



Jammu and Kashmir State Information Commission
 (Constituted under Right to Information Act 2009)
 Old Assembly Complex, Srinagar, Fax No. 0194-2484269, 2484262
 Wazarat Road Near DC Office, Jammu, Fax No. 0191-2520947, 2520937
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File No: SIC-J-A-15/2013
Decision No: SIC-J-A/15/2013/135

Sh. Raj Dev Sharma	Appellant	Present
Director School Education, Jammu.	FAA	Absent
Sh. H.R. Pakhroo	PIO	Absent
Joint Director, Directorate of School Education, Jammu.		
Sh. S.K. Gandotra Principal S.I.E., Directorate of School Education, Jammu.	PIO	Present
Sh. Ajit Kumar Principal S.I.E, Directorate of School Education, Jammu.	PIO	Present
Sh. Natha Ram Chief Education Officer, Jammu.	PIO	Present
Sh. Sanjay Sharma, Advocate For Principal Banyan International School, Babliana, Jammu.		Present

Jammu

23-05-2013

Briefly the facts in this appeal are that Sh. Raj Dev Sharma R/o 19, Ward No.9, Akhnoor moved an application dated 12-09-2012 under Jammu and Kashmir Right to Information Act, 2009 before the PIO, Department of School Education, O/o the Directorate of School Education, Jammu seeking the following information:-

S.No	Department	Information required
1.	Department of School Education	Copy of the letter issued to Banyan Tree (Now Banyan International School), Jammu for recognition of classes 6 th to 8 th . Copy of the letter issued to Banyan Tree School (Now Banyan International School) for recognition of classes 9 th & 10 th .
2.	Department of School Education	-Copies of notification of detailed school fee structure for the academic year 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13 as notified by Banyan Tree School (Now Banyan International School), Jammu in compliance to section 9(a) of SRO 123. -Copies of the approval of parents association for revision of fee for the academic year 2009-10, 2010-11, 2011-12 & 2012-13 as intimated by Banyan Tree School (Now Banyan International School), Jammu in compliance to section 9(d) of SRO 123.
3.	Department of School Education	Copies of the letter of recommendation forwarded by DSE, Jammu to Commissioner Secy. Department of Education, Civil Secretariat for issuance of the NOC to Banyan Tree School (Banyan International School), Jammu for affiliation to CBSE.
4.	Department of School Education	-Status & action taken report of the complaints forwarded to DSE, Jammu by CM grievance cell under ref. No. 33875 and 33954
5.	Department of School Education	-Amount and Details of the student wise Pending fee as per fee register of the school as on 31.03.2012 & 30.06.2012 of all the students of the school on roll of Banyan

		<i>Tree School (Now Banyan International School), Jammu from 01.01.2005 to 31.03.2012 in compliance to the section 10(i) of SRO 123.</i>
6.	<i>Department of School Education</i>	<i>-Copies of the Consensus of Parents and formation of the Parents Association of Banyan Tree School (now Banyan International School) for the academic year 2010-11, 2011-12 and 2012-13.</i>

The information with regard to point no. 1-4 of the RTI application was provided to the information seeker by the DSEJ vide office letter no. DSEJ/RTI/2012/3573-77 dated 11-10-2012. However, the information relating to point no. 5 & 6 was not available in the office of Directorate of School Education, Jammu and accordingly the application was transferred to CEO, Jammu with the direction to provide information to the information seeker. The CEO, Jammu asked the Principal, Banyan International School vide office letters no. CEOJ/RTI/26412-14 dated 16-11-2012 and CEOJ/RTI/29133-35 dated 08-12-2012 to provide the information, but no response has been received from the Principal of the said school, as a result of which the information seeker filed 1st and 2nd appeals.

The 1st appeal was posted for hearing on 28-12-2012 and the Principal of the said school was asked to attend on the fixed date but the Principal did not appear before the 1st Appellate Authority. Meanwhile, the CEO, Jammu reported the matter to the FAA vide office letter no. CEOJ/RTI/2012/30935-38 dated 28-12-2012 that the Principal of the said school has categorically refused to provide the information.

