ODISHA INFORMATION COMMISSION
BHUBANESWAR
Present : Shri Sunil Kumar Misra,
State Chief Information Commissioner
Date 7th August, 2020
Second Appeal No. 2985/2015

Gyanendra Kumar Tripathy,
Plot No.283, Wireless Road,
Bhimpur,
PO-Airport Area,
PS-Airfield, Bhubaneswar,
District-Khurda……..……..Appellant

-Vrs-

1. Public Information Officer,
School & Mass Education Department,
Government of Odisha,
Secretariat, Bhubaneswar.

2. First Appellate Authority,
School & Mass Education Department,
Government of Odisha,
Secretariat, Bhubaneswar…….. .....Respondents

Decision

1. Appellant, Gyanendra Kumar Tripathy, is not present. The PIO of the Department of School & Mass Education is also not present.

2. The appellant filed the subject second appeal vide an appeal memo in Form-E dated 07.12.2015. The appeal was directed against the School & Mass Education Department, Government of Odisha, Bhubaneswar. In a statement enclosed to the appeal memo, the appellant alleged that the PIO of the School & Mass Education Department erroneously and outrightly rejected his application for information relating to the DAV Public School, Pokhariput, Bhubaneswar by stating that the information sought by him was not available in his Department. Even the First Appellate Authority of the Department rejected the first appeal without going through the proper procedure of law as per the RTI Act, 2005. The appellant contended that such outright rejection was improper and unjust as the information

sought by him which was under the control of the Regional Director, DAV Institutions, Zone-I, Chandrasekharpur, Bhubaneswar could have been obtained by the respondents by exercising control as per the laws in force. In this connection, the appellant referred to Section 2(f) and Section 2(h) of the RTI Act, 2005.

2.1 Earlier, vide his application in Form-A dated 06.07.2015, the appellant had requested the PIO of the School & Mass Education Department to furnish true copies of the Transfer Certificates of the students who were studying in Class-XI in the DAV Public School, Pokhariput for the academic year 2014-15 and who left the School in the year 2015. The PIO disposed of the application vide an intimation dated 09.07.2015 by stating that the information sought by the appellant was not available. Aggrieved, the appellant filed first appeal vide an appeal memo in Form-D dated 22.08.2015. The appellant contended in the first appeal memo that in view of Sections 2(f) and 2(h) of the RTI Act, he was entitled to get the required information from the concerned authority, i.e. from the Regional Director, DAV Institutions through the concerned PIO, i.e. PIO of the School and Mass Education Department. He urged in the first appeal that order be passed with direction to transfer the RTI application to the concerned authority, i.e. to the Regional Director, DAV Institutions. The First Appellate Authority initially advised the appellant to file appeal in the prescribed form i.e. Form-D. After the appellant complied, he disposed of the appeal in an order dated 08.09.2015. It was observed by him that the concerned School did not seem to be a public authority under the RTI Act and, therefore, the PIO of Section-VII of School and Mass Education Department did not transfer the application to the School under Section 6(3) of the Act. The First Appellate Authority further observed that the Department only issued No Objection Certificates (NOC) in favour of such Schools as per Resolution No.30720 dated 23.09.1996. “In case of any violation of the said Resolution, this Department can access the concerned information from the School”. In the present case, information was not held by the Department and there was no apparent error on the part of the PIO in intimating the

appellant accordingly. Observing thus, the First Appellate Authority disallowed the appeal.

3. This case was earlier heard on several occasions. During the initial hearings, the appellant contended that the First Appellate Authority erroneously gave a finding that the DAV Public School was not a public authority. The appellant also referred to the Resolution No.30720 dated 23.09.1996 in which conditions were prescribed for issue of NOCs to the Schools. It was contended by the appellant that by virtue of such conditions, the PIO as well as the First Appellate Authority of the Department had the right of the inspection of the documents held by and relating to the School. Moreover, Para 6(ii) of the Resolution prescribed a condition that "School shall supply information and returns called for by the Government within the prescribed time given for its furnishing to the authority concerned". The above condition appearing under the Head "Miscellaneous" would make it clear that the information could have been collected from the School. The appellant accordingly argued that either his application should have been transferred to the DAV Public School, Pokhariput or information should have been collected from the said School if it was not a public authority.

