.2020
Date of receipt of complaint	24.02.2020

ORDER

This Complaint Petition, filed under Sec.18 of the Right to Information Act, 2005, herein after referred to as RTI Act, is against non-receipt of information about the functioning of Parent Teacher Association (PTA) of Government Girls Higher Secondary School, Ernakulam, as asked by the complainant through RTI application submitted to the State Public Information Officer (SPIO) in the office of the Regional Deputy Director of Higher Secondary Education, Ernakulam.

o.e.

2) The issue to be decided in this complaint petition is whether a PTA will fall within the definition of 'Public Authority' as defined under Sec.2(h) of the RTI Act, and be bound by the obligations to provide information sought for by a citizen under the said act.

3) The object of the RTI Act is to provide for citizens, access to information under the control of Public Authorities and to promote transparency and accountability in the working of every public authority. This objective is engraved in the opening sentence of the preamble of RTI Act which starts as follows:

"An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities,....."

It is thus a statutory fact that information under the control of public authorities alone, and only from Public Authorities can be accessed through RTI Act.

4) Now let me see whether PTA falls under the definition of Public Authority as defined under Sec.2(h) of the RTI Act. The expression 'Public Authority' as defined under Sec.2(h) of the RTI Act is as follows:

(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;

5) An organization that fit into any of the clauses or sub-clauses of Sec.2(h), as defined above, can only be classified as a public authority for the purpose of RTI Act, and only such organizations come under the ambit of the said Act.

6) PTAs have been organized in schools as per the instructions contained in Government Orders G.O.(P) No. 138/69/Edn. Dt. 31.03.1969, subsequently amended vide G.O.(P) No. 178/81/G.Edn. Dt. 13.10.1981, G.O.(MS) No. 126/2007/G.Edn. Dt. 25.06.2007, G.O.(MS) No. 190/2016/G.Edn. Dt. 16.11.2016 and circulars issued by Director of Public Instructions vide H1-72607/85 dt. 07.04.1985 and H1-51568/98 Dt. 18.08.1998. On a perusal of all these Government Orders and circulars, it is seen that they are all guidelines issued from time to time for the organization and smooth functioning of PTAs. None of the above Government Orders or circulars have created a PTA, or rather not even a single PTA has ever been created through a Government Order. They all profess the benefit to be derived out of a close co-operation of parents of pupils studying in schools with the teachers for improving the physical as well as mental environment in school campus for the ultimate benefit of the students.

7) Under the sub heading 'Administration' in the Government Order G.O.(P) No.138/69/Edn. Dt. 31.06.1969 mentioned in the previous Para the guide lines states interalia as follows:

- "i) the association will elect from among its members, office bearers like president, vice president, treasurer etc.
- ii) the headmaster of the school will be the convener cum treasurer of the association;
- iii) an executive committee will be constituted electing members from among the members of the association;

iv) the executive committee will plan, execute and evaluate the program of association;

v)

vi)

vii) the number of representatives of parents in the executive committee will be at least one more than the number of the representatives of teachers."

Under the heading "By-laws of school associations" the guideline given is that 'the Parent -Teacher Association of a school will frame and accept its own by-laws consistant with this instrument of instructions.....'. Regarding the financing of the association the guidelines states that the funds of the association shall consist of membership fee and donation from members.

Regarding the membership of the association the guideline states that parents of the pupils on the rolls of the school and teachers on the staff of the school shall become the members of the association.

8) Now it is imperative to examine critically the constitution, administration, control and source of financing of the PTAs to see whether any of these parameters fit into any of the clauses of Sec.2(h) of the RTI Act viz: an authority or body or institution of self Government established by or under the Constitution, or by a law made by the Parliament or State Legislature, or by a notification issued or made by the appropriate government, and includes anybody owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate government, or non-government organizations substantially financed, directly or indirectly by funds provided by the appropriate government. It is relevant to take here into consideration the opinion expressed by the Hon'ble Supreme Court in Thalappalam Service Co-Operative Bank ltd. & Ors. V. State of Kerala & Ors., that

“Legislature, in its wisdom, while defining the expression “public authority” under Sec. 2(h), intended to embrace only those categories, which are specifically included, unless the context of the Act otherwise requires”.

