॥ श्री रामदेवायनमः ॥

Shri Ramdeobaba College of Engineering and Management

Autonomous College Permanently Affiliated to
Rashtrasant Tukadoji Maharaj Nagpur University

Ramdeo Tekdi, Katol Road, Nagpur - 440 013.
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'A' Grade Accreditated by NAAC

An ISO 9001 : 2015 Certified Institution

NO. RCOEM/GAD /2019/67844 Date : 02.05.2019

Response :

As per raised clarification with respect to RTI, we have uploaded Hon. High Court Judgment on our Website.

Shri Ramdeobaba College of Engineering and Management (formerly - Shri Ramdeobaba Kamla Nehru Engineering College) is an established College under Shri Ramdeobaba Sarvajanik Samiti whixh is a 'Public Trust" and as per the judgment of Hon- High Court dated 20.08.2009, RTI Section 4(1)(b) of the RTI Act 2005 is not applicable to "Public Trust" (page No.8, Point No. 8 & 9).

For reference Judgment copy of the same is also placed on the Website.

(DR. RAJESH PANDE)
PRINCIPAL

Shri Ramdeobaba College of Engineering & Management ★ NAGPUR.

(GOVINDLAL AGARWAL)
GENERAL SECRETARY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :

NAGPUR BENCH : N A G P U R.

WRIT PETITION No. 5132 OF 2008

1. Nagar Yuwak Shikshan Sanstha,
having its office at Hingna Road,
Wanadongri, Nagpur.
Through its Secretary.

2. Yeshwantrao Chavan College of Engineering,
Hingna Road, Wanadongri, Nagpur,
through its Principal. ... **PETITIONERS.**

-VERSUS -

!. Maharashtra State Information Commission,
Vidarbha Region, Nagpur,
Having its office at Ravi Bhawan,
Civil Lines, Nagpur.

2. Rajkumar Shyamrao Bhoyar,
Secretary,
Yeshwantrao Chavan College of Engineering
Non-teaching staff Employees Union,
Hingna Road, Wanadongri, Nagpur. ... **RESPONDENTS.**

....

Mr. Shashank Manohar Advocate for the Petitioners.
Mr. Rohit Sharma h/f Mr. Anand Parchure Advocate for the Respondents.

....

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CORAM : A.B. CHAUDHARI, J.
RESERVED ON : 31.7.2009.
PRONOUNCED ON : 20th AUGUST, 2009 .

J U D G M E N T :

Rule. Rule returnable forthwith. Heard finally by consent of learned counsel for rival parties.

2. By the present petition, the petitioners have put to challenge the order dated 1.9.2008 passed by the State Information Commissioner, Vidarbha Region, Nagpur, in Appeal No. 1772/07 holding that the Right to Information Act, 2005 is applicable to the petitioners.

3. In support of writ petition, Mr. Shashank Manor, learned counsel for petitioners, vehemently argued that petitioner no.1 which is a Public Trust registered under the provisions of Bombay Public Trusts Act and petitioner no.2- an unaided Engineering College do not at all fall within the meaning of definition of `Public Authority' as defined under Right to Information Act. He argued that none of these petitioners were created or established or constituted by any law made by the State legislature, as assumed by the State Information Commissioner in his impugned order. Further, none of the petitioners have been financed either directly or indirectly by the funds provided by the appropriate government. The reimbursement made by such governments under their

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respective schemes is for the students and not for the petitioners towards the fees recoverable from backward class students or other instrumentation provided by the appropriate government. He then argued that grant of permission to start petitioner no.2 - college from the Director of Technical Education or from AICTE or from Nagpur University cannot mean that there is any control since these are the regulatory controls in the matter of admissions, affiliations etc. provided by their respective laws and there is no direct or indirect control as contemplated by the definition. He then argued that the impugned order is clearly illegal and deserves to be quashed and set aside.