Thus, feeling aggrieved of failure on the part of PIO / FAA to extract the information from the school concerned, the information seeker filed 2nd appeal dated 21-01-2013 before the Commission. In 2nd appeal the appellant *interalia* alleged that incomplete and irrelevant information was provided to him by the PIO, moreover, the Banyan Tree School (Now Banyan International School), Babliana, Jammu a third party school duly

recognized by the Department of Education has refused to provide the information. The Commission took cognizance of the 2nd appeal and issued notice bearing no. SIC/J/A/15/2013/1044-45 dated 01-03-2013 to PIO O/o the Directorate of School Education, Jammu to appear before the Commission with counter statement and relevant documents on 11th of March, 2013 at Jammu office. The PIO and the appellant were present during the course of hearing and apprised the Commission that appeal was pending before the FAA i.e. Director School Education, Jammu and has not been adjudicated and disposed of till date. Accordingly the notices were sent to FAA / Director School Education, Jammu, PIO / Joint Director Trainings, Jammu and PIO / Principals, SIE, Jammu to remain present on 20-03-2013.

On 20-03-2013, Sh. H.R. Pakhroo, Joint Director / PIO, Directorate of School Education, Jammu, Sh. S.K. Gandotra, Joint Director / PIO, Directorate of School Education, Jammu and Sh. Raj Dev Sharma / Appellant were present before the Commission. During the course of hearing before Dr. S.K. Sharma, State Information Commissioner, the PIO's and the appellant brought to the notice of the Commission certain issues embedded with important questions of interpretation of law and facts which required to be adjudicated upon by the Division Bench of the Commission. Thus, the following questions were framed for consideration of the Division Bench:-

- I. Whether a private unaided educational institution which has been established after seeking permission from the DOSE can be declared as a public authority in terms of Section 2(f) IV (A) of the RTI Act, 2009?*
- II. Whether a private unaided educational institution if under the control of DOSE can be compelled to shell out the rest of the information lying with it.*
- III. Whether the school Principal is deemed PIO when a request for information is transferred to it by the PIO / DOSE, Jammu?*

IV. Whether information relating to a private unaided institution is a third party information and whether the school has to be provided a reasonable opportunity of being heard by the Information Commission?

After seeking the approval of the Chief Information Commissioner, the matter was referred to Division Bench comprising of Sh. G.R. Sufi, Chief Information Commissioner and Dr. S.K. Sharma, State Information Commissioner and was listed for hearing on 09-04-2013. During the course of hearing, Sh. Sanjay Sharma learned counsel for Banyan International School, Babliana, Jammu was requested to bring following documents for Commission's perusal on the next date of hearing:-

- a. If school is established under a trust, copy of the trust deed.*
- b. Whether it is registered with Income Tax Department?*
- c. Whether it has sought and enjoys income tax exemption U/s 10 / 11 of the Income Tax Act, 1961, copy of returns wherein exemption is sought U/s 10 / 11 of Income Tax Act, 1961.*
- d. Counsel for Banyan International School, Jammu was directed to provide copy of registration by virtue of which the school has been registered with Registrar of Societies under Societies Registration Act.*
- e. Copy of No objection Certificate from the State Education Department under which it was established.*
- f. Copies of Letters of Affiliation / recognition to the Central Board of School Education or State Board of School Education, Jammu.*

On the request of Sh. Sanjay Sharma counsel for school concerned, matter was adjourned and listed for hearing on 22-04-2013. The counsel for respondent school failed to comply with the direction of the Commission issued on last date of hearing and rather requested for long adjournment,

which was not allowed. He was given last and final opportunity to produce the aforesaid documents and matter was adjourned and again listed for hearing on 23-04-2013.

The Chief Education Officer / PIO, Jammu vide office letter no. CEOJ/RTI/2013/2075-77 dated 23-04-2013 informed the Commission that the requisite information regarding points 2, 5 & 6 pertains to Banyan International School, Babliana, Jammu and the Principal, Banyan International School was asked to furnish the information to the information seeker vide office letter no. CEOJ/RTI/23609-11 dated 17-10-2012, but nothing has been heard from Principal's side. In continuation to above cited no. and date a series of reminders have been sent to the Principal vide office letter no. CEOJ/RTI/2012/25925-27 dated 08-11-2012 (Reminder 1), No. CEOJ/RTI/2012/26412-14 dated 16-11-2012 (Reminder II), No. CEOJ/RTI/2012/29133-35 dated 08-12-2012 (Reminder III), when no response has been received even after repeated reminders, the applicant has filed 1st appeal in Director School Education office and it was attended on 28-12-2012. In the said appeal no one was present from Banyan International School side. The CEO, Jammu further informed that he has also personally visited the said school and on the day of the visit, the Principal of the school assured for providing information within two days. But the Principal of the said school failed to provide the same till date.

