

Delhi High Court

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E.C.S.E.P. Council vs Central Information Commission & ... on 1 September, 2008

Author: Mukul Mudgal

* IN THE HIGH COURT OF DELHI AT NEW DELHI + LPA 1802/2006 & CM 11865/2006 Date of Decision: 1st September, 2008.

E.C.S.E.P. COUNCIL Appellant Through Mr. Kailash Vasdev, Sr. Adv. with Mr. Virender Mehta, Adv.

versus

CENTRAL INFORMATION

COMMISSION & ORS. Respondents Through Mr. K. K. Nigam, Adv. for R-1.

Ms. Asha Jain Madan, Adv. for R-2.

Mr. S.K. Dubey with Mr. Nitin Kumar Sharma,

Mr. Deepak Kumar, Adv. for UOI.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers

may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be

reported in the Digest? Yes JUDGMENT(Oral)

LPA No.1802/2006 Page 1 of 10 : MUKUL MUDGAL,J.

1. Admit. With the consent of the learned counsel for the parties, this appeal is taken up for final hearing.

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2. This is an appeal challenging the order dated 19 July 2006 of the learned Single Judge in Writ Petition No.11434/.2006. The original writ petitioner is nd

the appellant before us and has challenged the order dated 22 March 2006 and th

the order dated 18 May 2006 passed by the respondent no.1 Central Information Commission directing the appellant, i.e., CPIO, Department of Information Technology (DIT)/Electronics & Computer Software Export Promotion Council (ESC) to supply the requisite information to the respondent no.2 Smt. Navneet Kaur on the ground that the appellant is not amenable to the Right of Information Act, 2005 (hereinafter referred to as

"the Act").

3. The respondents no.1 CIC's finding was affirmed by the learned Single Judge to the effect that out of sum of Rs.11.8 crores income for the year 2004- 05, the Grant-in-aid from the Department of Commerce and Information LPA No.1802/2006 Page 2 of 10 Technology was about Rs.6.8 crore, and consequently, the finding was that the petitioner, the appellant herein was substantially financed by the Government. While the issue as to whether the appellant is a government organization is pending in the Hon'ble Supreme Court , we have proceeded to decide this Appeal on the basis that the appellant is a non-governmental organization. The plea of the learned counsel Shri Kailash Vasdev is that not only is the appellant a non-government organization but is not substantially funded by the Government as required by Section 2(h) of the Act. 'Public Authority' as defined in Section 2(h) of the Act reads as follows: "(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 an 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 Organization

substantially financed,

LPA No.1802/2006 Page 3 of 10 directly or indirectly by funds

provided by the appropriate

Government;"

4. Both the learned counsel have not disputed that a public authority is amenable to the said Act. Consequently, the learned Single Judge in view of the above finding of substantial funding by the Government dismissed the writ petition leading to the present appeal.

5. We are proceeding on the assumption that the appellant is a non- governmental organization and only deciding whether the appellant is included in the definition of non-governmental organization substantially

financed by the Government.

6. Shri Kailash Vasdev, the learned Senior Counsel, appearing on behalf of the appellant, has contended that the appellant being an 'autonomous body' as evident from the Gazette communication of the Government could not be said to be an organization amenable to Section 2(h) of the Act as it was not substantially financed by the Government. In support of the said plea, the learned counsel for the appellant relied upon the communication issued by the LPA No.1802/2006 Page 4 of 10 Marketing Development Assistance, Code for Export Promotion Efforts, Government of India, Ministry of Commerce & Industry, Department of Commerce (E&MDA Division), Udyog Bhavan, New Delhi in the month of June 2001. In Particular, Reliance has been placed on Clause 10(i) of the said Code which reads as follows:

"(i) Export Promotion Councils (EPCs)

are autonomous in administrative matters

and no financial assistance is provided to

them from MDA for administrative

expenditure (non-code). List of

recognized EPCs is given in Annexure X.

The EPCs can, however, be considered for

assistance from MDA in modernization,

computerization for data collection,

analysis, dissemination and to reduce

recurring administrative expenses by

cutting down identified surplus manpower

through Voluntary Retirement Scheme so

that they can provided efficient, online

and cost effective better services to the

trade etc."

