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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 03RD DAY OF NOVEMBER 2015

BEFORE

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

WRIT PETITION No.25114 OF 2009 (GM-RES)

BETWEEN:

Manipal University,
Madhav Nagar,
Manipal,
Udupi District,
Represented by its Registrar.

…PETITIONER

(By Shri Ashok Haranahalli, Senior Advocate for Shri Manmohan P.N., and Shri Vinay .K, Advocates)

AND:

1. Mr. S.K.Dogra,
   Advocate,
   District Court,
   Hamirpur,
   Himachal Pradesh.

2. The Central Information Commission,
   Club Building,
   Near Post Office,
   Opposite Ber-Sarai Market,

Old J.N.U.Campus,
New Delhi 110 067.

3. Mr. Mahendra V Desai,
Son of Vishvanath Desai
Aged about 38years,
Karikatte Farm,
Anavatti, Soraba,
Shimogga District.

[I.A.I/12 for impleading
Allowed vide court order
Dated 3.11.2015]

…RESPONDENTS

(By Shri Veerendra R Patil, Advocate for Respondent no.3;
Respondent Nos. 1 and 2 served)

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This Writ Petition is filed under Articles 226 and 227 of the Constitution of India praying to quash the order dated 13.7.2009 passed by the second respondent vide Annexure-A and declare that the Right to Information Act, 2005 is not applicable to the petitioner-university.

This Writ Petition is coming on for Hearing this day, the court made the following:

O R D E R

Heard the learned Senior Advocate Shri Ashok Haranahalli appearing for the Counsel for the petitioner and the Counsel appearing for the impleading applicant on his application for impleading.

2. The petitioner is said to be a deemed University having several educational institutions under its umbrella. The petitioner was declared as a 'Deemed to be University' under Section 3 of the University Grants Commission Act, 1956 (Hereinafter referred to as the 'UGC Act', for brevity), by a notification dated 1.6.1993, issued by the Ministry of Human Resource Development. The petitioner being a University established under the UGC Act is different from the Universities established by the legislature.

3. The first respondent, an advocate, submitted an application to the Assistant Public Information Officer, Higher Education, M.S.Building, Bangalore, dated 7.2.2009 seeking

information as to how many students were admitted to B-Pharma Course in the years 2005, 2006 and 2007 and how many out of the said students left during the first year of joining the course after payment of entire course fee and their permanent addresses. The first respondent had further sought for information regarding the total money received by the petitioner from the students who left the Academy during the first year of the starting of the course, namely, 2005, 2006 and 2007.

Pursuant to the application filed by the first respondent, the Under Secretary, Education Department (Universities), by a letter dated 18.3.2009, has transferred the application to the Under Secretary, Medical Education. Thereafter, the Family and Health Department, by letter dated 16.4.2009 forwarded the application of the second respondent to the Public Information Officer (Hereinafter referred to as the 'PIO', for brevity), of Drug Control Department. The PIO of Drug Control Department, in turn, wrote a letter to the petitioner and the

petitioner by a letter dated 22.5.2009, informed the first respondent that the Right to Information Act, 2005 (Hereinafter referred to as the 'RTI Act', for brevity) is not applicable to the petitioner and hence they are not able to disclose the information sought for by the first respondent.

It was also stated that the PIO's action in denying the information attracts penal provisions of Section 20(1) of the RTI Act. The petitioner, by reply dated 19.6.2009, had indicated that there was already a reply filed insofar as the request was concerned and sought for dismissal of the complaint.

The second respondent, by an order dated 13.7.2009, has held that the 'Deemed University' comes within the definition of a 'Public Authority' as defined under the RTI Act and hence the second respondent has allowed the complaint filed by the first respondent directing the petitioner to appoint a Public Information Officer and First Appellate Authority and further

directed the petitioner to provide the information sought for by the first respondent. It is in this background that the present petition is filed.

