

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

ITANAGAR BENCH

WP(C) NO. 347 (AP)/2014

**The Indira Gandhi Technological and Medical
Sciences University,**

Represented by Assistant Registrar of the
Indira Gandhi Technological and Medical Sciences
University, Ziro, PO- & PS-Ziro,
District-Lower Subansiri, (A.P).

.....**Petitioner.**

By Advocates:

Mr. HR Obing,

Mr. D. Gumbo

Mr. N. Kago.

Mr. A.K Roy

-Versus-

1. **The State Information Commissioner,**
Arunachal Pradesh Information Commission,
Hotel Bomdila, Gohpur Road, Itanagar,
Arunachal Pradesh.
2. **Dr. Nani Bath,**
Rajiv Gandhi University,
Department of Political Science,
Rono Hill, PO-Doimukh (A.P)

.....**Respondents.**

By Advocates:

Mr. R. Saikia, S/C for State Information Commission.

Mr. T.T. Tara, for Resp. No.2.

WP(C) 347 (AP)/2014

BEFORE
THE HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN

Date of hearing : 27-05-2015 & 01-06-2015

Date of Judgment & Order: 04-06-2015

JUDGMENT & ORDER (CAV)

This petition under Article 226 of the Constitution of India has been moved by the petitioner praying for setting aside and quashing the order dated 28-08-2014 passed by the learned State Information Commission, Itanagar in Case No. APIC-41/2014, whereby the Commission declared the Indira Gandhi Technological and Medical Sciences University, Ziro, as a Public Authority and falls under the ambit of RTI Act, 2005.

2. The fact of the case, in brief, is that the respondent No.2, namely, Dr. Nani Bath, Department of Political Science, Rajiv Gandhi University, Rono Hill, Doimukh filed an application to the Registrar of the petitioner's University seeking certain information and documents under the RTI Act. The Registrar of the petitioner's University verbally informed the respondent No.2 that the Indira Gandhi Technological and Medical Sciences University being a private university do not come under the ambit of the RTI Act, 2005, for which, the documents sought for by the respondent No.2 cannot be furnished to him under the said Act.

3. Being aggrieved with the verbal information with regard to non furnishing of the documents, the respondent No.2 has approached the State Information Commissioner i.e. respondent No.1 by filing a petition in the form of an appeal, which was registered as State Information Commission Case No.

WP(C) 347 (AP)/2014

Page 2 of 12

APIC-41/2014. The learned Member of the State Information Commission after hearing both the parties, disposed of the said appeal petition vide order dated 28-08-2014 holding that the petitioner's University is a public authority and falls under the ambit of the RTI Act, 2005 and also directed the Registrar of the said University to provide/furnish all the information as sought for by the respondent No.2. Being aggrieved with the said decision of the State Information Commission, the petitioner has preferred this writ petition praying for setting aside the said decision as stated earlier.

4. I have heard Mr. A.K. Roy, learned counsels for the petitioner. Also heard Mr. R. Saikia, learned Standing Counsel for the State Election Commission/respondent No.1 and Mr. T.T. Tara, learned counsel appearing on behalf of the respondent No.2.

5. The learned counsel for the petitioner, Mr. A.K Roy, has submitted that the Indira Gandhi Technological and Medical Sciences University is a private University established under the Act No. 6 of 2012 by the Arunachal Pradesh Legislative Assembly for providing vocational, professional including technological and medical education facilities. The said University is a private university, which is run by the World Institution Building Programme and the same is a Non- Government Organization (NGO). The said organization has established the petitioner's university by funding support from their own to run the university including all infrastructure of the university. It has also been submitted by the learned counsel for the petitioner that the university has not received or taken any grant or financial aid from the Government under sub-section 5 of the Clause 22 of the Schedule of the Indira Gandhi Technological and Medical Sciences University Act, 2012.

6. The learned counsel for the petitioner, in support of Section 15 of the Act of 2012, has submitted that the said Act only states about the structure but the Government has no any control over the management, finance and/or education of the University. Only two representatives of the Government of Arunachal Pradesh have been nominated as members of the University and the rest of the members are from the World Institution Building Programme. The University is a fully private organization and has discretion in all respect of finance like; salaries, fees structure, investment and admission etc., neither substantially financed nor it was owned and controlled by the State Government, which cannot be termed as a public authority. Thus, the main contention of the petitioner is that it is not a public authority coming within the definition clause under Section 2(h)(d) of the aforesaid Act. According to them, the University is neither a Govt. Institution nor an Instrumentality of the State, which can be brought within the purview of the right to information Act, as per the preamble of the Act no private Organization/Institution would be amenable to the jurisdiction of the Commission.

