

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WRIT PETITION (CIVIL) NO. 7265 OF 2007**

% **Reserved on : 15th September, 2009.**
Date of Decision : 25th September, 2009.

POORNA PRAJNA PUBLIC SCHOOLPetitioner.
Through Mr. Maninder Singh, Sr. Advocate
with Mr. Ankur S. Kulkarni, Mr. Nirnimesh
Dube, advocates.

VERSUS

CENTRAL INFORMATION COMMISSION
& OTHERSRespondents
Mr. Sanjeev Sabharwal, advocate for
respondent no.2-GNCTD.
Mr. K.K. Nigam, advocate for respondent 3-
CIC.
Mr. Tushti Chopra, advocate for respondent
no.4.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? YES
3. Whether the judgment should be reported in the Digest ? YES

SANJIV KHANNA, J.:

1. The petitioner Poorna Prajna Public School is a private unaided school recognized under the Delhi School Education Act, 1973 (hereinafter referred to as DSE Act, for short). Mr. D.K. Chopra, respondent no.4 herein, father of a former student of the petitioner School, had filed an application under the Right to Information Act, 2005 (hereinafter referred to as the RTI Act, for short) before the Public Information Officer appointed by the Department of Education, Government of National Capital Territory of

Delhi(GNCTD, for short) on or about 18th September, 2006. Respondent no.4 had asked for the following information :-

“1. Please provide me the information under RTI Act as to what decision were taken on my representations filed in your office Vasant Vihar file no.133/2005 and other offices. Why they were not communicated to me within stipulated period? What are the office rules?

2. MVS Thakur, Education Officer, told me on 25.1.2006 that they cannot interfere much in the non-aided school, but what is the role of your observer who was present in Executive Committee Meeting in Pooran Prajna Public School on 24.1.2006. If school does not do two meetings in a year what punishment can be given and who will give it.

3. I may be provided all copies of the minutes of the school since 1988 and action taken report.”

2. Information in respect of query no.3 i.e. copies of the minutes of the managing committee were not available with the Department of Education. Accordingly, a request was sent by the Department of Education to the petitioner School. The petitioner School by their letter dated 30th August, 2007 submitted that they were a private unaided institution and not covered under the RTI Act and respondent no.4 had no *locus standi* to ask for information. It was pointed out that respondent no.4 had filed a writ petition in the High Court against the petitioner School which was dismissed. The petitioner also relied upon Rule 180(i) of the Delhi School Education Rules, 1973 (hereinafter referred to as DSE Rules, for short) and submitted that the information sought for cannot be furnished and was outside the purview of the RTI Act.

3. Not satisfied with the order passed by the public information officer, the respondent no.4 filed the first appeal and then approached the Central Information Commission (hereinafter referred to as CIC, for short).

4. The CIC by their impugned Order dated 12th September, 2007 has held that the petitioner School was indirectly funded by the Government as it enjoyed income tax concessions; was provided with land at subsidized rates etc. Further, the petitioner school was a 'public authority' as defined in Section 2(h) of the RTI Act. Lastly, the Information Commissioner has held that the public authority i.e. GNCTD can ask for information from the petitioner School and therefore the public information officer should have collected the information with regard to the minutes of the managing committee from the petitioner School and furnished the same to the respondent no.4. It was noted that all aided and unaided schools perform governmental function of promoting high quality education and further an officer of the GNCTD was nominated by the Directorate of Education as a member of the managing committee. GNCTD has control over the functioning of the private schools and has access to the information required to be furnished.

5. RTI Act was enacted in the year 2005 as a progressive and enabling legislation with the object of assigning meaningful role and providing access to the citizens. It ensures openness and transparency consistent with the concept of participatory democracy and constitutional right to seek information and be informed. It also ensures that the Government

and their instrumentalities are accountable to the governed and checks corruption, harassment and red-tapism.

6. The provisions of the RTI Act have not been challenged by the petitioner School in the present petition. The contentions raised and argued relate to interpretation of the provisions of RTI Act.

