IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR.

LETTERS PATENT APPEAL NO.466/2011
IN
WRIT PETITION NO.5168/2010 (D)

APPELLANT/ PETITIONER		People Welfare Society, through its President Dr. Madhukarrao Wasnik, having office at PWS Arts and Commerce College, Kamptee Road, Nagpur.
...VERSUS...		
RESPONDENTS	1.	The State Information Commissioner, Nagpur Bench, Nagpur.
	2.	The Deputy Charity Commissioner, Nagpur.
	3.	Dr. Ravindra Shamrao Wasnik, Dr. Dabhodkar Marg, Near Punjab National Bank, Indora Square, Nagpur.

Mr. R. S. Parsodkar, counsel for the petitioner.
Mr. Amol B. Patil, counsel for the respondent No.1.
Mr. M.K.Pathan, AGP for the respondent No.2.
Mr. S.R.Narnaware, counsel for the respondent No.3.

CORAM :	AVINASH G. GHAROTE, J
	ANIL S. KILOR, J
	URMILA JOSHI-PHALKE, J.

Date of reserving the Order : 13/12/2023
Date of pronouncing the Order : 01/03/2024

O R D E R : (PER : AVINASH G. GHAROTE, J.)

1. The Full Bench has been constituted to answer the following question:

Question:- *Whether a Public Trust registered under the provisions of Maharashtra Public Trusts Act 1950, which is running an institution that receives grant from the State is duty bound to supply information sought from it under provisions of Right to Information Act 2005?*

2. The need for formulating the above question arose on account of a discord found by the learned Division Bench between various decisions of this Court taking opposite views on the above issue, by one set of judgments holding that the Trust/Society running an educational institution, which educational institution was receiving grants from the Government, would not fall within the definition of 'Public Authority', as it was the educational institution which was receiving the grants and not the Trust/Society and therefore information vis-a-vis the affairs of the Trust/Society as opposed to information in respect of the educational institution, could not be termed as 'information' within the meaning of

the expression as defined in section 2(f) of the Right to Information Act ('RTI Act' for short hereinafter) so as to invoke the jurisdiction of the authorities under the RTI Act to enforce its disclosure. These judgments are :

(i) Bhaskar Shankarrao Kulkarni Vs. State Information Commissioner, Nagpur and Ors. 2009(4) Mh.L.J. 802 [C. L. Pangarkar-J] an LPA against which namely *LPA No. 287/2009* decided on *28/07/2009* has been dismissed by the learned Division Bench.

(ii) Thalappalam Service Coop. Bank Ltd. v. State of Kerala, (2013) 16 SCC 82

(iii) D.A.V. College Trust and Management Society and Ors. Vs. Director of Public Instructions and Ors., (2019) 9 SCC 185.

(iv) Nagar Yuwak Shikshan Sanstha, Nagpur and Anr. Vs. Maharashtra State Information Commission, Vidarbha Region, Nagpur and Anr., 2009 (6) Mh.L.J. 85. [A B Choudhari- J]

(v) Dr Panjabrao Deshmukh Urban Co-op. Bank Ltd. Vs. State Information Commissioner, Vidarbha Region and Ors. 2009(3) Mh.L.J. 364.

(vi) Shikshak Sahakari Bank Ltd. / Murlidhar Pundlikrao Sahare, 2010 (2) MH.L.J. 240 [Mrs. V A Naik J].

Another set of judgments takes the view that since the educational institution receiving the grant is owned and controlled by the Society/Trust, which therefore can be said to have access to the finances

provided by the State to the Educational Institution, it would be permissible for information regarding the Society/Trust to be directed to be made available under the RTI Act. This view is taken by the following decisions :

(a) Appellate Authority and Chairman Shikshan Prasarak Mandali and Anr. Vs. State Information Commissioner and Anr. 2013(1) Mh.L.J. 897

(b) LPA No.48/2013 decided on 20/3/2013 against Appellate Authority and Chairman Shikshan Prasarak Mandali and Anr. (supra) which has been admitted.

(c) Shikshan Prasarak Mandal, Kamptee and Anr. Vs. The State Information Commissioner, Nagpur and Ors. 2010 (6) Mh.L.J. 357.

3. Mr. Parsodkar, learned Counsel for the petitioner, contends that though the petitioner/Trust, runs two educational institutions/Colleges, however, what was being sought was the information related to the Trust and not the Educational Intuitions and such information could not be directed to be disclosed under the provisions of the RTI Act, as the Trust, did not fall within the definition of a 'Public Authority', as defined in sec.2(h) of the said Act. He contends that even if the State was providing salary and non-salary grants to the institutions, that may bring in the Educational Institutions within the ambit of the RTI Act, but not the Trust, as the providing of salary and

non-salary grants, by the State was as a matter of policy to all the aided institutions, in the State and therefore the information in respect of the Trust could not be said to be information capable of being directed to be disclosed under the provisions of the RTI Act. He further contends that even if the Trust was subject to the statutory supervision of the Charity Commissioner under the Maharashtra Public Trust Act, the same would not make the Trust a 'public authority', under Section 2(h) of the RTI Act and even the Charity Commissioner, would not be able to solicit information from the trust or supply information, to a person soliciting it, under the aegis of the RTI Act. Learned Counsel in support of these submissions places reliance upon the judgments quoted above supporting this view and ***S.S.Angadi Vs. State Chief Information Commissioner, Bangalore and anr. AIR 2008 Kar 149.***

4. Mr. Amol Patil, learned Counsel, while opposing the contention, submits that since salary and non-salary grants are being supplied by the State to the petitioner/Trust, that by itself would indicate that there was substantial finance from the State, to the Petitioner /Trust thereby rendering the petitioner/Trust to be a 'public authority', as defined in Section 2(h)(i) of the RTI Act and therefore subject to the provisions of the RTI, requiring the disclosure of information as sought.

5. Mr. Mehroz Pathan, learned AGP, while supporting the contention of learned Counsel, Mr. Amol Patil, also Places reliance upon ***Appellate Authority and Chairman Shikshan Prasark Mandali and anr. Vs. State Information Commissioner and anr., 2013 (1) Mh.L.J. 897*** to contend that since there is control of the Trust upon the activities if the educational institutions run by it, that would be sufficient to hold that the Trust would also be a 'public authority', as defined in Section 2(h) of the RTI Act.

6. The relevant provisions for consideration are as under :

> ***"Sec. 2. Definitions. –*** *In this Act, unless the context otherwise requires, –*
> ***(h)*** *"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;*
> *(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, direct or indirectly by funds provided by the appropriate Government;"*
> ***Sec.8. Exemption from disclosure of information.–*** *(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*
> *(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;*
> *(b) information which has been expressly forbidden to be published by any Court of law or tribunal or the disclosure of which may constitute contempt of court;*

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) information received in confidence from foreign Government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act."