7. Mr. R. Saikia, learned Standing Counsel for the State Information Commission, has submitted that the Commission has rightly decided the matter and passed the order dated **28-08-2014** on the ground that the University having two representatives from the Govt. of Arunachal Pradesh as Members in the Governing Body/Council, Executive Committee and Finance Committee, which can be treated as a public authority under the ambit of the RTI Act of 2005. The learned counsel for the petitioner has relied upon a decision made by Hon'ble High Court of Punjab and **Haryana in Civil Writ Petition No.1509/2013, Chandigarh University, Village Gharun Vs. State of Punjab and Others**, wherein, the question for consideration in the said writ petition was whether the petitioner Chandigarh University is a public authority within the meaning of the section 2(h) of the RTI Act and it was answered that **"once it shown that a body has been constituted by an enactment of**
WP(C) 347 (AP)/2014

the State Legislature, then, nothing more need to be shown to demonstrate that such a body is a "public authority" within the meaning of Section 2(h) (c) of the RTI Act".

8. It has been urged that the matter in hand squarely covered by the decision rendered by the aforesaid case laws, as admittedly Petitioner University is a body established by law made by the State Legislature.

9. By filing the affidavit-in-opposition, on behalf of the respondent No.2, the learned counsel for the respondent No.2, Mr. T.T. Tara, submits that the oral intimation or communication to the respondent No.2 by the authority of the petitioner's university is wrong as per RTI Act of 2005 as they have admitted that the said University is a University established under the Act No.6 of 2012 enacted by the Legislative Assembly of the State of Arunachal Pradesh, although, the State Government is not a competent authority to establish a University, whether public or private but after establishment of the University by the enactment of the State Legislature, whether it be a public or private, it is the State Government who look after the affairs of the University directly or indirectly.

10. Mr. Tara, learned counsel representing the respondent No.2 further submits that there are representatives of the State Government in the GTMSU and is being run by the NGO in the name of the World Institution Building Programme. A private body or an agency enacted by the Act of the Legislature of the State falls within the definition of the State under Article 12 and 13 of the Constitution of India. As per 22(5) of the Schedule of the Indira Gandhi Technological and Medical Sciences University Act, 2012, , the University shall be a self-financed as it shall not be entitled to receive any grant or other financial assistance from the Government, but the University received substantial financial grants from the State Government which amounting to Rs.50.00 lakhs under SPA 2010-11 for construction of boundary wall of the

WP(C) 347 (AP)/2014

University, implemented by the Water Resources Division, Ziro under the State of Arunachal Pradesh, which defines as a public authority and falls under the ambit of the RTI Act of 2005.

11. It is further stated in the affidavit-in-opposition of the respondent No.2 that as per Section 2(f) of the University Grant Commission Act, 1956 defines "University" as one established or incorporated by or under a Central Act, Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with regulations made in this behalf under the Act. The petitioner rightly stated that there is a violation of his fundamental rights, as the petitioner while filing this writ petition has clearly admitted that the said university is within the meaning of the State. Hence, the contention of the petitioner is devoid of any merit and liable to be dismissed.

12. The term "Public Authority" under 2(h) of Chapter-1 of the RTI Act, 2005, which reads as under:-

"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;

(i) "record" includes-

- (i) any document, manuscript and file;*
- (ii) any microfilm, microfiche and facsimile copy of a document;*
- (iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and*
- (iv) any other material produced by a computer or any other device;”*

13. Now, it is an admitted position that the petitioner’s university was established under the law made by the State Legislature, which was published in the Arunachal Pradesh Gazette dated 30-05-2012, and as per Act No.6 of 2012 and accordingly, as has been held by the **Pubjab and Haryana High Court in Chandigarh University** (supra), it can be held that the petitioner’s university will come within the purview of 2(h) © of the RTI Act.

14. The Hon,ble High Court of Madras while dealing with similar aspect, has discussed various aspects of such matter, reported in **2013 (6) MLJ 669, Manu T.N. 2010/2013**, the Madras High court has observed as below:-

“.....imparting education is now recognized as a public duty taken up by private institution duly recognized by the competent authorities either under the Statute or Govt. orders issued from time to time, till a suitable Legislation is made. Article 162 of the Constitution of India deals with the Executive Power of the State. Executive Function of the State comprises of both determination of the policy and implementation of the same by issuing appropriate Government orders. Even if there is no enactment covering a particular aspect, the Government can carry on the administration by issuing administrative

directions and instructions, until the legislature makes a law in that behalf. The State Government can act in relation to any matter with respect to which the State legislature has power to make rules even if there is no legislation to support the executive action.

Though the internal administration of the College vests with its Management, regarding enforcement of discipline, dress code, etc. but the Institution has to scrupulously follow the admission guidelines, as prescribed by the Government and the Director of Technical Education, Chennai from time to time.

It is also well settled that private educational institutions supplement the functions performed by the institutions established by the Government in imparting education. It is no more an independent activity. It is an activity supplemental to the principle activity carried on by the State. No private educational institution can survive or subsist without recognition and/or affiliation. The bodies which grant recognition and/or affiliation are the authorities of the government or a body constituted under an enactment.