In the backdrop of factual matrix of the matter in hand, the Commission will have to dwell on the following issues in order to determine whether the respondent school falls within the ambit of J&K RTI Act, 2009:-

- 1. Whether the respondent school is under the control of the State Government so as to bring it within the ambit of public authority as defined in Section 2(f)(iv)(A).*

2. *Whether the information relating to third party school (private unaided institution) can be accessed by a public authority under any other law for the time being in force.*
3. *Whether the Directorate of School Education, Jammu enjoys statutory powers to take preventive / punitive action against the school, in case, it fails to discharge its statutory obligations.*

The answer to the 1st question whether school is under the control of the Government requires a brief look into Section 2 (f) of the Right to Information Act, 2009 and the provisions of J&K School Education Act, 2002. Section 2(f) of the RTI Act reads as under:-

"public authority means any authority or body or institution of self-government established or constituted-

- (i) *by or under the Constitution of India or the Constitution of Jammu and Kashmir,*
- (ii) *by any other law made by Parliament,*
- (iii) *by any other law made by the State Legislature,*
- (iv) *by notification issued or order made by the Government, and includes any-*
 - (A) *body owned, controlled or substantially financed,*
 - (B) *non-Government organization substantially financed, directly or indirectly by funds provided by the Government."*

Section 2(f)(iv) provides for two separate categories, one of which is notified by the government and the other which are mentioned in its inclusive definition. Both the categories are separated by a 'comma' and a conjunction 'and'. The body can be either owned or controlled or substantially financed by the government. The word owned, controlled or substantially financed in Section 2(f)(iv)(A) are to be read as

alternatives not as cumulatives. Therefore, if a body is either owned or controlled or substantially financed by the government, but no notification or order has been issued in respect of such a body / NGO, even then it will come within the definition of public authority.

The private school and its recognition as defined under the J&K School Education Act, 2002 is as under:-

2(I) "Private School means a school established, run or maintained by any educational agency and recognized by the Government;

12. Recognition of Private School: 1. only such Private Schools as are recognized shall be permitted to function;

15. Permission for starting new classes and their recognition:-

Every Private School shall have to seek prior permission of the Competent Authority before adding any higher classes. Any higher class so added in a school shall require recognition by the Government. The Government shall, by notification in the Government Gazette, prescribe the procedure for the grant of such permission and recognition.

It would also be appropriate to dwell on Govt. Order No. 11-Edu of 2004 dated 02-01-2004 which was issued in pursuance of the Private Education Institutions (Regulation and Control) Act, 1967 and the rules framed thereunder. The aforesaid Government Order interalia provides as under:-

- a. Private Schools which have been operational for ten years shall be considered for grant of permanent recognition by the Director School Education, Kashmir/Jammu upon a close and careful scrutiny on a case-to-case basis, with particular reference to the requirements of infrastructure, equipment and teaching staff as laid down in the norms/rules prescribed from time to time.*

- b. New schools conforming to the laid down standards will be granted provisional recognition and considered for permanent recognition after five years in terms of the actual performance and overall reputation of the school(during this period).*
- c. The Private Schools shall duly notify the details of the fee structure chargeable and no mid-term revision of any fee will be made.*
- d. The private schools shall issue a proper receipt for any item (like uniform/books, notebooks etc.) as may be sold by or through the schools to the students.*
- e. The private schools shall pay reasonable salary to the teachers and other staff and the payment shall be made through cheque.*
- f. The private schools shall arrange for the in-service training of Teachers, including Orientation and Refresher Courses from time to time, through the State-run and/or private recognized institutes.*
- g. The private schools shall not terminate the services of teachers and/ or other staff at will, without due regard to the principles of equity and fairplay. Disciplinary action or proceedings, if and when warranted, shall be conducted consistent with the due process of law and also notified to the CEO, concerned.*

The Managing Committee of the respondent school was approved for a period of three years by Joint Director, Directorate of School Education, Jammu vide office letter no. DSEJ/R/Pvt/MC/2590-91 dated 20-05-2010 and ZEO, Satwari is the departmental representative of the Managing Committee. The aforesaid letter further provides that the school already

stands granted permission to run classes up to 8th till ending March, 2012 vide order no. DSEJ/R/Pvt/1144 of 2010 dated 26-03-2010 for academic purpose only.

It would be useful to mention here the circular issued by Director School Education, Jammu vide office no. DIP/JK-18813 dated 15-03-2012 published in Daily Excelsior on 17-03-2012 where under all the Private Schools CBSE & BOSE affiliated are enjoined upon to submit the copies of their fee structure to the office of Director School Education. The aforesaid circular is reproduced here for facility of reference:-

"Whereas under Rule (g) sub rule (e) of the SRO-123 dated 18-03-2010, it is mandatory on the part of Private Schools to effect any revision of fee in consultation with parents association under intimation to Director School Education.