7. In ***Appellate Authority and Chairman Shikshan Prasark Mandali*** the purpose of enacting the RTI Act, has been nicely summed up as under :

*"**7.** To appreciate it, the RTI Act and its provisions will have to be borne in mind. On 15th June, 2005 Act 22 of 2005 was brought into effect whereunder what is paramount and predominant is conferring of Right to Information for citizens. The RTI Act is only giving effect to and implementing Constitutional mandate of "Right to Know" which flows from the right to freedom and expression guaranteed vide Article 19(1) (a) of the Constitution of India. As would be evident from the preamble itself, some practical regime had to be created so that the substantive right as conferred by the Constitution of India can be enforced. Therefore, the preamble states that this is an Act for setting out practical regime of right to information for citizens to secure access to the information under the control of public authorities, in order to promote transparency, accountability in the working of every public authority, constitution of the Central Information Commission and State Information Commission and for matters connected therewith or incidental thereto. The preamble then reads thus:*

"AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it."

8. The object and aim of the RTI Act, 2005 was considered by the Hon'ble Supreme Court in the case of Institute of Chartered Accountants v. Shaunak H. Satya, reported in AIR 2011 SC 3336. In that context and dealing with some of the provisions of the Act, it is held as under:

"18. The information to which RTI Act applies falls into two categories, namely, (I) information which promotes transparency and accountability in the working of every public authority, disclosure of which helps in containing or discouraging corruption, enumerated in clauses (b) and (c) of section 4(1) of RTI Act; and (ii) other information held by public authorities not falling under section 4(1)(b) and (c) of the RTI Act. In regard to information falling under the first category, the public authorities owe a duty to disseminate the information wide suo motu to the public so as to make it easily accessible to the public. In regard to information enumerated or required to be enumerated under section 4(1)(b) and (c) of RTI Act, necessarily and naturally, the competent authorities under the RTI Act, will have to act in a proactive manner so as to ensure accountability and ensure that the fight against corruption goes on relentlessly. But in regard to other information which do not fall under section 4(1)(b) and (c) of the Act, there is a need to proceed with circumspection as it is necessary to find out whether they are exempted from disclosure. One of the objects of democracy is to bring about transparency of information to contain corruption and bring about accountability. But achieving this object does not mean that other equally important public interests including efficient functioning of the Governments and public authorities, optimum use of limited fiscal resources, preservation of confidentiality of sensitive information, etc. are to be ignored or sacrificed. The object of RTI Act is to harmonise the conflicting public interests, that is, ensuring transparency to bring in accountability and containing corruption on the one hand, and at the same time ensure that the revelation of information, in actual practice, does not harm or adversely affect other public interests which include efficient functioning of the Governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information, on the other hand. While sections 3 and 4 seek to achieve the first objective, sections 8, 9, 10 and 11 seek to achieve the second objective. Therefore, when section 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfilment and preservation of democratic ideals. Therefore, in dealing with information not falling

under section 4(1)(b) and (c), the competent authorities under the RTI Act will not read the exemptions in section 8 in a restrictive manner but in a practical manner so that the other public interests are preserved and the RTI Act attains a fine balance between its goal of attaining transparency of information and safeguarding the other public interests."

"19. Among the ten categories of information which are exempted from disclosure under section 8 of the RTI Act, six categories which are described in clauses (a), (b), (c), (f), (g) and (h) carry absolute exemption. Information enumerated in clauses (d), (e) and (j) on the other hand get only conditional exemption, that is the exemption subject to the overriding power of the competent authority under the RTI Act in larger public interest, to direct disclosure of such information. The information referred to in clause (i) relates to an exemption for a specific period, with an obligation to make the said information public after such period. The information relating to intellectual property and the information available to persons in their fiduciary relationship, referred to in clauses (d) and (e) of section 8(1) do not enjoy absolute exemption. Though exempted, if the competent authority under the Act is satisfied that larger public interest warrants disclosure of such information, such information will have to be disclosed. It is needless to say that the competent authority will have to record reasons for holding that an exempted information should be disclosed in larger public interest."

"25 …… Public authorities should realise that in an era of transparency, previous practices of unwarranted secrecy have no longer a place. Accountability and prevention of corruption is possible only through transparency. Attaining transparency no doubt would involve additional work with reference to maintaining records and furishing information. Parliament has enacted the RTI Act providing access to information, after great debate and deliberations by the Civil Society and the parliament. In its wisdom, the parliament has chosen to exempt only certain categories of information from disclosure and certain organisations from the applicability of the Act……."

"26. We, however, agree that it is necessary to make a distinction in regard to information intended to bring transparency, to improve accountability and to reduce corruption, falling under section 4(1)(b) and (c) and other information which may not have a bearing on accountability or reducing corruption. The competent authorities under the RTI Act will have to maintain a proper balance so that while achieving transparency, the demand for information does not reach unmanageable proportions affecting other public interests, which

include efficient operation of public authorities and Government, preservation of confidentiality of sensitive information and optimum use of limited fiscal resources."

When it comes to the definitions, the term "appropriate Government" has been defined and when it is so defined, what is crucial therein are the words, "established, constituted, owned, controlled or substantially financed" by funds provided directly or indirectly. Therefore, in properly defining a public authority, the word "appropriate government" had to be defined and it is defined in section 2(a) as under:

"2(a) "appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly—

(i) by the Central Government or the Union Territory Administration, the Central Government;

(ii) by the State Government, the State Government;"

10. *If Chapter II which provides for right to information and obligations of public authority as contained in sections 3 to 11 is taken into account, then, it would be clear that what the legislature brought in place and effect is a practical regime. That practical regime means all those who are obliged to provide information should be properly identified. That identification has been done so as to then make it possible for citizens to have this obligation enforced. Therefore, the term public authority in the first part means any authority or body or institution of self government, established or constituted by or under the constitution, by any other law made by the State Legislature and equally by notification issued or order made by appropriate government. The word "establish" means "to bring into existence" whereas the word "constituted" does not necessarily mean "created" or "set up" though it may mean that also. The word is used in a wider significance and would include both the idea of creating or establishing and giving a legal form to the body (see AIR 1959 SC 868, R.C. Mitter and Sons v. Commissioner of Income Tax, West Bengal). It includes in the later part "any body owned, controlled or substantially financed" and equally a non-governmental organisation, substantially financed directly or indirectly by funds provided by appropriate government. Thus any body owned, controlled or substantially financed is being brought within the net and purview of the definition so as to clearly set out its duty and obligation to provide information and thereafter, make it possible for the citizens to enforce it. It is very clear that the Legislature did not exhaust itself but included bodies owned, controlled*

> *or substantially financed, directly or indirectly by funds provided by appropriate Government."*

The purpose of enacting the RTI Act has been stated by the learned Constitution Bench of the Hon'ble Apex Court in ***SCI / Subhash Chandra Agarwal, 2020 (5) SCC 481***, to be to ensure transparency and accountability and to make Indian democracy more participatory, for which the RTI Act sets out a practical and pragmatic regime to enable citizens to secure greater access to information available with public authorities by balancing diverse interests including efficient governance, optimum use of limited fiscal operations and preservation of confidentiality of sensitive information.