..... The words "body owned", "controlled" or substantially financed" have not been defined under the Act or the rules framed thereunder and that public authority includes a non government organization substantially financed, directly or indirectly by funds provided by the appropriate government. The terms "substantial" employed in Section 2(h) of the Act has come up for consideration before this Court in Tamil Nadu Road Development Company Limited represented by its Director-in-charge, Chennai Vs.

Talimnadu Information Commission, reported in (2008) 8 MLJ 17, wherein, the Court held as follows:-

The word "substantial" is not defined in the Act. For the word "substantial" it is not possible to lay down any clear and specific definition. It must be a relative one, however, "substantial" means real or actual as opposed to trivial. "Substantial" also means practicable or as far as possible, hence the word "substantial" not to be construed as higher percentage of the estimated amount or otherwise."

15. The Hon'ble Madras High Court in the case of the Registrar, **Thiyagarajar College of Engineering Vs. The Registrar, Tamil Nadu Information Commission and Mr. T.K. Ravindranath**, in **WP No. 1253 of 2010**, it has been held as follows:-

"(19). Analyzing the RTI Act with the aforesaid in mind, it can be seen that the provision in section 3 thereof that subject to the provisions of that Act, all citizens shall have the right to information, is the legislative recognition of the constitutional right of every citizen to information, including the right to access information. The provisions in the RTI Act, subject to which the citizen could enjoy the right to information, are laws amounting to restrictions made by the Parliament on the right to information and the right to access information, and therefore, restrictions on the freedom of speech the legitimacy of any such restriction has to answer the constitutional touchstones.

(28). In the light of the above, this Court is not inclined to accept the submission of the learned Senior Counsel for the petitioner that the Colleges is not substantially financed to come within the purview of the Act. In a given case, if the college denies admission to a meritorious student, for any reason, and if the College denies to part with the information for such denial, citing that it is not a public authority, then, such meritorious student, cannot be compelled to

approach the Court of law, bereft of any fact, as to why, the admission was denied.

(30). Once public money is paid to the College for the purpose of imparting education and when public policies towards implementation of achieving social justice is sought to be enforced in any educational institution, by the State, then it is incumbent on the education authorities to implement the same and that no college can be permitted to take a defence that it does not come within the purview of the Act, and that the public information Officer cannot issue any direction to the College to disclose any information to the applicant. Such a stand would be defeat the very purpose and object of the Act."

16. Adverting to the present case, it flows from the pleadings that the representatives of the State Government are in the Governing Council of the Executive Committee and the Finance Committee of the Indira Gandhi Technological and Medical Sciences University. From the annexure-2 (series) annexed in the affidavit-in-opposition filed by the respondent No.2, it has been indicated that the financial assistance with regard to boundary wall/fencing of the Indira Gandhi Technological and Medical Sciences University and by the annexure-3, providing for allotment of room at the District Hospital Ziro vide order dated 12-09-2012, indicated directly or indirectly financial assistance provided by the State to the Indira Gandhi Technological and Medical Sciences University and the Management Committee is guided and assisted by the Govt. Members, while implementing policy matter. A private University cannot run at his own wisdom, while imparting education, by flouting Govt. Rules & Procedure applicable to the State.

17. The Hon'ble Apex Court in the case of **Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd.**, reported in **(1987) 1 SCC 424**, it has been observed a wider definition would have to be assigned to the expression "Public Authority" rather than a restrictive one, noted the

importance of the context in which every word is used in the matter of interpretation of statutes and held in the following terms:-

" That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, cause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

18. As per the provision under 2(h) of Chapter-1 of the RTI Act, 2005, the expression "public authority" in the later part of Section 2(h) i.e. body owned, controlled or substantially financed; non-government Organization substantially financed, directly or indirectly by funds provided by the appropriate Government. The petitioner's University has been established under the Act No.6 of 2012 enacted by the Legislative Assembly of the State of Arunachal Pradesh and published in the Arunachal Pradesh Gazette (Extraordinary) No.99 Vol. XIX dated 30-05-2012, which demonstrate that such a body/University falls under the public authority within the meaning of Section 2(h) (c) of the RTI Act.

19. Having regard to the observations made in the aforementioned case laws and the aims and object of RTI, it can be held that the RTI Act, 2005 intends to achieve access to information to all concerned and to provide an

effective frame work for enforcing the right to information recognized under Article 19 of the Constitution of India. The contention of the petitioner's University that it is a private body, which does not fall under the public authority, is without any substance and cannot be accepted.

20. Accordingly, in my considered opinion, nothing illegality or infirmity has been found in passing the impugned order dated 28-08-2014 passed by the learned State Information Commission, Itanagar in Case No. APIC-41/2014 holding that the Indira Gandhi Technological and Medical Sciences University, Ziro, falls under the ambit of RTI Act, 2005 within the meaning of 'Public Authority'.

21. In view of the above, this writ petition deserves to be dismissed and accordingly, the same is dismissed. There shall be no order as to costs.

JUDGE

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