Whereas it has been observed by this office that the revision of the fee is effected by the Private Schools without intimating this office in violation of SRO-123.

In view of the facts mentioned above, it is enjoined upon all the Private Schools CBSE and BOSE affiliated to submit the copies of their fee structure for the current academic session to this office through Chief Education Officer concerned, besides notifying the fee structure of their institutions in prominent newspapers for the information of general public and parents of the admission seekers."

Keeping in view the aforesaid facts, the Commission is of the considered view that the respondent school was established under a NOC issued in its favour by the Director School Education, Jammu and the Management of the School has also given an undertaking on affidavit duly sworn to abide by all the conditions invogue and whatever conditions will be imposed in future. The Directorate of School Education, Jammu is exercising deep and pervasive control over the activities of the school. The

deep and pervasive control so exercised by the Directorate of School Education, Jammu emanates from various provisions of J&K School Education Act, 2002, Govt. Order no. 11-Edu of 2004 dated 02-01-2004 and the NOC issued by the Directorate of School Education, Jammu in favour of the respondent school. The control does not mean that it should be totally dominating. The Hon'ble Delhi High Court has pertinently laid down the contours of such control which is relevant for our purpose as the facts of the case were same before Hon'ble Delhi High Court. Their finding reads as under:-

"At this juncture a brief reference may be made to the legal and ordinary meanings of the word "control". The word "control" has been defined in Black's Law Dictionary (6th Edn.) to mean "power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. The ability to exercise a restraining or directing influence over something." The Shorter Oxford English Dictionary (5th Edn.) defines it as "the act of power of directing or regulating; command, regulating influence" or "a means of restraining or regulating; a check; a measure adopted to regulate prices, consumption of goods etc". In both senses therefore the key word is "influence" and not necessarily "domination".

Thus, the Commission has no hesitation in declaring that school is a body controlled by the Government and is a public authority as defined in Section 2(f)(iv)(A) of J&K RTI Act, 2009 and is under a statutory obligation to disclose the information and follow the mandate of Section 4 of this Act.

During the course of hearing before the Commission, the Commission had made a specific enquiry from the respondent school whether it had availed the exemption from income tax as provided U/s 10/11 of the Income Tax Act, 1961. The school verbally refused of having enjoyed (enjoying) such exemption. However, no documentary evidence was produced before the Commission that if the exemption from payment

of income tax as provided U/s 10/11 of the Income Tax Act, 1961 has not been enjoyed then whether the payment of taxes @33% (including sur charge if any) has been made by the school since it's establishment. It would be appropriate to observe that generally private schools, Universities, Hospitals etc. do claim exemption from income tax as provided under Section 10 and if no such exemption is claimed onus is upon the defending party to prove that liability of income tax was paid. The provisions of Section 2 f(B) of State Information Act, 2009 provides that even "non government organizations can be declared as public authorities. In the foregoing paragraphs the Commission has held that the defending school is controlled by the government through various laws and regulations made by the Education Department and J&K Board of School Education. The Commission has declared that the school is bound to provide information which can be accessed by a public authority under any other law for the time being in force as provided under Section 2(d) of the State RTI Act and in absence of any proof and rebuttal by the school to establish that it does not enjoy exemption for income tax under Section 10 and if alternatively and in the absence of any proof that it pays income tax, the school thus falls under the definition of public authority. The various courts of the country have held that substantially financed does not mean finances of the magnitude of more than 50%. The Hon'ble Delhi High Court in the cases titled Indian Olympic Association V/s Verish Malik and others, Krishek cooperative Limited V/s R. Chandra and others and IFCI Limited V/s Ravinder Balwani (WPC 4596/2007) have held that "substantial" does not mean major. It is to be interpreted as an opposite as insubstantial. If investment is not insubstantial then the body shall be said to be substantially financed. Giving exemption of income tax which is more than 33% of the total income is a substantial funding by the Government. Hence, if school falls under the definition of substantially

financed by the Government and thus a public authority and school should, therefore, follow the mandate given in the State RTI Act, 2009 and report compliance to the Commission with the various provisions of the State RTI Act, 2009 and within 30 days from the receipt of this order.