7. The terms "information" and "right to information" have been defined in Sections 2(f) and 2(j) of the RTI Act and read as under:-

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"

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;"

(emphasis supplied)

8. Information as defined in Section 2(f) means details or material available with the public authority. The later portion of Section 2(f)

expands the definition to include details or material which can be accessed under any other law from others. The two definitions have to be read harmoniously. 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. It is well settled that an interpretation which renders another provision or part thereof redundant or superfluous should be avoided. Information as defined in Section 2(f) of the RTI Act includes in its ambit, the information relating to any private body which can be accessed by public authority under any law for the time being in force. Therefore, if a public authority has a right and is entitled to access information from a private body, under any other law, it is "information" as defined in Section 2(f) of the RTI Act. The term "held by the or under the control of the public authority" used in Section 2(j) of the RTI Act will include information which the public authority is entitled to access under any other law from a private body. 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.

9. It may be appropriate here to refer to the definition of the term "third party" in Section 2(n) of the RTI Act which reads as under:-

"2(n). "third party" means a person other than the citizen making a request for information and includes a public authority."

10. Thus 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 petitioner School, a private body, will be a third party under Section 2(n) of the RTI Act.

11. The above interpretation is in consonance with the provisions of Sections 11(1) and 19(4) of the RTI Act. Section 11 prescribes the procedure to be followed when a public information officer is required to disclose information which relates to or has been supplied by a third party and has been treated as confidential by the said third party. Section 19(4) stipulates that when an appeal is preferred before the CIC relating to information of a third party, reasonable opportunity of hearing will be granted to the third party before the appeal is decided. Third party as stated above includes a private body. As held above, a public authority is not a private body.

12. A private body or third party can take objections under Section 8 of the RTI Act before the public information officer or the CIC. In terms of Section 11(4) of the RTI Act, an order under Section 11(3) rejecting objections of the third party is appealable under Section 19 of the RTI Act before the CIC.

13. Information available with the public authority falls within section 2(f) of the RTI Act. The last part of section 2 (f) broadens the scope of the term 'information' to include information which is not available, but can be accessed by the public authority from a private authority. Such information relating to a private body should be accessible to the public authority under any other law. Therefore, section 2(f) of the RTI Act requires examination of the relevant statute or law, as broadly understood, under which a public authority can access information from a private body. If law or statute permits and allows the public authority to access the information relating to a private body, it will fall within the four corners of Section 2(f) of the RTI Act. If there are requirements in the nature of preconditions and restrictions to be satisfied by the public authority before information can be accessed and asked to be furnished from a private body, then such preconditions and restrictions have to be satisfied. A public authority cannot act contrary to the law/statute and direct a private body to furnish information. Accordingly, if there is a bar, prohibition, restriction or precondition under any statute for directing a private body to furnish information, the said bar, prohibition, restriction or precondition will continue to apply and only when the conditions are satisfied, the public authority is obliged to get information. Entitlement of the public authority to ask for information from a private body is required to be satisfied.

14. Section 22 of the RTI Act, reads:-

"22. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of

1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

15. Section 22 of the RTI Act is an overriding clause but it does not modify any other statute or enactment, on the question of right and power of a public authority to call for information relating to a private body. A bar, prohibition or restriction in a statutory enactment, before information can be accessed by a public authority, continues to apply and is not obliterated by section 22 of the RTI Act. Section 2(f) of the RTI Act does not bring about any modification or amendment in any other enactment, which bars or prohibits or imposes pre-condition for accessing information from private bodies. Rather, it upholds and accepts the said position when it uses the expression “which can be accessed” i.e. the public authority should be in a position and entitled to ask for the said information. Section 22 of the RTI Act, an overriding provision does not mitigate against the said interpretation for there is no contradiction or conflict between the provisions of Section 2(f) of the RTI Act and other statutory enactments/law. Section 22 will apply only when there is a conflict between the RTI Act and Official Secrets Act or any other enactment. As a private body, the Petitioner School is entitled to plead that they cannot be compelled to furnish information because the public authority is not entitled to information/documents under the law. The petitioner school can also claim that information should not be furnished because it falls under any of the sub-clauses to Section 8 of the RTI Act. Any such claim, when made, has to be considered by the public information officer, first appellate authority and the CIC. In other words, a

private body will be entitled to the same protection as is available to a public authority including protection against unwarranted invasion of privacy unless there is a finding that the disclosure is in larger public interest.