8. In ***Thalappalam Service Cooperative Bank Limited and others Vs. State of Kerala and others,*** *(supra),* the question which fell for consideration was :

> *"Whether a cooperative society registered under the Kerala Cooperative Societies Act, 1969 will fall within the definition of "public authority" under Section 2(h) of the Right to Information Act and be bound by the obligations to provide information sought for by a citizen under the RTI Act?"*

8.1. The Hon'ble Apex Court conducted a thorough analysis of the provisions of the Kerala Cooperative Societies Act *vis-a-vis* the RTI Act

and held that a clear distinction can be drawn between a body which is created by a Statute and a body which, after having come into existence, is governed in accordance with the provisions of a Statute. In the context of Societies registered under the Kerala Cooperative Societies Act, it found that these were not Statutory bodies, but bodies corporate within the meaning of Section 9 of the Kerala Cooperative Societies Act, the final authority in respect of such societies, being in the general body and not the Registrar of Cooperative Societies or the State Government. Though the Societies were subject to the control of the Statutory authorities like the Registrar, Joint Registrar, the Government, etc, but it could not be said that the State exercised any direct or indirect control over the affairs of the Societies which could be said to be deep and all pervasive. It also held that the supervisory or general regulation under the Statute over the cooperative societies, which are bodies corporate does not render activities of the body so regulated as, subject to such control of the State, so as to bring it within the meaning of the "State" or "Instrumentalities of the State" within the meaning of Article 12 of the Constitution and hence does not subject them to all Constitutional limitations as enshrined in Part III of the Constitution. This is what has been said in this regard :

> *"18. We can, therefore, draw a clear distinction between a body which is created by a Statute and a body which, after having come into existence, is governed in accordance with the provisions of a Statute.*

> *Societies, with which we are concerned, fall under the later category that is governed by the Societies Act and are not statutory bodies, but only body corporate within the meaning of Section 9 of the Kerala Co-operative Societies Act having perpetual succession and common seal and hence have the power to hold property, enter into contract, institute and defend suites and other legal proceedings and to do all things necessary for the purpose, for which it was constituted. Section 27 of the Societies Act categorically states that the final authority of a society vests in the general body of its members and every society is managed by the managing committee constituted in terms of the bye-laws as provided under Section 28 of the Societies Act. Final authority so far as such types of Societies are concerned, as Statute says, is the general body and not the Registrar of Cooperative Societies or State Government."*

8.2. It however also indicated that there may be situations where a body or organization though not a part of the "State" or "Instrumentalities of the State" may still satisfy the definition of "public authority" within the meaning of Section 2(h) of the RTI Act in respect of which, in view of the language of Section 2(h)(d)(i) of the RTI Act which uses the words and phrases "owned", "controlled", "or substantially financed", it opined that in so far as the word "owned", was concerned, on an admitted position that in the said case the Societies were not owned by the appropriate government, the same was not attracted. This is what has been said in this regard :

> *"35. 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."*

8.3. Insofar as the word "controlled", was concerned it held that in the background of Section 2(h)(d)(i) of the RTI Act, it 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, i.e. the control of the body is of such a degree which amounts to substantial control over the management and affairs of the body. This is what has been said in this regard :

> *'**44.** 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. The 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. The 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 Cooperative Societies Act.*

> ***45.*** *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-à-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."*

8.4. As regards the phrase "substantially financed", it held that merely providing subsidies, grants, exemptions, privileges, etc., as such cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body, that it practically runs by such funding and but for such funding, it would struggle to exist. It also held that the State may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD, etc. but those facilities or assistance cannot be termed as "substantially financed" by the State Government to bring the body within the fold of "public authority" as defined in Section 2(h)(d)(i) of the RTI Act. It also noted that there are instances, where private educational institutions getting 95% grant in aid from the appropriate government, may answer the definition of "public authority", under Section 2(h)(d)(i) of the RTI Act. This is what has been said in this regard :

> ***"48.*** *Merely providing subsidies, grants, exemptions, privileges, etc. as such, cannot be said to be providing funding to a substantial extent,*

> *unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist. The State may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD, etc. but those facilities or assistance cannot be termed as "substantially financed" by the State Government to bring the body within the fold of "public authority" under Section 2(h)(d)(i) of the Act. But, there are instances, where private educational institutions getting ninety-five per cent grant-in-aid from the appropriate Government, may answer the definition of public authority under Section 2(h)(d)(i).*

8.5. In this context, what has been held in para 53 thereof being material, is quoted as under :

> *"53. We are of the view that the High Court has given a complete go-by to the above-mentioned statutory principles and gone at a tangent by misinterpreting the meaning and content of Section 2(h) of the RTI Act. Court has given a liberal construction to expression "public authority" under Section 2(h) of the Act, bearing in mind the "transformation of law" and its "ultimate object" i.e. to achieve "transparency and accountability", which according to the court could alone advance the objective of the Act. Further, the High Court has also opined that RTI Act will certainly help as a protection against the mismanagement of the society by the managing committee and the society's liabilities and that vigilant members of the public body by obtaining information through the RTI Act, will be able to detect and prevent mismanagement in time. **In our view, the categories mentioned in Section 2(h) of the Act exhaust themselves, hence, there is no question of adopting a liberal construction to the expression "public authority" to bring in other categories into its fold, which do not satisfy the tests we have laid down**. Court cannot, when language is clear and unambiguous, adopt such a construction which, according to the Court, would only advance the objective of the Act. We are also aware of the opening part of the definition clause which states "unless the context otherwise requires". No materials have been made available to show that the cooperative societies, with which we are concerned, in the context of the Act, would fall within the definition of Section 2(h) of the Act."*

8.6. It has also been held that the burden to show that a body is owned, controlled and substantially financed or that an NGO is substantially financed, directly or indirectly, by the funds provided by the appropriate Government is on the applicant who seeks information and is an issue which can be examined by the State Information Commissioner when the question comes up for consideration.

