

IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P(C) No.11434/2006

19.07.2006

Date of decision : July 19, 2006

ELECTRONICS and COMPUTER SOFTWARE
EXPORT PROMOTION COUNCIL PETITIONER
Through: Mr.Sudhansu Batra, Advocate

Versus

CENTRAL INFORMATION COMMISSION RESPONDENTS.
and ORS
Through: Mr.S.K. Dubey, Advocate

CORAM :-
HON'BLE MR. JUSTICE ANIL KUMAR

1. Whether reporters of Local papers may be allowed YES to see the judgment?
2. To be referred to the reporter or not ? NO
3. Whether the judgment should be reported NO in the Digest?

ANIL KUMAR, J. (Oral)

Respondent No.2, Mrs. Navneet Kaur, sought all documents and records of Sexual Harassment Complaint Committee against two officials. On her application a clarification was sought from the Department of Personnel whether a copy of the report of the Committee could be furnished to respondent No.2 before the disposal of the same by the Disciplinary Authority. On the advice of the Department, the matter was referred to the Department of Women and Child Development. By a communication dated 9th January, 2006, it was communicated that the petitioner being a non-Governmental organization and non-funded by the Government, the Right to Information Act was not applicable. ? However, on appeal by respondent No.2 to Central Information Commission against the said decision holding that Right to Information Act,2005 was not applicable to the petitioner, it was held that in terms of Section 2(h) of the Right to Information Act, 2005, the petitioner is an organization under the administrative control of Department of Information Technology. Out of Rs.11.8

crore income for the year 2004-2005, the Grant-in-Aid from the Department of Commerce and Information Technology was about Rs.6.8 crore and consequently it was inferred that the petitioner is substantially financed by the Government. It was thus held that the Right to Information Act, 2005 is applicable to the petitioner and petitioner was directed to furnish respondent No.2 a copy of inquiry report and also copies of minutes of the Working Committee relating only to the Inquiry Report and action taken thereon.

Despite the order of Central Information Commission, the information which was directed to be given to respondent No.2 was not given entailing filing of another proceeding by respondent No.2 which was disposed of by order dated 18th May, 2006. During the hearing, respondent No.2 had sought additional information which was, however, declined to the petitioner holding that scope of the decision dated 22nd March, 2006 could not be enlarged, however, the Commission reiterated that petitioner is under the administrative control of Department of Information Technology as CAG audits the accounts of petitioner; annual report is laid in the Parliament through Department of Information Technology; name of petitioner appears in the annual report of Department of Information Technology and Department of Information Technology assign programs and activities which are undertaken by the petitioner which were programs and activities were communicated in the annual reports of the petitioner for 2004-2005. In view of the administrative control of Department of Information Technology on petitioner and substantial funding by the government, it was thus held that the petitioner is a public authority under the definition of Right to Information Act, 2005.

The petitioner has impugned the orders holding him to be a public authority contending that the Grants-in-Aid are released by the Department of Commerce, Department of Information Technology for specific programs/projects and the grants are also received from international agencies like the United Nations Industrial Development Organization (UNIDO). The learned counsel for the petitioner contended that since there is a distinction between funding of an organization and funding of promotional programs/projects, therefore, it cannot be inferred that the petitioner is substantially financed by the Government as contemplated under the Right to Information Act, 2005. The petitioner also relied on a letter dated 15th February, 2006 by the Ministry of Commerce and Industry stipulating that petitioner is treated as an autonomous non-Governmental organization and the employees of petitioner are not government servants nor petitioner is required to seek clearance from the Government for the appointment of officers. Post are created and so do the rules are framed by the petitioner governing the service conditions of its employees and therefore it is not under the Administrative Control of Department of Information Technology.

The learned counsel for the petitioner has also contended that the Working Committee members of petitioner are the persons from private industries and has

relied on list of Working Committee members of the petitioner for 2004-2006 to contend that it is not a public authority.

For the purpose of Section 2(h) of Right to Information Act, 2005, what is to be seen is whether the body is owned and controlled or substantially financed by the Government. Whether the funding is for specific

programs/projects carried on by the petitioner or funds are given not for any specific program to the petitioner, will not make the petitioner not financed by the Government. The Government can give the funds without specifying as to how the funds are to be utilized and can also specify the manner and the programs on which the funds are to be utilized. Specifying the manner in which the funds are to be utilized rather will show more control of the Government on the petitioner. Specifying the programs on which the funds are to be utilized does not negate the substantial funding of the petitioner as is sought to be canvassed by the learned counsel for the petitioner. I have no hesitation in holding that in the circumstances, as has been done in the orders impugned by the petitioner, that the petitioner is substantially funded by the Government in the facts and circumstances.

The Central Information Commission has held that petitioner is a public authority on account of administrative control of Department of Information Technology on the petitioner on the basis of various factors stipulated in its order which are not negated on account of autonomous character of the petitioner in framing its rules governing the service conditions of its employees and the employees of the petitioner being not the Government servants. On the plea that its employees are not government servants, the control of Department of Information Technology cannot be negated. Therefore the probable inference is that the petitioner is under the administrative control of Department of Information Technology

The Working Committee Members of the petitioner from different industries will also not negate the control of Department of Information Technology on the petitioner and Petitioner's substantial funding by the Government as contemplated under Right to Information Act, 2005. Perusal of list of Working Committee Members of petitioner for 2004-2006 rather reflects that it also has the Government nominees and, consequently, it cannot be inferred that petitioner will not be a public authority under the definition of the Right to Information Act, 2005. From the objects of the petitioner also, the character of the petitioner discharging public functions and being a public authority cannot be negated.

In the circumstances, the orders impugned by the petitioner do not have any jurisdictional error nor suffer from any material illegality. Therefore for the reasons stated hereinabove, it is held that the petitioner is a public authority as contemplated under the Right to Information Act, 2005 and is liable to render information as has been directed by the orders impugned in this petition.

The writ petition is, therefore, without any merit and it is dismissed.

July 19, 2006 ANIL KUMAR, J.
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