4. *Per contra,* Mr.Rohit Sharma holding for Mr. Anand Parchure argued that petitioner no. 2 could not have been started without the permission of Director of Technical Education or AICTE and the affiliation by Nagpur University which clearly shows that these authorities have full control over the working of petitioner no.2 including making of admissions, fees structure, grant of permission to open new courses and therefore there is material to show that there is control. He then argued that the land which was allotted to petitioner no.1 for constructing building for petitioner no. 2- college was allotted by the State Government on a nominal lease amount. The land which belongs to Government has been leased out and therefore it can be said that the

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Government has given its property by leasing out its lands to petitioners no.1 and 2. If that is so, the petitioners ought to be held to be public authority. The admissions of the students are made in the petitioner no.2-college through Common Entrance Test and the petitioner no.2 does not have any authority to admit the students on its own. To add to this, under various schemes the Central Government as well as the State Government provide for finance to the petitioner no.2 for undertaking various schemes introduced by the Central Government or the State Government for upliftment of the education standard. Even the fees are reimbursed to the students belonging to backward classes and such amounts are paid to petitioner no.2 by Central/State Government. In fact the petitioners appointed Public Information Officer in terms of the directions issued by the Director. He, therefore, urged this Court to uphold the order of State Information Commissioner.

5. I have heard learned counsel for rival parties and I have also gone through the impugned order. The definition of public authority as given under the Act reads thus :

> "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;

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(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."

6. Upon perusal of the provisions of the Bombay Public Trusts Act it is clear that this Act does not on its own establish or constitute any public trust. It is nobody's case that petitioner no.1 was constituted or established under the provisions of the Bombay Public Trusts Act. Similar is the case with petitioner no.2 since the same has also not been established or constituted under any of the provisions of the Act of legislature or Act of Parliament. It is not in dispute that in respect of petitioners there is no notification as contemplated by clause (d). Reliance placed by learned counsel for respondent no.2 about `control' in the matter of admissions, fees, regulations etc. in my opinion is misplaced. In my opinion the word `control' used in the definition is in a sense of control over the management of the petitioners. The control in making admissions, deciding fees structure or implementing reservation

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policy, if any, or asking the petitioners to implement a scheme of Central/State Government in respect of higher education or research and development is not the control in that sense. The term `control' used in the definition is for control over the management and affairs and the running of the petitioners and its institutions. There is nothing on record to show that either of the two institutions, namely petitioners are being run insofar as its management and affairs are concerned either directly or indirectly by the Government. Therefore, the control over fees structure, admissions, new courses etc. will have to be distinguished from the term `control' that is contemplated by the definition. I, therefore, hold that none of the petitioners are controlled by the appropriate government.

7. Insofar as petitioner no.1- public trust is concerned, the same is also not controlled in strict sense of the term, as I have discussed herein before. Petitioner no.1- public trust is not run by the Government either directly or indirectly and its management and affairs are controlled by the trustees. No doubt, public trusts are subject to regulatory measures to be found in the Bombay Public Trusts Act. But that does not mean that either the Charity Commissioner or the appropriate government controls this public trust by virtue of the fact that such public trust is registered under the Bombay Public Trusts Act and regulatory

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provisions are made applicable. And that by itself cannot be said to be control over the management and its affairs either directly or indirectly. The regulation of fees structure or permission to start new courses or admissions to the college by the Government and its machinery is again not a control to run petitioner no.2- college or the management and affairs of petitioner no.1- trust. Similarly, reimbursement of fees towards reserved category students or projects required to be undertaken by the Engineering College sponsored by the Central/State Government cannot be said to be financed for the benefit of petitioners 1 and 2. These benefits of reimbursement etc. are ultimately for the benefits of the students and people at large and not only for the benefit of the college or financing the affairs of the college. At any rate, the aspect regarding finance is qualified by the word `substantially financed'. There is absolutely no material on record that both the petitioners have been substantially financed by the appropriate government either directly or indirectly. On the contrary, the entire infrastructure and the salary of the staff etc. is substantially financed by petitioner no. 1 itself. This term `substantially financed' has been repeatedly used by the Parliament with a view to exclude such institutions which are financed directly or indirectly with a small or a little contribution of funds by the appropriate government. The Parliament has deliberately used the word

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'substantially' and this court finds that there is wisdom in doing so. In **Shri Ram Krishna Dalmia & ors. v. Shri Justice S.R. Tendolkar & ors. - AIR 1958 SC 538** the Supreme Court has had to say in para 11 -

(a) ....