8.7. It further goes on to hold that neither the right to information, which has been codified, nor the right to privacy, which is yet to be so done, but which has been recognised by the Courts, are absolute rights, but can be regulated, restricted and curtailed in the larger public interest and even the public authority is not legally obliged to give or provide information even if it is held under its control, if that information falls under clause (j) of Sub-Section (1) of Section 8 of the RTI Act.

8.8. Considering the regulation of the societies by the Registrar of Cooperative Societies, it has been held that even if the Registrar would be a "public authority" within the meaning of Section 2(h) of the RTI Act, and is empowered to exercise regulatory control over the societies, that by itself would only permit him to gather information from the society, to

the extent to which he can have access, as permissible in law, but would not be obliged to disclose, if such information falls within the ambit of Section 8(1)(f) of the RTI Act. It has also been held that under its supervisory control the Registrar cannot call for information of the bank accounts of the members of the society and disclose it under the RTI Act, as there is no such provision for the same. Any demand for information has to have statutory backing.

8.9. It has therefore been held that if the information which has been sought for, relates to the personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual, the Registrar of Cooperative Societies, even if he has got that information, is not bound to furnish the same to an applicant, unless he is satisfied that the larger public interest justifies the disclosure of such information, that too, for reasons to be recorded in writing. It has also been categorically held that Cooperative Societies registered under the Kerala Cooperative Societies Act, will not fall within the definition of "public authority", as defined in Section 2(h) of the RTI Act.

9. The position thereafter has been considered in ***D.A.V. College Trust and Management Society and Ors.*** (supra), which was a case where the question which fell for consideration was whether non-governmental organizations substantially financed by the appropriate Government fall within the ambit of "public authority" under Section 2(h) of the RTI Act. After considering ***Thalappalam Service Cooperative Bank Limited and others*** (supra) it was held in as under :

> *'**17.** We have no doubt in our mind that the bodies and NGOs mentioned in sub-clauses (i) and (ii) in the second part of the definition are in addition to the four categories mentioned in clauses (a) to (d). Clauses (a) to (d) cover only those bodies, etc., which have been established or constituted in the four manners prescribed therein. By adding an inclusive clause in the definition, Parliament intended to add two more categories, the first being in sub-clause (i), which relates to bodies which are owned, controlled or substantially financed by the appropriate Government. These can be bodies which may not have been constituted by or under the Constitution, by an Act of Parliament or State Legislature or by a notification. Any body which is owned, controlled or substantially financed by the Government, would be a public authority.*
>
> ***22.** Therefore, in our view, Section 2(h) deals with six different categories and the two additional categories are mentioned in sub-clauses (i) and (ii). Any other interpretation would make sub-clauses (i) and (ii) totally redundant because then an NGO could never be covered. By specifically bringing NGOs it is obvious that the intention of Parliament was to include these two categories mentioned in sub-clauses (i) and (ii) in addition to the four categories mentioned in clauses (a) to (d). Therefore, we have no hesitation in holding that an NGO substantially financed, directly or indirectly, by funds provided by the appropriate Government would be a public authority amenable to the provisions of the Act.*
>
> ***26.** In our view, "substantial" means a large portion. It does not necessarily have to mean a major portion or more than 50%. No hard-and-fast rule can be laid down in this regard. Substantial financing can be both direct or indirect. To give an example, if a land in a city is*

given free of cost or on heavy discount to hospitals, educational institutions or such other body, this in itself could also be substantial financing. The very establishment of such an institution, if it is dependent on the largesse of the State in getting the land at a cheap price, would mean that it is substantially financed. Merely because financial contribution of the State comes down during the actual funding, will not by itself mean that the indirect finance given is not to be taken into consideration. The value of the land will have to be evaluated not only on the date of allotment but even on the date when the question arises as to whether the said body or NGO is substantially financed.

27. *Whether an NGO or body is substantially financed by the Government is a question of fact which has to be determined on the facts of each case. There may be cases where the finance is more than 50% but still may not be called substantially financed. Supposing a small NGO which has a total capital of Rs 10,000 gets a grant of Rs 5000 from the Government, though this grant may be 50%, it cannot be termed to be substantial contribution. On the other hand, if a body or an NGO gets hundreds of crores of rupees as grant but that amount is less than 50%, the same can still be termed to be substantially financed.*

28. *Another aspect for determining substantial finance is whether the body, authority or NGO can carry on its activities effectively without getting finance from the Government. If its functioning is dependent on the finances of the Government then there can be no manner of doubt that it has to be termed as substantially financed.*

29. *While interpreting the provisions of the Act and while deciding what is substantial finance one has to keep in mind the provisions of the Act. This Act was enacted with the purpose of bringing transparency in public dealings and probity in public life. If NGOs or other bodies get substantial finance from the Government, we find no reason why any citizen cannot ask for information to find out whether his/her money which has been given to an NGO or any other body is being used for the requisite purpose or not.*

32. *Appellant 1 is the Society which runs various colleges/schools but each has an identity of its own and, in our view, each of the college/school is a public authority within the meaning of the Act. It has been urged that these colleges/schools are not being substantially financed by the Government inasmuch as that they do not receive more than 50% of the finance from the Government. Even the documents filed by the appellants themselves show that M.C.M. D.A.V. College, Chandigarh, in the years 2004-2005, 2005-2006 and 2006-*

> *2007, has received grants in excess of 1.5 crores each year which constituted about 44% of the expenditure of the College. As far as D.A.V. College, Chandigarh is concerned the grant for these three years ranged from more than 3.6 crores to 4.5 crores and in percentage terms it is more than 40% of the total financial outlay for each year. Similar is the situation with D.A.V. Senior Secondary School, Chandigarh, where the contribution of the State is more than 44%."*

After considering the funding received by the institutions it has been held :

> *"**35.** These are substantial payments and amount to almost half the expenditure of the colleges/school and more than 95% of the expenditure as far as the teaching and other staff is concerned. Therefore, in our opinion, these colleges/school are substantially financed and are public authority within the meaning of Section 2(h) of the Act."*

10. What is material to note is that in ***D.A.V. College Trust and Management Society and Ors.*** (supra) though it has been held that an NGO which is substantially financed by the appropriate Government would be a body included in sec. 2(h) of the RTI Act, as clauses (i) and (ii) as contained therein have been held to be additional categories apart from those defined in sec.2(h) clauses (a) to (d) therein, on the facts of it, it has been held that though the appellant no.1 is a Society which runs various colleges/ schools but each has an identity of its own and each of the college/ school is a 'public authority' within the meaning of the expression as defined in the Act. It has not been held that the Society

which runs the educational institutions is a 'public authority', within the meaning of sec.2(h) of the RTI Act.