16. Section 8 of the RTI Act is a non-obstante provision which applies notwithstanding other sections of the RTI Act. In other words, Section 8 over-rides other provisions of the RTI Act. Section 8 stipulates the exceptions or rules when information is not required to be furnished. Section 8 of the RTI Act is a complete code in itself. Section 8 does not modify the term "information" as defined in Section 2(f) of the RTI Act. Whether or not Section 8 applies is required to be examined when information under Section 2(f) is asked for. To deny "information" as defined in section 2(f), the case must be brought under any of the clauses of Section 8 of the RTI Act. "Right to information" under the RTI Act is a norm and Section 8 adumbrates exceptions i.e. when information is not to be supplied. It is not possible to accept the contention of the petitioner School that "information" as defined in Section 2(f) need not be furnished under the RTI Act for reasons and grounds not covered in Section 8. This will be contrary to the scheme of the RTI Act. Information as defined in Section 2(f) of the RTI Act is to be furnished and supplied, unless a case falls under sub-clauses (a) to (j) of Section 8(1) of the RTI Act. Thus all information including information furnished and relating to private bodies available with public authority is covered by Section 2(f) of the RTI Act. Further, information which a public authority can access under any other

law from a private body is also "information" under section 2(f). The public authority should be entitled to ask for the said information under law from the private body. Details available with a public authority about a private body are "information" and details which can be accessed by the public authority from a private body are also "information" but the law should permit and entitle the public authority to ask for the said details from a private body. Restrictions, conditions and prerequisites imposed and prescribed by law should be satisfied. The question whether information should be denied requires reference to Section 8 of the RTI Act.

17. Learned counsel for the petitioner School submitted that the Directorate of Education does not have an access to the minutes of the managing committee. Under Rule 180 (i) of the DSE Rules, the private unaided schools are required to submit return and documents in accordance with Appendix 2 thereto and minutes of the managing committee are not included in Appendix 2. Rule 180 (i) of the DSE Rules is not the only provision in the DSE Rules under which Directorate of Education are entitled to have access to the records of a private unaided school. Rule 50 of the DSE Rules, stipulates conditions for recognition of a private school and states that no private school shall be recognized or continue to be recognized unless the said school fulfills the conditions mentioned in the said Section. Clause (xviii) of Rule 50 of the DSE Rules reads as under:-

"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-

(i) - (xvii) x x x x x x

(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 continue fulfillment of the condition of recognition or the removal of deficiencies in the working of the school;"

18. Under Rule 50(xviii) of the DSE Rules, the Directorate of Education can issue instructions and can call upon the school to furnish information required on conditions mentioned therein being satisfied. Rule 50 therefore authorizes the public authority to have access to information or records of a private body i.e. a private unaided school. Validity of Rule 50(xviii) of the DSE Rules is not challenged before me. Under Section 5 of the DSE Act, each recognized school must have a management committee. The management committee must frame a scheme for management of the school in accordance with the Rules and with the previous approval of the appropriate authority. Rule 59(1)(b)(v) of the DSE Rules states that the Directorate of Education will nominate two members of the managing committee of whom one shall be an educationist and the other an officer of the Directorate of Education. Thus an officer of the Directorate of Education is to be nominated as a member of the management committee. Minutes of the management committee have to be circulated and sent to the officer of the Directorate of Education. Obviously, the minutes once circulated to the officer of the Directorate of Education have to be regarded as 'information' accessible to the Directorate of Education,

GNCTD. In these circumstances, it cannot be said that information in the form of minutes of the meeting of the management committee are not covered under Section 2(f) of the RTI Act.

19. In view of the above findings, the question whether the petitioner school is a public authority is left open and not decided.

Writ Petition has not merit and is accordingly dismissed. No costs.

(SANJIV KHANNA)
JUDGE

SEPTEMBER 25, 2009.
P