(b) ....

(c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

8. For all th above reasons, I am of the opinion that none of the petitioners are covere by the definition of public authority within the meaning of Section 2(h) of the Right to Information Act. Consequently, the impugned order will have to be quashed and set aside. In the result, I make the following order.

9. Writ petition is allowed. Impugned order made by the State Information Commissioner, Nagpur, on 1.9.2008 in Appeal No.1772/07 is quashed and set aside. It is held that the provisions of Right to Information Act do not apply to any of the petitioners. Rule is made absolute in above terms. No order as to costs.

JUDGE

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The Hitavada ▪ NAGPUR ▪ SATURDAY ▪ AUGUST 29 ▪ 2009

RTI not applicable to unaided Engineering colleges: HC

■ Staff Reporter

IN A major respite to unaided educational institutions especially professional colleges, Nagpur bench of the Bombay High Court has held that same are not covered under the ambit of Right to Information (RTI) Act since they are not substantially financed or controlled by State or Central Government.

Justice Arun Chaudhari while quashing the order of State Information Commission which held that private unaided professional college is covered under RTI, since it adheres to supervisory jurisdiction of the regulatory bodies like AICTE, DTE, Shikshan Shulka Samiti, ruled that educational institutions run by trust are amenable to all the rules and regulations, but this hardly means that such colleges or trust is controlled by State or Central Government or any of the authority.

In the instant case the State Information Commission on September 1, 2008 had held that Yeshwantrao Chavan College of Engineering (YCCE) run by Nagar Yuwak Shikshan Sanstha is covered under RTI. The ruling was challenged before the High Court by Sanstha and YCCE through their counsel Adv. Shashank Manohar. It was contended that petitioner Sanstha and YCCE do not fall within the meaning of definition of 'Public Authority' as defined under RTI Act. He argued that none of these petitioners were created or established or constituted by any law made by the State legislature, as assumed by the State Information Commissioner in his order. Further, none of the petitioners have been financed either directly or indirectly by the funds provided by the appropriate government. The reimbursement made by such governments under their respective schemes is for the students and not for the petitioners towards the fees recoverable from backward class students or other instrumentation provided by the appropriate government.

Adv Manohar pointed out that grant of permission to start YCCE from the Director of Technical Education or from AICTE or from Nagpur University cannot mean that there is any control since these are the regulatory controls in the matter of admissions, affiliations etc. provided by their respective laws and there is no direct or indirect control as contemplated by the definition. He urged the High Court to quash and set aside the order.

On the other hand respondents pointed out these institutions could not have been started without the permission of Director of Technical Education or AICTE and the affiliation by Nagpur University which clearly shows that these authorities have full control over the working of college including making of admissions, fees structure, grant of permission to open new courses and therefore there is material to show that there is control. It was also argued that the land which was allotted to NYSS for constructing building for YCCE was allotted by the State Government on a nominal lease amount. The land which belongs to Government has been leased out and therefore it can be said that the Government has given its property by leasing out its lands to petitioners and hence the petitioners ought to be held to be public authority. In fact the petitioners appointed Public Information Officer in terms of the directions issued by the Director. He, therefore, urged High Court to uphold the order of State Information Commissioner.

The High Court in its well researched judgment upheld contentions of petitioner institution and held that it was not covered by RTI. Even the provisions of the Bombay Public Trust Act it is clear that this Act does not on its own establish or constitute any public trust. Adherence to rule and regulation and obeying regulatory bodies can not be construed as control as the term 'control' used in the RTI definition is for control over the management and affairs and the running of the petitioners and its institutions.

Adv. Shashank Manohar appeared for the petitioner. Adv. Anand Parchure and Adv Rohit Sharma for the respondents.