

CENTRAL INFORMATION COMMISSION

'B' Wing, August Kranti Bhawan

New Delhi 110066

Appeal No.CIC//MA/A/2008/01117

Decision No.5607/IC(A)/2010

Date of Decision :(14-7-2010)

Name of the Appellants:

Ms. Bindu Khanna

D-688, 2nd Floor, C.R. Park

New Delhi 110 019.

Respondents:

Directorate of Education

Government of NCT of Delhi

District South, Defence Colony

New Delhi-110 024.

Third Party:

Pinnacle School

D-Block, Panchsheel Enclave

New Delhi.

FACTS OF THE CASE

1. On the grounds of non-compliance of the order dated 23.4.2008 passed by the first Appellate Authority (FAA) of the respondent, the appellant submitted her 2nd appeal before the Commission through which she pleaded for compliance of the FAA order. The Commission upheld the decision of FAA and directed the respondent to provide the information as per the direction of the FAA. Subsequently, the third party, the custodian of information, challenged the decision of the Commission before the High Court of Delhi, which has made the following observations vide its order dated 15.09.2009:

“It is an admitted case of the parties that the petitioner M/s Pinnacle School who is required to furnish information pursuant to application filed by Ms. Bindu Khanna, the respondent No.4 with

the Public Information Officer of Director of Education, Govt. of NCT of Delhi, was not issued notice and heard before the impugned order dated 15th September, 2009 was passed. The impugned order passed by the Information Commissioner dated 15th September, 2008 is required to be set aside for failure to comply with Section 19(4) of the Right to Information Act, 2005. The said provision ensures compliance with principles of natural justice and requires that a third party shall be given a reasonable opportunity of being heard if an appeal is preferred before the Central Information Commission. It may be noted here that the petitioner before the Public Information Officer had relied upon Section 8 (1) (j) of the Act and had submitted that information cannot be furnished.

In these circumstances, the impugned order dated 15th September, 2008 passed by the Information Commissioner is set aside and the matter is remanded back for fresh adjudication in accordance with law. The parties will appear before the Central Information Commission on 7th October, 2009 when a date for hearing will be given.

The writ petition is accordingly disposed of.”

2. In pursuance of the above Court Order, the case was heard on 26.3.2010 and 30.6.2010. During the hearing on 30.6.2010, the following were present:

Appellant:

Ms. Bindu Khanna along with Shri Manoj Khanna

Respondents:

- 1) Ms. Indira Rani Singh, Link Officer, DDE, Dte. of Education
- 2) Ms. Satinder Kaur, RD, Dte. of Educaiton
- 3) Ms. Renu Sharma, EO, Dte. of Education
- 4) Shri H.K. Maan, ADE, Dte. of Education
- 5) Shri K.K. Batra, Manager of School (3rd party)
- 6) Shri Ashok Chabra, Advocate for the School (3rd party)

3. The fact of the matter is that the Appellant Ms. Bindu Khanna, a teacher in a private school, namely, Pinnacle School, wanted certain information relating to her employment, mainly her service records, leave and other statutory allowances, working hours, medical facilities, pension & gratuity benefits, etc. She made various oral as well as written requests to the school. When she did not get the said information, she approached Directorate of Education by filing an RTI application dated 11.2.2008.

4. The Public Information Officer (PIO), Directorate of Education informed the applicant that Pinnacle School had declined to provide information under Section 8(1)(j) of the Right to Information Act, 2005 (hereinafter referred as the 'RTI Act'). The Appellate Authority of the Directorate, by an order dated 23.4.2008 directed its PIO, in presence of the Manager of School Shri K.K. Batra, to procure information from the school and provide the same to the applicant. When the Appellate Authority's order was not complied within the stipulated period due to non-cooperation of school authorities, the appellant had to file 2nd appeal before this Commission on 30.6.2008.

5. The 2nd appeal of the applicant was disposed of by the Commission on 15th September, 2008 whereby the Commission directed the Directorate to secure compliance of the order of its Appellate Authority dated 23.4.2008.

6. Pinnacle School which is a third party in these proceedings approached the Hon'ble Delhi High Court by filing Writ Petition No.6956/2008 and contended before the court that the RTI Act was not applicable to the school, inter-alia, for the following reasons:

- i) Pinnacle school is a private school;
- ii) Delhi School Education Act and Rules framed thereunder do not provide for disclosure of information.