In order to answer the 2nd question whether the information relating to respondent school (private unaided institution) can be accessed by a public authority under any other law for the time being in force. It is pertinent to look into the definition of information as defined in Section 2(d) of the J&K RTI Act, 2009 which is as under:-

"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". (Emphasis added.)

The Jammu and Kashmir School Education Act, 2002 with respect to Private Schools provides in Section 11 that:-

- (i) *No Private School shall be established, run or maintained without permission, in writing, of the Government or the Competent Authority.*
- (ii) *The Government shall prescribe the procedure to be followed for the grant of permission to establish, run or maintain Private Schools.*

Section 12 deals with Recognition of Private Schools, Section 13 deals with Management of Private Schools, Section 16 deals with De-Recognition of Schools. The Government may de-recognize any Private School, if in its opinion, the functioning of such a school is not in accordance with the provisions of this Act and the Rules made thereunder. Section 19 deals with Teaching and Non Teaching Staff in Private Schools

and Section 20 deals with conditions of Service of Staff in Private Schools, Section 27 provides for imposition of Penalties for contravening any of the provision of this Act or rules framed thereunder.

The perusal of the aforesaid provisions amply demonstrate that the Banyan International school is under a statutory obligation to furnish any information required by the Directorate of School Education, Jammu relating to its activities and functioning and even if we go by the presumption that the school is not a public authority, yet it is under a statutory obligation to furnish the information desired by the Directorate of School Education, pertaining to its functioning and activities from time to time. The combined reading of Section 2(d), 2(f)(iv)(A) of the J&K RTI Act, 2009 and the Jammu and Kashmir School Education Act, 2002 conclusively establish that the Directorate of School Education, Jammu is the Governing Authority of the School, has the requisite powers vested in it to access the information sought by the appellant. Thus, information which a public authority is entitled to access, under any law from a private body, has to be furnished. The answer to both the queries raised above is in the affirmative and it is crystal clear from the factual matrix and statutory provisions that the Director School Education possesses sufficient powers to initiate punitive action against the school authorities in case the school concerned fails to furnish the information as requested under the RTI Act. It can be safely concluded that the Banyan International School, Jammu is under the control of Directorate of School Education, Jammu and also under a statutory obligation to comply with the provisions of J&K RTI Act, 2009. The Commission, therefore, directs Director School Education, Jammu to seek information from the Banyan International School as sought by the information seeker in his RTI application and furnish the same to the information seeker within 30 days and also submit compliance report immediately thereafter. The information should be furnished free of

cost as per Section 7(6) of the J&K RTI Act, 2009 failing which the appropriate action would be initiated against the concerned official.

The issues relating to management and regulation of schools responsible for promotion of education are so important for the development of the nation that it cannot be left at the whims, fancies, idiosyncrasies and caprices of private institutions whether funded or not by the Government. Today, the State of Jammu and Kashmir is facing a difficult task of ensuring social justice and equality to all the sections of society. The model chosen by the government as a social service state in spreading welfare activities especially in the field of education, the role of private institutions which are tasked to assist in this endeavour is commendable. The important role that Right to Information plays in achieving this objective can't be understated. It is in this context that Section 2(f)(iv) recognizes that the non-state actors shall also have statutory obligation to disclose the information which would be useful and necessary for the people they serve. Such a role of non-state actors will further the process of empowerment, assure transparency and accountability and will make democracy responsible and meaningful in accordance with cherished ideals enshrined in the preamble of the State Constitution. The Commission, therefore, directs the Director School Education, Jammu to comply with the directions and observations made above and 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. The Director School Education, Jammu is further directed to submit compliance report to the Commission at the earliest.

The appeal is accordingly disposed of.

Notice of this decision be given free of cost to the parties.

Sd/-
Dr. S.K. Sharma
State Information Commissioner

Sd/-
G.R. Sufi
Chief Information Commissioner

Copy to the:-

1. 1st Appellate Authority / Director School Education, Jammu.
2. Public Information Officer / Sh. H.R. Pakhroo, Joint Director, Directorate of School Education, Jammu.
3. Public Information Officer / Sh. S.K. Gandotra, Principal S.I.E, Directorate of School Education, Jammu.
4. Public Information Officer / Sh. Ajit Kumar, Directorate of School Education, Jammu.
5. Public Information Officer / Sh. Natha Ram, Chief Education Officer, Jammu.
6. Sh. Sanjay Sharma, Advocate for Principal Banyan International School, Babliana, Jammu.
7. Sh. Raj Dev Sharma R/o 19, Ward No.9, Akhnoor. J&K.
8. Office File.

M.S. Shah
Registrar
State Information Commission