7. It is contended that since the Export Promotion Council, such as the appellant is an autonomous body and had no financial assistance, provided to them from Marketing Development Assistance, Code for Export Promotion LPA No.1802/2006 Page 5 of 10 Efforts, Government of India, Ministry of Commerce & Industry, Department of Commerce (E&MDA Division), Udyog Bhavan, New Delhi. In fact, the main thrust of the appeal is founded on the pleas of the appellant that grand-in-aid from the government is not for establishment of the council and hence the appellant is not substantially financed by the Government. The learned counsel for the appellant submitted that since the Code referred to above provided that the appellant was not given funds for administrative expenses of the respondent, consequently, the Act can not be said to be applicable to the appellant council.

8. In our view, in construing the effect of Section 2(h) of the Act, it is necessary to see the aims and objects of the Act which provides information to the querist. The preamble of the Act is instructive and reads as under: 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 LPA No.1802/2006 Page 6 of 10 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

harmonize these conflicting interests while

preserving the paramountcy of the democratic

ideal;

9. Since the appellant has not challenged the figure of Rs.6.8 crore out of 11.8 crore, we proceed on the assumption that the aforesaid finding is correct. From the Preamble, it is apparent that the intent of the Act is to ensure that there is an informed citizenry and transparency of information which are necessary to prevent corruption and hold the government and its instrumentalities accountable to the governed.

10. The 'public authority' is amenable to the jurisdiction of the respondent no.1 on the basis of it being a non-governmental organization which is substantially financed by the Union of India. The respondent no.1 has recorded and the learned Single Judge has affirmed that out of funds of the sum of Rs.11.8 crore income for the year 2004-05, the Grant-in-aid to the appellant LPA No.1802/2006 Page 7 of 10 from the Department of Commerce and Information Technology was about Rs.6.8 crore and consequently, it was held by the respondent no.1 and affirmed by the learned Single Judge that the appellant was substantially financed by the Government. The appellant has challenged the above finding not on the quantum of the aid given but on the ground that the grant-in-aid is provided by the Government for specific promotional programmes and projects and not for administrative expenses.

11. In our view, all that the Act requires is that the non-governmental organization ought to be substantially financed by the Government. The dictionary meaning of 'substantial' is instructive and reads as follows: *â €* Oxford English Dictionary

"Constituting or involving an essential point or feature; essential, material."

12. We are satisfied that grant of a sum of Rs.6.8 crore out of 11.8 crore amounts to substantial financing of the appellant by the Government. Whether the grant is for its project, establishment or otherwise, the requirements of the LPA No.1802/2006 Page 8 of 10 Act are fully satisfied. The fact that the grant-in-aid from the Government was not for administrative expenses cannot detract from the fact and its legal effect that the appellant was substantially financed by the Government.

13. The Memorandum of Association clearly shows that out of 15 members of the council, only Serial No.13, 14 and 15 are government nominees thus the control of the council does exist according to the appellant, in the council and not in the government. We are not going into that issue as we are only required to construe Section 2 (h) of the Act which requires the non-governmental organization to be substantially financed. Moreover, we have proceeded on the assumption that the appellant is a non-governmental organization.

14. The learned counsel for the appellant submitted that the council's expenditures on establishment, salaries and other operations for the financial year 2004-2005 was Rs.2.08 crores which was totally met out of Membership Fees and Trade Contribution amounting to Rs.2.19 core for that year. A copy of the annual report containing the audited annual accounts and the balance sheet for the year 2004-05 has been enclosed. In our view, this plea of the appellant LPA No.1802/2006 Page 9 of 10 does not advance the cause of the appellant as in fact, the aim and object of the appellant is to support, protect, maintain, increase and promote the exports of electronic goods, computer software and related services and promote and develop use of electronics in other products by such methods as may be deemed necessary. Therefore, in pursuance of the objects of the council/appellant if it received a grant of a sum of Rs.6.8 crore out of Rs.11.8 crore for various projects, then such grants are in pursuance to the objects of the appellant. This also supports our view that the appellant was substantially financed by the government, even if the grant-in-aid was provided by the government for specific promotional programmes and projects and not for administrative expenses. The government grants certainly fall within the purview of the aims and object of the appellant.

15. Consequently, there is no merit in the appeal and it is dismissed with no orders as to costs.

MUKUL MUDGAL, J.

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