PTAs admittedly, do not fall in the above mentioned first four categories as none of them is either a body or institutions of the self government, established or constituted under the constitution, by a law made by the Parliament, by a law made by the State Legislature or by way of a notification issued by the government. Let me now examine whether the PTAs fall in the other categories mentioned in 2(h) ie. a body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate government or non-government organizations substantially financed directly or indirectly by funds provided by the appropriate government, which is the state Government.

9) Admittedly, PTAs are not owned by the state Government. Hence no further discussion is needed on that aspect. Then comes the need to test whether the State Government exercise any control in the meaning of the term ‘control’ as used in 2(h)(d)(i). The term ‘control’ or ‘controlled’ has not been defined in the RTI Act. But several High Courts and the Hon’ble Supreme Court have on several occasions gave meaning to that term as figures in Sec.2(h)(d)(i). They all were of the nature that the term ‘control’ is to be used synonymous with superintendence, management or authority to direct, restrict or regulate by a superior authority in exercise of its supervisory power. In Thalappalam case the Hon’ble Supreme Court has held that “..... 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 Sec.2(h)(d)(i) of the RTI Act”. The control exercised by the government or its officers on the functioning of PTAs, as contained in the G.O.s and circulars mentioned supra, are mere guidelines intended to regulate the smooth functioning of the PTAs. The

actual control of PTAs vest with the executive committee which is an elected body with its president and majority of members elected from among the parents as guided in the GOs. Thus the test to find meaning for the term 'control' as figures in Sec.2(h)(d)(i) with respect PTAs fail to embrace it within the ambit of the public authority as defined under Sec. 2(h) of the act.

10) For testing the term "substantial financing" also I would like to rely on the deliberation of the Hon'ble Supreme Court in Thalappalam case. Why I rely more on the judgement in Thalappalam case is that, it is the classic case in which the term 'public authority' as defined under Sec. 2(h) of the RTI Act has been deliberated thread bare. The apex court held that "mere providing subsidiaries, grant, exemptions, privileges etc. as such, cannot be said to be providing funding to a substantial extend, 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". For PTAs, the source of its financing is Membership fee and donations from members. No evidence is available to show that PTA have been funded by the Government, and even if by any indirect means, it is not of any substantial degree to place it on the table of section 2(h)(d)(i) of the RTI Act. In this aspect also PTAs fails to get the status of a Public Authority as defined under Sec.2(h) of the RTI Act.

11) Regarding the position of PTA with respect to the requirements of Section 2(h)(d)(ii) - non - Government Organization substantially financed, directly or indirectly by funds provided by the appropriate Government, it can be treated as a Non-Governmental Organization, no doubt. But it is not getting any financial assistance from the State Government, either directly or indirectly. It functions with the funds generated solely from its members. Such an organization cannot be treated as an NGO as defined under Sec.2(h)(d)(ii) of the RTI Act.

12) Summing up the deliberations made above, PTAs are formed in educational institutions following the guidelines issued by the government and Director of Public Instructions. The members of the PTAs are parents of students on the roll and teachers in the staff of that educational institution. They elect their own president and executive committee for the administration and control of its affairs. The president and majority of members of the executive committee are invariably from the parent community. The funds required for the functioning of the PTA are sourced from among its members. The control of the affairs of the PTA is exercised by the executive committee through its president. The State Government or any of its officials neither exercise any substantial control nor extends financing of any substantial nature, either directly or indirectly on and for the functioning of PTA. Such an organization cannot be considered as falling within the definition of Public Authority as defined under Sec. 2(h) of the RTI Act and cannot be embraced within the ambit of the Right to Information Act of 2005. I order accordingly.

Dated this, the 12th day of October, 2020.

(Sd/-)

S. Somanathan Pillai
State Information Commissioner



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Joint Secretary

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