4. The learned Senior Advocate would submit that in accordance with Section 3 of the UGC Act, the Ministry of Human Resource Development by Notification dated 1.6.1993, declared the petitioner as a 'Deemed to be University' for the purpose of the UGC Act. The UGC, by a Notification dated 13.9.2006 had held that there were no objections to the use of word 'University' by institutions deemed to be Universities. Accordingly, the Board of Management of the Manipal Academy of Higher Education, by a resolution dated 9.12.2006 resolved to change the name of the petitioner from Manipal Academy of Higher Education to Manipal University. Therefore, the petitioner is a 'Deemed to be University' for the purpose of the UGC Act and not for other purposes. The second respondent had failed to notice these aspects of the matter and has proceeded to pass the impugned order holding

that the petitioner is a 'Public Authority; under the provisions of the RTI Act.

It is pointed out that the second respondent had no jurisdiction to direct the petitioner to furnish information as RTI Act cannot be made applicable to the petitioner as it is not a public authority. It is a private educational institution which is neither owned, controlled or substantially financed by the Government. The petitioner is also not an Non-governmental Organisation, directly or indirectly or substantially financed by the funds provided by the Government. It is neither funded nor owned by the Government. This aspect of the matter has not been properly appreciated by the second respondent.

It is contended that Section 2(a) of the RTI Act defines 'appropriate Government', to mean in relation to the public authority, which is established, constituted, owned, controlled or substantially financed by the funds provided by the Central or the State Government. A combined reading of Section 2(a) and 2(h) clearly indicates that a public authority is essentially

one which is established, owned, controlled or substantially financed by the Government. Admittedly, the petitioner is a private University, over which the Government has no ownership, control nor has the Government substantially funded the petitioner. Added to this, the petitioner University is not established by the Government. The nature of the control of the Government over the petitioner - University is only regulatory.

It is contended that the second respondent had failed to notice that the petitioner is a 'Deemed University' for the purposes of UGC Act, which confers the status of a University on the petitioner. The word 'University' used with reference to the UGC Act cannot be considered on par with the University established or incorporated by a Central Act or a State Act. The petitioner has been declared to be a University under an Executive Charter and not by way of legislation as is usually done in case of Universities. This fine line of distinction between the University recognized under the UGC Act and the

University established by the Central or a State Act is lost sight of by the first respondent. Therefore, it is contended that the order impugned is unsustainable and is liable to quashed.

It is further emphasized that the petitioner is a private educational institution which can prescribe its own fee structure and regulate the functioning of the institution at its discretion. It is a sole custodian of information and the University has the complete administrative control over its institutions and the petitioner is non-profit organization, which aims at providing better education to the Society at large. The appropriate Government in respect of a public authority is the State Government or a Central Government depending on the establishment, constitution, ownership, control or substantial finance provided by the Central Government or State Government, as the case may be. If the Public Authority is established controlled, constituted, owned or substantially financed by the Central Government, the Central Government would be the appropriate Government. In cases of public

authorities which are established, controlled, or substantially financed by the funds provided directly or indirectly by the State Government, the State Government would by the appropriate Government.

5. In the present case, the petitioner is not established, constituted, owned, controlled or substantially financed by the funds provided directly or indirectly either by the State Government or the Central Government. Therefore, the appropriate Government for the petitioner is neither the Central Government nor the State Government and hence the first respondent has no jurisdiction to entertain the complaint itself.

The learned Senior Advocate would place reliance on the following authorities in support of the above contentions:_

(a) In *Bharati Vidyapeeth vs. State of Maharashtra, AIR 2004 SC 1943,* the apex court has expounded on the status of a 'deemed university' thus:

> *"18. Under Section 3 of the Act, deemed University status will be given to those institutions*

that for historical reasons or for any other circumstances are not Universities and yet are doing work of a high standard in specialised academic field compared to a University and that granting of a University status would enable them to further contribute to the course of higher education which would mutually enrich the institution and the University system. Guidelines for considering proposals for declaring an institution as deemed to be University were also issued by the UGC. Under the said guidelines aspects relating to admission was specifically entrusted with the UGC and admission could be made only through a common entrance test on All-India basis. Such an exercise was intended to maintain a uniform standard and level of excellence. As we have pointed out, admission plays a crucial role in maintaining of the high quality of education. And for the proper maintenance of academic excellence, as intended by the UGC Act, admissions to deemed University has to be made under the control of UGC. This further goes to show that admission procedure to a deemed to be University is fully occupied by Entry 66 of List I and the State cannot exercise any powers over admission procedure.