7. The School informed the High Court that the Commission passed the impugned order without hearing them and without complying with the principles of natural justice. The Hon'ble High Court (Coram: Hon'ble Mr. Justice Sanjiv Khanna) by order dated 15.9.2009 held that the "impugned order passed by the Information Commissioner dated 15th

September, 2008 is required to be set aside for failure to comply with Section 19(4) of the Right to Information Act, 2005. The said provision ensures compliance with principles of natural justice and requires that a third party shall be given a reasonable opportunity of being heard if an appeal is preferred before the Central Information Commission.” The Hon’ble High Court also noted that the petitioner school had relied upon Section 8 (1) (j) of the Act and submitted that information cannot be furnished. The Hon’ble High Court accordingly by order dated 15th September, 2009 set aside the impugned order dated 15th September, 2008 passed by the Commission and remanded the matter back to the Commission for fresh adjudication in accordance with law and directed the parties to present themselves before the Commission on 7th October, 2009.

8. In view of the remand order of the Hon’ble Delhi High Court directing fresh adjudication by the Commission, it was felt necessary that the matter be decided by a larger Bench. Initially, the matter was fixed to be heard by a Bench comprising three Hon’ble Information Commissioners on 3rd February, 2010 which was adjourned to 26th March, 2010. On 26.3.2010, the parties were directed to identify whatever information could be provided to the appellant out of 23 items of information as sought by the appellant in her RTI application and then to appear before the Commission on 25th May, 2010 to resolve the issues of denial of information under Section 8(1)(j) of the Act, by the Pinnacle School. The hearing was, however, postponed on the request of the School. It was finally fixed for hearing on 30.6.2010, as stated above.

9. In the meantime, the respondent by their letter dated 19.4.2010 conceded that unaided recognized schools under Rule 180 of the Delhi School Education Rule have to provide certain category of information to the Directorate, which only can be provided to the applicants seeking information. Such category of information are budget estimates, final accounts, students’ enrolment, concessions/ scholarship/staff statement, schedule of fees/fines/funds, statement showing dates of disbursement of salaries. The PIO prayed that CIC may in the interest of natural justice direct private schools to display on their websites all the info

mation pertaining to their employees, EWS details, admission details of the students in various classes.

10. The petitioner submitted that the Delhi School Education Act and rules framed thereunder are a complete code governing all aspects of functioning of aided and unaided recognized schools. A combined reading of Section 2(f) of the RTI Act and the Delhi School Education Rules [in particular Rules 50(xviii) and (xix)] shall conclusively establish that the respondent Directorate as the governing authority of the school, has the requisite powers vested in it to access to the information sought by the appellant. The petitioner further submitted that the third party by denying the information under Section 8(1)(j) of the RTI Act has already conceded the applicability of the RTI Act and had not made any representation to the effect that the information sought could not be given as the provisions of the RTI Act were not applicable to them. The petitioner also stated that in the hearing conducted by the First Appellate Authority on 9.4.2008, the Manager of the School, Shri K.K. Batra was present. And, in the said hearing, the School did not agitate against the applicability of the RTI Act. The petitioner alleged that the School was changing its stance at different levels for denial of information for malafide reasons.

11. The respondents submitted that certain information relating to inspection reports of staff room, activity room, computer room, library, etc., copies of all proceedings held for election of members of Managing Committee and copies of all inspection reports conducted and submitted by Zonal Education Officer till date respectively have been provided to the appellant.

12. The third party submitted that the RTI Act is not applicable to the private schools and it is the Directorate of Education which had to be approached in this connection. They further contended that Delhi School Education Act and Rules framed thereunder do not provide for disclosure of information. This stand of the 3rd party was in contradiction of the stand already taken before the PIO and the First Appellate Authority that the information sought by the appellant was exempted under Section 8(1)(j) of the RTI Act and cannot be disclosed. The third party has filed written statements in support of their claim and this has been taken on record and considered.

Issue for determination:

Whether the third party, a private school performing public function, can refuse to furnish the information under Section 8(1)(j) of the Act, particularly when the FAA of the respondent has ordered for disclosure of information.

Decisions:

13. The FAA of the respondent had duly heard the third party, the School Manager, Shri. K.K. Batra, and accordingly passed orders for providing the information. It is, therefore, incorrect to say that the third party was not heard before the passage of the FAA order, which was later upheld by the Commission.

14. The third party has made contradictory statements. It has been argued before the Commission that RTI Act is not applicable to a private school and that the Delhi School Education Act and Rules framed thereunder do not provide for disclosure of information. Against this, the stand already taken by the third party before the PIO and the First Appellate Authority was that the information sought by the appellant was exempted under Section 8(1)(j) of the RTI Act and thereby conceding applicability of the RTI Act to them.

15. Section 2(f) of the RTI Act defines 'Information' thus:

“Section 2(f):

"Information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.”