11. It is also material to note that ***D.A.V. College Trust and Management Society and Ors.*** (Supra) then goes on to consider the salary grants of the teaching and non teaching staff of the college and considering the extent of the grants received holds that the schools and college are substantially financed by the Government, and then in para 35 reiterates that these colleges/ schools on account of they being substantially financed are 'public authority' within the meaning of Section 2(h) of the RTI Act.

12. It appears that the Hon'ble Apex Court was very much aware of what was held in para 53 of ***Thalappalam Service Cooperative Bank Limited and others*** (supra) and therefore has rendered a specific decision considering the same, that it is the schools/ colleges which are "public authority" within the meaning of Section 2(h) of the RTI Act, the only exception being what has been indicated in paragraph 26 of ***D.A.V. College Trust and Management Society and Ors.*** (supra) when it relates to an NGO, itself having received substantial funding for the purposes of carrying out its objects either in the form of land at concessional rates or

direct finance in a monitory form.

13. ***Thalappalam Service Cooperative Bank Limited and others*** (supra) and ***D.A.V. College Trust and Management Society and Ors.*** (supra) would indicate that a distinction has been carved out between a Society on the one hand and educational institution or other institutions which may be run by such Society, and whereas the educational institutions would fall within the definition of "public authority" as occurring in sec.2(h) of the RTI Act, the Society itself would not fall within the scope and ambit of the expression "public authority ", unless the Society itself has been the beneficiary of government land or largesse, for its aims and objects, in which case it would stand included in the definition of 'public authority'.

14. A public Trust, by its very nature, is not the creation of a Statute, but is one which is created by virtue of the trust deed, executed by the executor, or on account of the activities carried out, being recognized as such, by the authorities under the Public Trust Act and registered as such. Sec.2(13) of the Maharashtra Public Trust Act (MPT Act, for short hereinafter) defines a "public Trust' as under :

> *"2 (13) "public trust" means an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, a wakf, church, synagogue, agiary or other place of public religious worship a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860 ,"*

Sec.2(7-A) defines 'instrument of trust', as under :

> "2 (7A) "Instrument of trust" means the instrument by which the trust is created by the author of the trust and includes any scheme framed by a competent authority or any Memorandum of Association and rules and regulations of a society registered under the Societies Registration Act, 1860, in its application to the State of Maharashtra;

and Sec.2(18) defines 'trustee', as under:

> *2 (18) "trustee" means a person in whom either alone or in association with other persons, the trust property is vested and includes a manage*r"

15. A public Trust can be for any public religious purposes, or it can also be for charitable purposes as defined in sec.9 of the MPT Act, which includes (1) relief of poverty or distress; (2) education; (3) medical relief; (3A) provisions or facilities for recreation or other leisure time occupation (including assistance for such provision), if the facilities are provided in the interest of social welfare and public benefit, and (4) the advancement of any other object of general public utility.

16. The management and administration of a Public Trust, is in the hands of the Trustees, as appointed by the Trust Deed, executed by

the Settlor, or in the hands of a body of persons, which may be appointed by the authorities under the MPT Act, if the situation so arises, in which case also, the control is in the hands of the body of persons so appointed. A public Trust, therefore is not a body created by any law and in fact can be said to be a private body.

17. By its very definition, generally speaking, a 'public trust', would mean a Trust, created by the instrument of trust, as defined in sec.2(7-A) of the M P T Act, to be managed by the 'trustee/s', for the aims and objects, which amongst other things, would be those as indicated in sec. 9 of the M P T Act. As a matter of course, most of the public trusts, have nothing to do with the State, and therefore would not fall within the definition of 'public authority', as contained in sec.2(h) (a) to (d) of the RTI Act. In almost all cases, such creation of a Trust, would have nothing to do with the Government and thus the question of a Public Trust, being a body owned or controlled by the Government, would not arise. Of course, there may be exceptions, to this, where the trust, is formed with the Government as a constituent, however, this can be easily ascertained from the trust deed, which would demonstrate, the extent of control, which the Government may exert in such cases. This position, thus is easily ascertainable from a reading of the trust deed, which however, will

have to be determined by the Information Commissioner, in case such a question arises.

18. All Public Trusts, are required to be registered with the office of the Charity Commissioner, who exercises regulatory control over such Public Trusts as is provided by the provisions of the Public Trusts Act, in this case the MPT Act. The scope and ambit of such regulatory control would be apparent from the provisions of sections 18- which provides for registration of a Public Trust; Sec. 22 – enquiry as to change; Sec.35 - relating to investment of public trust money; Sec.36 -alienation of immovable property of public trust; Sec.37-powers of inspection and supervision; Sec.40-power to issue orders on report received under sec.39; Sec.41-A – power to issue directions for proper administration of trust; Sec.41-B- power to institute enquiries ; Sec.41-D- suspension, removal and dismissal of trustees; Sec.41-E-power to act for protection of charities; etc. A 'public trust', unless the deed of trust otherwise indicates, cannot be held to be one falling within sec.2(h) (a) to (d) of the RTI Act. It now remains to be considered whether a 'public trust', can be said to be covered by clauses (i) and (ii) of sec.2(h) of the RTI Act.

19. It is axiomatic, by applying the analogy of the reasoning in ***Thalappalam Service Cooperative Bank Limited and others*** (supra) and ***D.A.V. College Trust and Management Society and Ors.*** (Supra), that on account of the regulatory supervision and control by the authorities under the Public Trust Act, the Public Trust, itself, cannot be held to fall within the scope and ambit of sec.2(h)(i) of the RTI Act as the control, as envisaged therein, cannot be the control or supervision by the authorities in view of the regulatory provisions under the M P T Act, but has to be a control of the management of the Trust and its objects as is spelt out from the deed by which it is created, or a scheme which is settled for such public trust, by the Authorities under the MPT Act, in case of absence of a deed of trust. In this view of the matter it cannot be said that the management of the Public Trust, in any case would be under the control of the Government.

20. In so far as the question of a public trust being substantially financed by the Government is concerned, it would be material to note, what has been held in ***Thalappalam Service Coop. Bank Ltd.***(supra) in this regard, which holds that mere providing subsidies, grants, exemptions, privileges, etc., as such cannot be said to be providing funding of a substantial extent, unless the record shows that the funding

was so substantial to the body, that it practically runs by such funding and but for such funding, it would struggle to exist.