3.1 The PIO on the other hand contended that the DAV Public School was a purely private body and could not be termed as a public authority liable to provide information under the RTI Act, 2005. Hence, there was no occasion to supply the desired information by obtaining the same from the School. There was also no reason to transfer the application to the School. It was also stated that merely because an NOC was issued to the School would not by itself convert a private body into a public authority. A body or an institution could be considered as a public authority only as per the in-built mechanism provided in the RTI Act; and not otherwise. In this connection, reliance was placed on the decision of the Hon'ble Supreme Court in the case of Thallapalam Co-operative Bank vrs. State of Kerala in Civil Appeal No.9017/132013 wherein the decision in the case of Maulabi Hussain

Haji Abraham Umarji vrs. State of Gujarat and Another had been cited / endorsed. The Hon'ble Court had held in the Umarji case that the Courts must avoid the danger of determining the meaning of a provision based on their preconceived notion of the ideological structure or the scheme into which the provision to be interpreted was somehow fitted. It was trite law that the words of a statute were clear, plain and unambiguous and they were reasonably susceptible only to one meaning. In such instances, the Statute would speak for itself and the question of construction would not arise. The PIO also referred to the decision of the Hon'ble Supreme Court in the case of Kanailal Sur vrs. Paramnidhi Sudhukhan, AIR 1957 SC 907, wherein it was held that if the words used in the statute were capable of one construction only, then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction was more consistent with the alleged object and policy of the Act. On the basis of such references, the PIO contended that the Resolution dated 23.09.1996 had application only to issue of NOCs and had no connection with declaring any private institution as a public authority under the RTI Act. Such a declaration would be contingent upon substantial financing, direct or indirect, by funds provided by the appropriate authority.

3.2 The Commission considered the submissions thus made by both the parties. The Commission observed that the fact that the PIO did not have the required information in his possession stood uncontested. As regards transfer of the application under Section 6(3) of the Act, a PIO is required to transfer an application only to another public authority. In the present case, the First Appellate Authority took the stand that the DAV Public School, Pokhariput did not seem to be a public authority. The Commission however observed that the issue whether or not the DAV Public School was a public authority need not be adjudicated upon while deciding the subject appeal since the above issue was not one of the grounds raised by the appellant. The issue which needed to be adjudicated upon was whether or not the PIO could collect the required information by accessing it from the concerned School

under the RTI Act and by virtue of Clause 6(ii) of the Resolution dated 23.09.1996. The stand of the respondents with regard to the above issue was that they could not exercise any control over the School for getting the information sought by the appellant; and, further, the Resolution dated 23.09.1996 which had been issued in the context of the Odisha Education Act related only to issue of NOCs; and, therefore, the various terms and conditions prescribed in the Resolution could not be stretched beyond the avowed object / purpose. It was also the respondents' stand that information could be collected from a private institution only if the institution could be deemed as a public authority on the ground that it was substantially financed, directly or indirectly, by funds provided by the appropriate Government. Hence the Commission allowed an opportunity to the appellant to make his submission, if any, on the contentions raised by the respondents.

4. Complying with the direction, the appellant made further submission wherein reference was made to the Right to Education Act. It was stated that the information sought by him could be collected by the respondents through exercise of control as per the above Act. The appellant also submitted before the Commission copy of an order dated 20.03.2018 of the Government of Odisha, General Administration and P.G. Department, in the matter of allotment of Ac.2.000 of land to the D.A.V. Public School, Pokhariput for the purpose of further expansion of the School campus. It was contended that the above order would indicate that the Government could exercise control over the School.

4.1 The PIO responded to the further contention thus raised by the appellant. It was stated that the RTE Act provided for right to free and compulsory education to every child in the age group of 6 to 14 years in a neighborhood School till the completion of elementary education. Thus the RTE Act, 2009 would not apply to Class-XI. The PIO further submitted that as could be seen from a copy of the supplementary lease deed obtained from the G.A. Department, Government of Odisha, the land had been leased in favour of the School only after payment of cost.

Therefore, the lease deed could not be taken to construe substantial financing by the appropriate Government.