Further while defining 'right to information', Section 2(j) of the RTI Act lays down as under:

Section 2(j):

"Right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

Section 2(n) of the RTI Act defines 'third party' as under:

Section 2(n):

'Third party' means a person other than the citizen making a request for information and includes a public authority'.

'Information' thus means any material in any form including records etc and information relating to any private body which can be accessed by a public authority under any other law for the time being in force. In the case of third party Pinnacle School, the public authority is the respondent-Directorate of Education and the appellant has rightly submitted her RTI application to the said public authority which has to access information under the Act. However, in view of section 2(j) of the Act, the 'right to information' extends to only those information which is held by or under the control of a public authority.

16. The Hon'ble Supreme Court in "Khanapuram Gandaiah Vs. Administrative Officer & ors" (AIR2010SC615) has held that under Section

6 of the RTI Act, an applicant is entitled to get only such information which can be accessed by the Public Authority under any other law for the time being in force. The Hon'ble Delhi High Court in "Poorna Prajna Public School Vs. Central Information Commission" (Manu/DE/2577/2009) has held that the term 'held by or under the control of any public authority' in Section 2(j) of the RTI Act has to be read in a manner that it effectuates and is in harmony with the definition of the term 'information' as defined in Section 2(f). The said expression

used in Section 2(j) of the RTI Act should not be read in a manner that it negates or nullifies definition of the term 'information' in Section 2(f) of the RTI Act. The Hon'ble High Court held that a private body need not be a public authority and the said term 'private body' has been used to distinguish and in contradistinction to the term 'public authority' as defined in Section 2(h) of the RTI Act. Thus, information which a public authority is entitled to access, under any law, from private body, is 'information' as defined under Section 2(f) of the RTI Act and has to be furnished. It was further held by the Hon'ble High Court that the term 'third party' includes not only the public authority but also any private body or person other than the citizen making request for the information. The School is a private body and a third party under Section 2(n) of the RTI Act.

17. It thus can be concluded that the Pinnacle School is a third party and is under the control of the respondent herein. As to the third party's contention that the Delhi Education Act and the Rules framed thereunder do not provide for disclosure of information, on perusal of the said provision, it is found that various clauses of Rule 50 of the Delhi School Education Rules, 1973, in particular clauses (xviii) and (xix), are relevant for the present controversy. The same are being reproduced hereunder:

“Rule 50: Conditions for recognition — No private school shall be recognized, or continue to be recognized, by the appropriate authority unless the school fulfills the following conditions, namely:

(xviii) the school furnishes such reports and information as may be required by the Director from time to time and complies with such instructions of the appropriate authority or the Director as may be issued to secure the continued fulfillment of the condition of recognition or the removal of deficiencies in the working of the school;

(xix) all records of the school are open to inspection by any officer authorized by the Director or the appropriate authority at any time, and the school furnishes such information as may be necessary to enable the Central Government or the Administrator to discharge its or his obligations to Parliament or to the Metropolitan Council of Delhi, as the case may be.”

18. The Pinnacle School has submitted that “All personal information has already been provided to the Applicant and in case she still wants she can again be provided”.

19. Therefore, we hold that the orders passed by the First Appellate Authority directing the third party to provide complete information to the appellant and the decision of the Commission affirming the orders of the First Appellate Authority are perfectly in compliance with the provisions of the Act. The third party is hence obliged to comply with the said orders. The Commission, therefore, directs the Respondent to seek compliance of the aforementioned order from the third party-Pinnacle School to provide information as sought at Serial Numbers (i) to (x), (xiv) and (xv) of the RTI application of the appellant dated 11.2.2008 within 15days from the date of receipt of this decision and submit compliance immediately thereafter. The information should be furnished free of cost as per Section 7(6) of the Act, failing which appropriate action would be initiated against the concerned officials.

20. The issues relating to management and regulation of schools responsible for promotion of education are so important for development that it cannot be left at whims and caprices of private bodies, whether funded or not by the Government. The Director, Directorate of Education should, therefore, ensure compliance of these directions including the order of the First Appellate Authority dated 23.4.2008. In case the School in question fails to cooperate in the matter, appropriate action under relevant rules should be initiated for de-recognition of the school activities. A compliance report should be submitted at the earliest.

21. Announced on the Fourteenth day of July, 2010. Notice of this decision be given free of cost to the parties including Secretary, Ministry of Personnel, Public Grievances & Pensions.

Sd/-
(Prof. M.M. Ansari)
Information Commissioner

Sd/-
(Satyananda Mishra)
Information Commissioner