21. What is also material to note is that the plea of financial assistance being provided by the State, to the educational institutions, run and managed by a 'public trust', in the form of salary and non-salary grants, has to be considered, in the context as to whether such salary and non-salary grants are being provided by the State only to the educations institutions run by the 'public trust', or such salary and non-salary grants are being received by the educational institutions on account a uniform policy framed by the State for providing assistance to all educational institutions in the state. The receipt of salary and non-salary grants by the educational institutions, throughout the State, whether run and administered by any body/institution/trust/society, are under the various Government resolutions, by which the State has formulated a uniform policy for granting aid and assistance to the educational institutions, which comply with the requirement of the conditions laid down therefor. It is therefore not possible to hold that merely because salary and non-salary grants are being provided by the Government to all educational institutions, as a matter of policy, irrespective of whether it is run and

administered by a Trust or a Society, such a Public Trust, would be a 'Public Authority', as defined in sec.2(h) of the RTI Act.

22. As indicated above, the position of a Trust, is not dis-similar to that of a Society, considering that both are established on account of a written document, the Trust by the deed of trust, its affairs being managed by the trustees, and the Society by its bye-laws, its affairs being managed by the duly elected Managing Committee, both being under the regulatory control of the Authorities, under the respective Acts which govern them. The distinction, which has been carved out between a Society on the one hand and the educational institutions run by it, on the other, as indicated in ***Thalappalam Service Cooperative Bank Limited and others*** (supra) and maintained in ***D.A.V. College Trust and Management Society and Ors.*** (supra), on the same analogy, will equally apply to a Public Trust and the Institutions administered and run by such Public Trust and therefore whereas the educational institutions run and administered by a Public Trust, may fall within the definition of "public authority" as occurring in sec.2(h) of the RTI Act, depending upon the extent of funding by the State, the Public Trust itself would not fall within the scope and ambit of the expression "public authority", unless, the

Public Trust, itself has been the beneficiary of government land or largesse, in any form, for its aims and objects, in which case it would stand included in the definition of 'public authority', the question being one of fact, to be determined by the Information Commissioner, on a case to case basis.

23. The question also has to be considered in light of the definition of 'information', as defined in sec.2(f) of the RTI Act, which reads as under :

> ***"2(f)*** *"information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;"*

A perusal of the definition of 'information' would indicate that information relating to a private body which can be accessed by a 'public authority', under any law for the time being in force, is also included in the said definition. In ***Subhash Chandra Agarwal*** (supra) the learned Constitutional Bench, while considering the term 'private body', as occurring in sec.2(f) of the RTI Act, has held as under :

> ***"21.*** *What is explicit as well as implicit from the definition of "information" in clause (f) to Section 2 follows and gets affirmation from the definition of "right to information" that the information*

should be accessible by the public authority and "held by or under the control of any public authority". The word "hold" as defined in Wharton's Law Lexicon, 15th Edn., means to have the ownership or use of; keep as one's own, but in the context of the present legislation, we would prefer to adopt a broader definition of the word "hold" in Black's Law Dictionary, 6th Edn., as meaning; to keep, to retain, to maintain possession of or authority over. The words "under the control of any public authority" as per their natural meaning would mean the right and power of the public authority to get access to the information. It refers to dominion over the information or the right to any material, document, etc. The words "under the control of any public authority" would include within their ambit and scope information relating to a private body which can be accessed by a public authority under any other law for the time being in force subject to the pre-imposed conditions and restrictions as applicable to access the information.

22. *When information is accessible by a public authority, that is, held or under its control, then the information must be furnished to the information seeker under the RTI Act even if there are conditions or prohibitions under another statute already in force or under the Official Secrets Act, 1923, that restricts or prohibits access to information by the public. In view of the non obstante clause in Section 22 of the RTI Act, any prohibition or condition which prevents a citizen from having access to information would not apply. Restriction on the right of citizens is erased. However, when access to information by a public authority itself is prohibited or is accessible subject to conditions, then the prohibition is not obliterated and the preconditions are not erased. Section 2(f) read with Section 22 of the RTI Act does not bring any modification or amendment in any other enactment, which bars or prohibits or imposes precondition for accessing information of the private bodies. Rather, clause (f) to Section 2 upholds and accepts the said position when it uses the expression — "which can be accessed", that is, the public authority should be in a position and be entitled to ask for the said information. Section 22 of the RTI Act, an overriding provision, does not militate against the interpretation as there is no contradiction or conflict between the provisions of Section 2(f) of the RTI Act and other statutory enactments/law. Section 22 of the RTI Act is a key that unlocks prohibitions/limitations in any prior enactment on the right of a citizen to access information which is accessible by a public authority. It is not a key with the public authority that can be used to undo and erase prohibitions/limitations on the right of the public*

> *authority to access information. In other words, a private body will be entitled to the same protection as is available to them under the laws of this country.*
> ***96.*** *In the RTI Act, in the absence of any positive indication as to the considerations which the PIO has to bear in mind while making a decision, the legislature had intended to vest a general discretion in the PIO to weigh the competing interests, which is to be limited only by the object, scope and purpose of the protection and the right to access information and in Section 11(1), the "possible" harm and injury to the third party. It imports a discretionary value judgment on the part of the PIO and the appellate forums as it mandates that any conclusion arrived at must be fair and just by protecting each right which is required to be upheld in public interest. There is no requirement to take a fortiori view that one trumps the other'."*

This would clearly indicate that even in respect of information accessible to a 'public authority', i.e. information which the 'public authority', is in a position and entitled to ask for, the supply of the said information cannot be withheld, unless it is demonstrated to fall within any of the exemptions as contained in sec.8 of the RTI Act. ***Thalappalam Service Cooperative Bank Limited and others*** (supra) will therefore have to be read in light of what has been held in ***Subhash Chandra Agarwal*** (supra).

24. The position has also been considered by the Division Bench of this Court in ***Rajeshwar Majoor Kamgar Sahakari Sanstha Ltd. v. State Information Commissioner*****, 2021 SCC OnLine Bom 2459,** where after considering ***Thalappalam Service Cooperative Bank Limited and others*** (supra), it has been held that :