5. The appellant has not made any further submission. In fact, he has not attended any of the last 8 hearings including today's hearing. In the circumstances, the Commission proceeds to dispose of the appeal on merits as under:

5.1 As already noted, information was not / is not available with or held by the public authority. This fact has also not been disputed by the appellant. On the contrary, both in the first appeal memo as well as in the second appeal memo, the appellant himself had stated that "information is available under the control of the Regional Director, DAV Institutions, Zone-I, Chandrasekharpur, Bhubaneswar". Therefore, the PIO's reply that the information sought by the appellant was not available in the Department cannot be termed as outright rejection.

5.2 The ground raised against the First Appellate Authority is that he rejected the first appeal without going through proper procedure of law (RTI Act, 2005). In the first appeal, the appellant had contended that " I am fully entitled to get the said information under RTI Act from the concerned authority i.e. from the Regional Director, DAV Institutions, Zone-I, Chandrasekharpur, Bhubaneswar through the concerned PIO as I applied for". The First Appellate Authority in his order dated 08.09.2015 made 3 observations. He observed that the information was not available in the School & Mass Education Department and "such information" must be available in the particular School. He also observed that the PIO did not transfer the application under Section 6(3) of the RTI Act as "it seems that particular School is not a public authority under RTI Act". He further observed that Department only issues NOCs in favour of such Schools according to Resolution No.30720 dated 23.09.1996.

5.3 As can be seen from the first appeal memo, the appellant had not raised any issue whether or not the School was a public authority. He had also not made any mention of transfer of his application under Section 6(3) of the RTI Act.

The only ground raised by him was that he should have got the required information which as per him was available under the control of the Regional Director, DAV Institutions through the PIO. It is apparent that the appellant wanted the PIO of the School & Mass Education Department to collect the required information from the Regional Director, DAV Institutions as per the laws in force.

5.4 Thus, as can be seen from the foregoing, the main ground raised by the appellant, even if not explicitly so worded, was that the PIO could have accessed the information from the office of the Regional Director "under any other law for the time being in force" as per Section 2(f) of the RTI Act, 2005. However, during the proceedings before this Commission, the appellant challenged the correctness of the order of the First Appellate Authority by questioning the 3 observations made by him. That is how the issue whether or not the School was a public authority to whom the application could have been transferred by the PIO under Section 6(3) of the Act came up. Further, as also noted, the appellant in this connection singularly referred to the School and did not make any reference to the office of the Regional Director, DAV Institutions.

5.5 The first thing which needs to be mentioned is that it was not at all necessary for the First Appellate Authority to make any reference to the issue whether or not the School was a public authority or, for that matter, to Section 6(3) of the Act. For, the appellant had not raised any ground in the first appeal memo in respect of the above issues. The only ground raised by him has been already noted. The First Appellate Authority also dealt with the said ground by referring to Resolution No.30720 dated 23.09.2016. Therefore, the other 2 observations made by the First Appellate Authority will have to be regarded as excess, uncalled for. Be that as it may, it is necessary to examine whether or not the First Appellate Authority was justified in making his observations, or if he failed to decide the appeal by going through the proper procedure of law as alleged.

5.6 As can be seen from the order of the First Appellate Authority, he did not give a categorical finding that the School was not a public authority. The use of the word "seems" amply testifies to the tentativeness of his observation in this matter. The First Appellate Authority also could not have given any such categorical finding because there was no such claim by the School which was also not a party before the First Appellate Authority. As regards the merit of the tentative observation made by the First Appellate Authority, it is seen that he made such observation only by way of reasoning out why the PIO did not transfer the application under Section 6(3). The line of reasoning thus adopted by the First Appellate Authority, even though uncalled for, cannot be found fault with. For, an application can be transferred under Section 6(3) only to another public authority with whom the information would be available or to whose functions the subject matter of the information is closely related. Now coming to the correctness of the First Appellate Authority's observation regarding transfer under Section 6(3), it is pertinent to mention that a transfer can be made under Section 6(3) only where the PIO knows for sure and has no doubts that the transferee is a public authority. Section 6(3) is used by a PIO on the basis of his understanding of the facts. It is a plain and common understanding. The PIO does not make the transfer after making a long-drawn enquiry. There is no scope for such enquiry under Section 6(3) which involves a summary exercise. Therefore, if the PIO or the First Appellate Authority were unsure of the status of the School under the RTI Act, the PIO's action of not transferring the application to the School, or for that matter to the Regional Director of DAV Institutions, as well as the observations made by the First Appellate Authority in this matter, cannot be found fault with.