19. Therefore, the State could not have enacted any legislation in that regard. If that is so, neither in exercise of executive power under Article 162 of the Constitution which extends only to the extent of legislative power nor in respect of power arising under the Maharashtra State Universities Act, such rules could have been prescribed. To the extent the High Court holds to the contrary, we set aside the order of the High Court.

20. At this stage we must strike a note of caution in regard to institutions which are exclusively owned by the Government and in respect of institutions which stand affiliated to the University or in respect of institutions to which either affiliation or grant is made. Such institutions may be controlled to an extent by the State in regard to admission as a condition of affiliation or grant or owner of the institutions. But those conditions, again if they are in respect of the institutions of higher education must apply the standard prescribed by the statutory authorities such as U.G.C., Medical Council, Dental Council, AICTE, governed by Entry 66 of List I of the Constitution.

21. Though arguments have been advanced before us that even if some area is

> *covered under Entry 25 in relation to admission, inasmuch as the power has been exercised under Entry 66 which in pith and substance falls within that scope the State legislation to that extent has to yield to Central legislation. In this case it is unnecessary to examine this aspect of the matter as the institution in question entirely falls within the scope of the U.G.C. Act. UGC has prescribed the norms of admission also which include Fees that can be collected from students and specifically debar collection of Capitation fee. The university or the State Government has no role to play either in the matter of recognition, affiliation or making any financial grants to exercise powers either as condition thereto or in exercise of Entry 25 of List II."*

(b) In *Thalappalam Service Co-operative Bank Limited and others vs. State of Kerala, 2013 SCC 915,* the apex court has discussed the scope and meaning of a 'public authority' under the RTI Act, thus:

> *"27. Legislature, in its wisdom, while defining the expression "public authority" under Section 2(h), intended to embrace only those categories, which are specifically included, unless the context of the Act*

otherwise requires. Section 2(h) has used the expressions 'means' and includes'. When a word is defined to 'mean' something, the definition is prima facie restrictive and where the word is defined to 'include' some other thing, the definition is prima facie extensive. But when both the expressions "means" and "includes" are used, the categories mentioned there would exhaust themselves. Meanings of the expressions 'means' and 'includes' have been explained by this Court in Delhi Development Authority v. Bhola Nath Sharma (Dead) by LRs and others (2011) 2 SCC 54, (in paras 25 to 28). When such expressions are used, they may afford an exhaustive explanation of the meaning which for the purpose of the Act, must invariably be attached to those words and expressions.

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31. The RTI Act, therefore, deals with bodies which are owned, controlled or substantially financed, directly or indirectly, by funds provided by the appropriate government and also non-government organizations substantially financed, directly or indirectly, by funds provided by the appropriate government, in the event of which they may fall within the definition of Section 2(h)(d)(i) or (ii) respectively. As already pointed out, a body, institution or an organization, which is neither a State within the meaning of Article 12 of the Constitution

or instrumentalities, may still answer the definition of public authority under Section 2(h) d (i) or (ii).

(a) Body owned by the appropriate government – A body owned by the appropriate government clearly falls under Section 2(h)(d)(i) of the Act. A body owned means to have a good legal title to it having the ultimate control over the affairs of that body, ownership takes in its fold control, finance etc. Further discussion of this concept is unnecessary because, admittedly, the societies in question are not owned by the appropriate government.