> *"7. It is seen from the decision in Thalappalam Service Co-operative Bank Ltd. (supra) that the Registrar of Co-operative Societies is empowered under the Kerala Co-operative Societies Act, 1969 to gather information from a Society on which he has supervisory or administrative control under that Act. He is in a position to gather such information from the Co-operative Society to the extent the same is permitted by law. It is found that under section 79 of the Act of 1960 as well Rule 65 of the Rules of 1961 a Co-operative Society is required to maintain returns, accounts and books as referred to therein. This material can be accessed statutorily by the Registrar under the Act of 1960. Hence, when such information which can be accessed by the Registrar statutorily under the Act of 1960 is sought for by any applicant by invoking the provisions of the Act of 2005, the same would be liable to be supplied by the Society through the Registrar. At the same time if it is found that certain information falls under the category exempted under section 8(1) of the Act of 2005 the same can be refused to be supplied by the Registrar.*
>
> *8. We find that the Information Commissioner has applied similar analogy while directing the Society to supply information to the respondent No. 3. The learned Single Judge has held that what was directed to be supplied to the respondent No. 3 was information which the Assistant Registrar could statutorily access. It is thus clear that information as contemplated by section 2(f) of the Act of 2005 as well as such information which is accessable to the Registrar under the Act of 1960 including that which is required to be maintained under section 79 and Rule 65 of the Rules of 1961 would be liable to be supplied to the applicant. The same would however be subject to the restrictions imposed in that regard by section 8(1) of the Act of 2005."*

Though ***Reserve Bank of India v. Jayantilal N. Mistry, (2016) 3 SCC 525***, has also been considered, it is however material to note that the hon'ble Apex Court in ***HDFC Bank Ltd. / UOI, (2023) 5 SCC 627***, has made the following observations in that regard :

> *"42. Without expressing any final opinion, prima facie, we find that the judgment of this Court in Jayantilal N. Mistry [RBI v. Jayantilal N. Mistry, (2016) 3 SCC 525 : (2016) 2 SCC (Civ) 382] did not take into consideration the aspect of balancing the right to information and the right to privacy."*

25. In *Goa State Co-Operative Milk Producer's Union Ltd. v. Goa State Information Commission at Panaji*, 2018 SCC OnLine Bom 12201 ~~[Nutan Sardesai-J]~~ also it has been held that though the petitioner was not a 'public authority', within the meaning of section 2(h) of the RTI Act, nevertheless, the petitioners records being within the domain of the Registrar under the Goa Co-operative Societies Act, 2001, the information sought for could very well be supplied by the Registrar of the Cooperative Societies to the respondent No. 2.

26. In *Shikshak Sahakari Bank Ltd. v. State Information Commissioner, State Information Commission, 2015 SCC OnLine Bom 6830* also a view has been taken that the petitioner Bank, was not a 'public authority', as defined in sec.2(h) of the RTI Act, and therefore information solicited by a person claiming to be a deemed member under the provisions of the Cooperative Societies Act, could not be supplied to him.

27. Coming to the decisions cited, in ***Bhaskar Shankarrao Kulkarni*** (supra) considering the position which was extant therein that

the Public Trust *was* not a body substantively financed or controlled by the Government nor was it a NGO financed by the Government nor did the trust received any contribution or grant from the Government, or for that matter it was not the contention of the State, that the State provided any funds to the petitioner trust, it was held by the learned Single Judge, that the RTI Act did not apply to the Public Trust. It was also held, that any person seeking to establish that a particular public trust is covered by the provisions of the Right to Information Act will have to first prove that it is a public trust created by Government or Parliament or is substantively financed by the government and until that is done, it must be held to be falling outside the scope of the Right to Information Act. The letters patent appeal against this judgment has been dismissed by the learned Division Bench in LPA No.287/2009, decided on 28/07/2009.

28. In ***Nagar Yuwak Shikshan Sanstha, Nagpur and Anr.*** (supra) it was held that the Public Trust, which ran and administered the educational institutions, was not controlled or financed substantially by the State and 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, in view of which the Public Trust did not come within the ambit of the RTI Act.

29. ***Dr Panjabrao Deshmukh Urban Co-op. Bank Ltd.*** (Supra) was a case in which it was a Society which was running and administering a Bank, and it was held that though a shareholder, would be entitled to solicit information from the Bank under the provisions of the Maharashtra Co-operative Societies Act, the same could not be done under the RTI Act. In ***Shikshak Sahakari Bank, Nagpur*** (supra) a similar view has been taken. The position would be as is indicated in ***Thalappalam Service Cooperative Bank Limited and others*** (supra) read with ***Subhash Chandra Agarwal*** (supra).

30. ***S. S. Angadi*** (supra) also deals with a position where information under the RTI act, was solicited from a Society registered under the Karnataka Societies Registration Act and considering the language of sec.2(h) of the RTI Act, is was held that a society was not created by any law made by the State Legislature and was also not a body controlled or financed substantially by the Government and therefore did not come within the ambit of sec.2(h).

31. ***Shikshan Prasarak Mandal, Kamptee and Anr.*** (supra), was a case in which challenge the notification issued by Joint Director of Education dated 12-9-2008, by which Principals and office bearers of Non-Government Colleges receiving grants-in-aid were directed to appoint Public Information Officers in order to comply with the Right to Information Act, 2005, was under consideration. The learned Division Bench considering the matter has held as under :

> *"**6.** In the instant case, however, we find that the impugned notification dated 12-9-2008, Annexure-I, issued by the Joint Director of Higher Education, Nagpur Division, Nagpur is not at all addressed to the petitioners - Education Society but is addressed and in our opinion, rightly to the Non-Government Colleges receiving grants-in-aid to appoint Public Information Officer under the Right to Information Act. **We have no doubt in our mind that all the Colleges receiving grants-in-aid from the Government of Maharashtra or from the Central Government will have to be treated as public authority as defined in section 2(h) of the Right to Information Act, 2005 because such colleges directly or indirectly receive the grants-in-aid from the Government(s)**. In the instant case, the petitioners have admitted in paragraph No. 5 that the Colleges and Institutions run by the petitioners are receiving grants-in-aid. We quote relevant extracted portion from paragraph No. 5 of the petition as under.*
>
> *"It is only colleges and institutions run by the petitioner-Trust are receiving grant-in-aid from the State's Exchequer. It is categorically stated that the petitioner-Trust did not receive a single rupee from the State and the aid is provided by the Government to the institutions administered by petitioner-society."*

It was further held as under :

> *"**7.** In view of the above admitted position, the notification in question is perfectly in order and in accordance with the mandate of the Right to*

Information Act, 2005. In the instant case, it is seen that the State Information Commissioner has recorded a finding in paragraph No. 3 of its impugned order that respondent No. 2 was informed by the petitioners - Society to ask the information from the concerned College, namely, Seth Kesrimal Porwal College, Kamptee, Tq. Kamptee, District Nagpur and when respondent No. 2 went to the Principal of the said College, he was instructed to ask for the information from the Society. This petition, however, has not been filed by the College for obvious reasons. The State Information Commissioner, therefore, rightly found that the petitioners-Society and its College were guilty of not providing the information and therefore, it found that it was necessary to impose fine in the sum of Rs. 25,000/- and the same was ordered to be recovered from the grants payable to the College. In the instant case, it is not in dispute that the said College run by the petitioners - Society is receiving grants-in-aid and the grants-in-aid received by the College from the Government are managed by the Society and its College. We, therefore, hold that the Non-Government Schools/ Colleges/ Institutions receiving grants-in-aid either from the State Government or the Central Government are fully covered by the definition of public authority and such Schools/Colleges are covered by the provisions of the Right to Information Act, 2005. We, thus, explain the judgment in the case of Nagar Yuwak Shikshan Sanstha, Nagpur v. Maharashtra State Information Commission, Vidarbha Region, Nagpur, cited supra. We, therefore, uphold the notification dated 12-9-2008 Annexure - I, issued by the Joint Director of Higher Education, Nagpur Division, Nagpur and consequently, we also uphold the judgment and order made by the State Information Commissioner Annexure - VI.----.'