5.7 As already noted, the First Appellate Authority observed that the Department only issued NOCs to the Schools and that it could access from the School only "the concerned information" as per Resolution No.30720. In fact, the above observation made by the First Appellate Authority relates to the ground raised by the appellant in the first appeal whereas the other observations did not. In any

case, now it is necessary to see if there was any error on the part of the First Appellate Authority in making the above observation. In other words, it needs to be seen whether or not information could have been obtained by the PIO either from the School or from the Office of the Regional Director, D.A.V. Institutions.

5.8 It is noted that the appellant sought to counter the First Appellate Authority's observation by referring to Resolution No. 30720 dated 23.09.1996 as well as to the RTE Act. The respondents have already clarified that the RTE Act would not apply to Class-XI. Therefore, the limited question which remains is whether or not the required information could have been collected / can be collected by the PIO from the School by exercising control as per Resolution No. 30720 dated 23.09.2016.

5.9 The Resolution No.30720 dated 23.09.1996 has been perused. The preamble to the Resolution reads "it has thus become imperative to prescribe certain guidelines to be followed before according N.O.C. / recognition to such institution and to withdraw such N.O.C./ Recognition to such Institution in the event of violation of any of the instructions issued in this Resolution". "Any organization / individual seeking No Objection Certificates from the State Government to open any unaided School to be affiliated to the ICSE / CBSE shall be required to fulfil the terms and conditions and satisfy the requirements prescribed hereunder". It can thus be seen that the purpose / objective of the Resolution was limited to issuing N.O.Cs or according recognitions. The conditions prescribed in the Resolution have to be seen in the light of the above declared purpose / object. This in itself restricts the scope of operation of the terms and conditions. No doubt, there is a miscellaneous condition which at para 6(ii) stipulates that "the School shall supply information and returns called for by the Government within the prescribed date given for its furnishing to the authority concerned". The above miscellaneous condition at para 6(ii) comes after 5 other conditions which relate to accommodation, recruitment of service conditions of the staff, medium of instruction, fees and admission of students

without distinction of religion, caste and creed. It cannot be disputed that the first 5 conditions are in the nature of compliances before an NOC can be issued or recognition can be accorded. Therefore, when the 6th condition refers to supply of information, the meaning and scope of "supply of information" has to be understood in the context of the objectives and purposes of the Resolution as well as the preceding 5 conditions. The 6th condition cannot be understood by isolating it from the other conditions and by treating as a stand-alone condition. In this connection, reference may be made to the *ejusdem generis* rule. Under his rule, where general words [such as information and returns used in para 6(ii)] follow particular words, the general words are construed as being limited to persons or things within the class outlined by the particular words. The words used together should be ready together as one. We may also refer to the legal principle of *noscitur socii.* As per this principle, the meaning of a doubtful word may have to be ascertained by making reference to the meaning of the words associated with it. Applying the above rule and principle of interpretation of law, there can be little doubt that the condition prescribed in para 6(ii) cannot be stretched beyond the scope delineated in the Resolution No. 30720 dated 23.09.1996. Hence the Commission does not find any error in the observations made by the First Appellate Authority by referring to the aforementioned Resolution.

6. For the reasons stated hereinabove, and also as the First Appellate Authority had otherwise followed proper procedure of law by hearing the appellant as well as by disposing of the appeal through an order, the Commission does not find any merit in the grounds raised by the appellant against the First Appellate Authority.

6.1 As the PIO is found to have given a correct reply to the appellant and also as no error has been found in the observations made by the First Appellate Authority in his order, the grounds raised by the appellant in this appeal are hereby rejected and the appeal is accordingly dismissed.

6.2 Since the issue whether or not the School is a public authority within the meaning of Section 2(h) of the RTI Act, 2005 has not been raised in the grounds of appeal, the Commission does not consider it necessary to deal with the said issue and also does not deem it appropriate to offer any comment with reference to the lease deed vide which certain extent of land was leased out by the Government in favour of the DAV Public School, Pokhariput.

7. With the above observations, the case is hereby closed and the subject second appeal stands disposed of.

Pronounced in open proceedings

Given under the hand and seal of the Commission this day, the 7th August, 2020.

State Chief Information Commissioner
07.08.2020