(b) Body Controlled by the Appropriate Government:

A body which is controlled by the appropriate government can fall under the definition of public authority under Section 2h(d)(i). Let us examine the meaning of the expression "controlled" in the context of RTI Act and not in the context of the expression "controlled" judicially interpreted while examining the scope of the expression "State" under Article 12 of the Constitution or in the context of maintainability of a writ against a body or authority under Article 226 of the Constitution of India. The word "control" or "controlled" has not been defined in the RTI Act, and hence, we have to understand the scope of the expression 'controlled' in the context of the words which exist prior and subsequent i.e. "body owned" and "substantially financed" respectively. The meaning of the word

"control" has come up for consideration in several cases before this Court in different contexts. In State of West Bengal and another v. Nripendra Nath Bagchi, AIR 1966 SC 447 while interpreting the scope of Article 235 of the Constitution of India, which confers control by the High Court over District Courts, this Court held that the word "control" includes the power to take disciplinary action and all other incidental or consequential steps to effectuate this end and made the following observations :

"The word 'control', as we have seen, was used for the first time in the Constitution and it is accompanied by the word 'vest' which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding Judge.... In our judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal, ..."

32. The above position has been reiterated by this Court in Chief Justice of Andhra Pradesh and others v. L.V.A.Dixitulu and others (1979) 2 SCC 34. In

Corporation of the City of Nagpur Civil Lines, Nagpur and another v. Ramchandra and others (1981) 2 SCC 714, while interpreting the provisions of Section 59(3) of the City of Nagpur Corporation Act, 1948, this Court held as follows :

"4. It is thus now settled by this Court that the term "control" is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers- vested in the authority concerned……"

33. The word "control" is also sometimes used synonyms with superintendence, management or authority to direct, restrict or regulate by a superior authority in exercise of its supervisory power. This Court in The Shamrao Vithal Co-opeartive Bank Ltd. v. Kasargode Pandhuranga Mallya (1972) 4 SCC 600, held that the word "control" does not comprehend within itself the adjudication of a claim made by a co-operative society against its members. The meaning of the word "control" has also been considered by this Court in State of Mysore v. Allum Karibasappa and others. (1974) 2 SCC 498, while interpreting Section 54 of the Mysore Cooperative Societies Act, 1959 and Court held that the word "control" suggests check, restraint or influence and intended to regulate and hold in check and restraint from action. The expression "control" again came up for consideration before this Court in Madan Mohan

Choudhary v. State of Bihar and others. (1999) 3 SCC 396, in the context of Article 235 of the Constitution and the Court held that the expression "control" includes disciplinary control, transfer, promotion, confirmation, including transfer of a District Judge or recall of a District Judge posted on ex-cadre post or on deputation or on administrative post etc. so also premature and compulsory retirement. Reference may also be made to few other judgments of this Court reported in Gauhati High Court and another v. Kuladhar Phukan and another (2002) 4 SCC 524,State of Haryana v. Inder Prakash Anand HCS and others (1976) 2 SCC 977, High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal and Another (1998) 3 SCC 72, Kanhaiya Lal Omar v. R.K.Trivedi and others (1985) 4 SCC 628, TMA Pai Foundation and others v. State of Karnataka (2002) 8 SCC 481, Ram Singh and others v. Union Territory, Chandigarh and others (2004) 1 SCC 126, etc.

34. We are of the opinion that when we test the meaning of expression "controlled" which figures in between the words "body owned" and "substantially financed", the control by the appropriate government must be a control of a substantial nature. The mere 'supervision' or 'regulation' as such by a statute or otherwise of a body would not make that body a "public authority" within the meaning of Section 2(h)(d)(i) of the RTI Act. In other words just like a body owned or body substantially

financed by the appropriate government, the control of the body by the appropriate government would also be substantial and not merely supervisory or regulatory. Powers exercised by the Registrar of Cooperative Societies and others under the Cooperative Societies Act are only regulatory or supervisory in nature, which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled. Management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Cooperative Societies Act and not on the authorities under the Co-operative Societies Act.