It would thus be apparent that what has been held in ***Shikshan Prasarak Mandal, Kamptee and Anr*** (supra) after considering ***Nagar Yuwak Shikshan Sanstha, Nagpur*** **(supra)** is that the Non-Government Schools/ Colleges/ Institutions receiving grants-in-aid, either from the State Government or the Central Government are fully covered by the definition of 'public authority' and such Schools/Colleges are covered by the provisions of the Right to Information Act, 2005. It does not hold that

it is the Society/ Trust running and administering such institutions is a 'public authority', under the RTI Act.

32. ***Appellate Authority and Chairman Shikshan Prasarak Mandali*** (supra) takes a contrary view by holding that a trust would also be covered in Sec.2(h) of the RTI Act, on the premise that there is an element of public dealing while administering a trust and the same cannot be distinguished by holding that such public dealing is only in respect of the educational institutions run by the public trust and not in respect of the trust. Though there is an element of public dealing while administering a public trust, the same, would relate to the fulfillment of the aims and objects of the Trust and not otherwise. As pointed out above a public trust cannot be said to be a body owned or controlled by the State, and so also the question of substantial finance, also has to be looked into in light of the policy of the State and the extent of finance. Though it cannot also be denied that while running and administering such educational institution, the 'public trust', doing so, does exercise control over the activities of the educational institution, however, it is also to be noted that the educational institution, owes its existence to the 'public trust'/Society/ Body, which created it and not otherwise. Even in

absence of any educational institution, a 'public Trust'/ Society can and does function, and can in certain cases, even run educational institutions, even without any State aid, in the form of salary and non-salary grants. Therefore to hold that a 'public trust', which runs an educational institution and the educational institution are one and the same for the purposes of the RTI Act, would not be a correct position, in our considered opinion. *LPA No.48/2013* decided on 20/3/2013 against Appellate Authority and Chairman ***Shikshan Prasarak Mandali and Anr.*** (supra) has only been admitted.

33. Jalgaon Jillha Urban Co-Operative Banks Association Ltd. v. State of Maharashtra, **2017 SCC OnLine Bom 151 [Nalavade + sangitrao Patil JJ],** apart from relying upon ***Jayantilal N. Mistry*** (supra) goes on a premises that the cooperative societies are bodies created by the statute, which in fact, is an incorrect premise, for the reason that the cooperative societies are created by the bye-laws and the provisions under the Cooperatives Societies Act, merely empower the authorities therein to exercise regulatory control. That apart, ***Jalgaon Jillha Urban Co-operative Banks Association Ltd. (supra)*** does not take into consideration the distinction between a 'society/trust', and the institutions run by such 'society/trust', in arriving at the conclusion that

everything which is mentioned in the definition of information needs to be supplied by the cooperative institution to the authority created under the Cooperative Societies Act, which distinction is clearly spelt out from ***Thalappalam Service Cooperative Bank Limited and others*** (supra).

34. In ***Pravara Medical Trust v. Union of India*****, 2014 SCC OnLine Bom 1505 : (2015) 2 Mah LJ 671**, what fell for consideration whether the petitioner no.2, a Trust registered under the Bombay Public Trusts Act which was declared as a deemed university under a notification issued by the Central Government was a public authority within the meaning of the term as defined in section 2 (h) of the RTI Act. The learned Division Bench taking into consideration that Section 2 (h) (d) contemplates a body or institution established or constituted by a notification made by the appropriate government, considering that the petitioner no.2 - Pravara Institute of Medical Sciences by virtue of the notification issued by the Joint Secretary to the Government of India on 29/9/2003, in exercise of powers conferred under Section 3 of the UGC Act, 1956 has declared it to be a deemed university held it to be a public authority under Section 2 (h) of the RTI Act. ***Thalappalam Service Cooperative Bank Limited and others*** (supra) was not considered. It is also material to note that sec.3 of the University Grants Commission Act,

1956 (UGC Act for short), applies the UGC Act, to institutions for higher studies other than universities and empowers the Central Government to declare by notification in the Official Gazette, that any institution for higher education , other than a University shall be deemed to be a University for the purposes of the UGC Act. It is thus apparent, that merely because an institution has been declared as a deemed University by virtue of notification under Section 3 of the UGC Act, it would not amount to creation of the institute in terms of section 2(h)(b) of the RTI Act. It is therefore apparent, that ***Pravara Medical Trust*** (supra), has been decided on an incorrect premise.

35. In light of the above discussion, the question is therefore answered as under :

Whether a Public Trust registered under the provisions of Maharashtra Public Trusts Act 1950, which is running an institution that receives grant from the State is duty bound to supply information sought from it under provisions of Right to Information Act 2005 ?	If the information solicited under the RTI Act, is regarding the Public Trust, then there is no obligation to supply the information, if such Public Trust, does not fall within clause (i) of sec.2 (h) of the RTI Act and has not received any substantial Government largesse or land on concession, to implement

	the aims and objects of the said Public Trust.
	In case the information solicited is in respect of the Educational or other Institutions run by the Public Trust, then depending on the extent of financial support given by the State, in case such finance, is found to be substantial, which is a plea to be decided by the Information Commissioner, information relating to such Educational or other Institutions can be directed to be supplied.
	The Charity Commissioner, would also not be legally obliged to supply such information, which may be collected by him, in respect of the Public Trust, under the provisions of the Maharashtra Public Trusts Act, in case such information falls under the exempted category mentioned in Section 8(*j*) of the Act and the demand does not have

	statutory backing. In case the information solicited does not fall in the exempted category under sec.8 of the RTI Act, then information as submitted to the Authorities under the provisions of the Maharashtra Public Act, under its various provisions by the Public Trust, can be supplied by the Authority who has the custody of such information.

(URMILA JOSHI-PHALKE, J.) (ANIL S. KILOR, J.) (AVINASH G. GHAROTE, J.)

Wadkar/Khunte