35. We are, therefore, of the view that the word "controlled" used in Section 2(h)(d)(i) of the Act has to be understood in the context in which it has been used vis-a-vis a body owned or substantially financed by the appropriate government, that is the control of the body is of such a degree which amounts to substantial control over the management and affairs of the body."

(c) In *State of Karnataka vs. K. Gopalakrishna Shenoy, (1987)3 SCC 655*, while considering whether the impact of a provision under one act will have ramifications on the provisions of the other act, the apex court has expounded thus:

"*10. The next factor for consideration is whether the impact of Section 38 of the Motor Vehicles Act on Section 22 of the said Act will have its ramifications on Section 3(1) and the Explanation of the Taxation Act. Section 22 deals with the necessity for registration of motor vehicles and mandates that no person shall drive a motor vehicle and no owner shall cause or permit his motor vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered in accordance with Chapter 3 of the Act and the Certificate of Registration granted has not been suspenaed or cancelled. Section 38 on the other hand deals with the Certificate of Fitness for transport vehicles. This section lays down that a transport vehicle shall not be deemed to be validly registered for the purposes of Section 22, unless it carries a Certificate of Fitness in the prescribed form issued by the Prescribed Authority. The very terms of Section 38 limit the deeming effect caused by the absence of a Certificate of Fitness to the rights conferred under Section 22 pursuant to the registration of a vehicle. There is therefore, no scope for extending the deeming provision in Section 38 to Section 3(1) and the Explanation thereto of the Taxation Act. In fact the Explanation to Section 3(1) clearly sets out that the deeming effect conferred by it will have overriding force on Section 3(1). This is*

made clear by the words " for the purposes of this Act" contained in the Explanation. The operative force of the deeming provision contained in Section 38 being restricted to Section 22 of the Motor Vehicles Act has been correctly noticed by the Karnataka High Court in V. Naraina Reddy vs. Commissioner for Transport (1971) 2 Mys L J 319 and the High Court has held at page 322 as follows:

> *The legal fiction created by Section 38 of the Motor Vehicles Act is only for the purpose of Section 22 of that Act and cannot be extended to the Taxation Act."*

(d) In WP 5132/2008, in the case of *Nagar Yuwak Shikshan Sanstha vs. Maharashtra State Information Commission,* the Nagpur Bench of the High Court of Judicature at Bombay has considered the situation where a public trust was sought to be treated as a public authority and has held as follows:-

> *"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 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 'substantially' and this court finds that there is wisdom in doing so. In Shri Ram Krishna Dalmia and others vs. Shri Justice S.R.Tendolkar and others, 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"

The petition is not contested and there are no statement of objections filed by the respondents.

6. Given the above facts and circumstances and the legal arguments canvassed by the learned Senior Advocate, it would have to be accepted that the petitioner is a 'Deemed to be University' and recognized as such under the UGC Act and it is not established under the Act unlike a University, which is generally established under a statute either under a Central

Government Act or State Government Act and therefore it could not be confused with any other University which may be so established. It is neither controlled or financed by the State Government and it is certainly a private institution with its own management and control and therefore, the same cannot be brought under the purview of the definition of a 'public authority' as contained under the RTI Act. Hence, it would not be tenable for the respondents to proceed as if the petitioner came under the definition of 'public authority' in having issued directions in the impugned order.

7. Incidentally, the impleading applicant is not connected in any manner with the present petition. His grievance is that his father was admitted in a hospital run by the petitioners. And that he had sought for details pertaining to his treatment in the hospital and since he was not furnished with the details under the RTI Act, the petitioner is before this court.

8. The learned Senior Advocate would submit that in so far as the impleading applicant is concerned, it is evident that he

has not approached the concerned hospital in seeking whatever information he wants and whatever information is available with the hospital would be furnished to him in the event that he should make an application relating to the treatment of his father. Therefore, if the applicant should make an appropriate representation to the concerned hospital, run by the petitioners, it would be the information that is available and preserved that would be furnished to the applicant.

Accordingly, the writ petition is allowed. The impugned order is quashed.

Sd/-
JUDGE

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