

Delhi High Court

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+ W.P.(C) 3422/2012 vs Rajesh Dhiman on 16 September, 2013

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 16.09.2013

+ W.P.(C) 3422/2012

POPULATION SERVICES INTERNATIONAL Petitioner Through: Mr Abhay Singh and Ms Veena Singh, Advs. versus

RAJESH DHIMAN Respondent Through: Mr Vineet Chadda and Mr Mukesh Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The respondent Rajesh Dhiman, who was working with the petitioner

Population Services International, sought certain information from the petitioner

under Right to Information Act. The stand taken by the petitioner was that since it

is not a public authority within the meaning of Section 2(h) of the Act, it was not

amenable to the provisions of the said Act. Being aggrieved, the respondent

approached the Central Information Commission by way of Appeal

No.CIS/SG/A/2011/003380. Allowing the appeal vide impugned order dated

23.04.2012, the Commission, inter alia, held as under:-

W.P.(C) 3422/2012 Page 1 of 7 "From the submissions of the Respondent, it is observed that the funding received from State and Central government for the last three consecutive years is as follows:

Year Funding by state and central government (Rupees)

2009 111,697,146

2010 130,777,428

2011 169,730,330

At the hearing held on 26/03/2012, the Respondent stated that PSI has been in existence since 1988 and that certain funds are being received from the state and central government, and several of their agencies. From the above table, it is clear that funds over Rs.11 crores (in 2009), Rs. 13 Crores (in 2010) and Rs. 16 crores (in

2011) have been received by PSI from the State and Central governments. Further, from the figures provided by the Respondent, it appears that approximately 20% of the total funding in PSI comprises of government funding, which cannot be considered as insubstantial. It is relevant to mention that the percentage of government funding in PSI over last three years has progressively increased from 18% (in 2009) to 21% (in 2011). Moreover, even if taken on absolute terms, a contribution ranging between Rs. 11 to 16 crores by the government from its corpus of public funds cannot be considered as insignificant and would render PSI as being "substantially financed" by funds from the government. This would render PSI as being "substantially financed" directly or indirectly by government funds. If over 1 crore or over 10% of the revenue funding comes from Government, directly or indirectly, it would certainly qualify as substantial funding. Citizens have a right to know about the manner, extent and purpose for which public funds are being deployed by the Government or its agencies. Having said so, not every financing of an entity in the form of a contribution or grant by the Government or its instrumentalities would qualify as

W.P.(C) 3422/2012 Page 2 of 7 "substantial" -but certainly a grant of over Rs. 1 crore would constitute "substantial financing" rendering such entity a public authority under the RTI Act. Based on the reasons described above, it appears that PSI is substantially financed by the appropriate government. Therefore, this Commission rules that Population Services International is a public authority under Section 2(h) of the RTI Act."

2. Section 2(h) of the Right to Information Act, to the extent it is relevant for our purpose, provides that public authority means any non-governmental organization substantially financed, directly or indirectly, by the funds by the appropriate Government. Based upon certain documents produced by the petitioner, the Commission came to the conclusion that the petitioner had received substantial fundings from the State and Central Governments for the year 2009, 2010 and 2011. However, the learned counsel for the petitioner submits that inference drawn by the Commission from the said documents is faulty since the funding was received from certain societies and associations but, not from the appropriate Government, as defined the Act.

3. A perusal of the details placed on pages 19, 20 and 21 of the paper book would show that the petitioner received aid from the following organizations/societies, in the year 2009, 2010 and 2011:-

W.P.(C) 3422/2012 Page 3 of 7 "FUNDING RECEIVED FROM STATE AND CENTRAL GOVERNMENTS Year 2009

State & Govt. Donations.	Amount	Amount	Percentage	National Aids & Control	102,121,500	Organization
RCH-GOR Urban	RCH	700,000				

Centre

Jharkhand State Aids 1,250,000

Prevention Society

Karnataka State Aids 4,688,256

Prevention Society

Andhra Pradesh State Aids 112,500

Control Society

National Rural Health 2,264,394

Mission

Tamilnadu State Aids 560,496 111,697,146 Control Society

Local & International 506,646,136 Donations

Total Donations As per 618,343,282 618,343,282 18 balance Sheet

FUNDING RECEIVED FROM STATE AND CENTRAL GOVERNMENTS Year 2010

State & Govt. Donations. Amount Amount Percentage National Aids & Control 120,471,656 Organization

Karnataka State Aids 1,085,805

Prevention Society

Jharkhand State Aids 1,893,711

Prevention Society

RCH-GOR Urban RCH 3,942,298

Centre

GSACS 1,329,701

Andhra Pradesh State Aids 412,500

Control Society

W.P.(C) 3422/2012 Page 4 of 7 Jharkhand State Aids 1,282,912

Prevention Society (Coila)

Mumbai Distt. Aids Control 1,334

Society

Tamilnadu State Aids 357,511

Control Society

130,777,428

Local & International 511,527,038 Donations

Donations As per balance 642,304,466 642,304,466 20 Sheet

FUNDING RECEIVED FROM STATE AND CENTRAL GOVERNMENTS Year 2011

State & Govt. Donations. Amount Amount Percentage Tamilnadu State Aids 272,903 Control Society

Karnataka State Aids 1,992,087 Prevention Society

Maharashtra State Aids 1,043,636 Control Society

RCH-GOR Urban RCH 2,164,234 Centre

Mumbai Distt. Aids Control 4,085,318 Society

Avert Society 630,534 Andhra Pradesh State Aids 986,741 Control Society

National Rural Health 207,168 Mission

National Aids & Control 158,141,981 Organization

NDMC 205,729 169,730,330

Local & International 640,248,433

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Donations As per balance 809,978,763 809,978,763 21 Sheet

The learned counsel further states that in the year 2012, substantially reduced funding was received by the petitioner. However, the details of such funding were not made available to the Commission. The learned counsel submits that the details of the funding received during the year 2012 shall be placed before the Commission, if so, directed by the Court. As regards the year 2013, he submits that no funding at all has been received till date even from the Societies and organizations from which the same was received in the year 2009 to 2012.

3. Admittedly, no direct funding from the appropriate Government was received by the petitioner. The only question which arises for consideration would be as to whether the petitioner received any indirect substantial funding from the appropriate Government or not. The answer to this question, in my view, can be given only on examining the legal status of the organizations/societies from which the funding was received. In case the petitioner received substantial fundings from the associations which are fully or at least substantially funded by the appropriate Government that, in my view, would be a case of the petitioner being funded indirectly by the appropriate Government. The exercise as to whether the organizations and societies from which the funding was received by the petitioner W.P.(C) 3422/2012 Page 6 of 7 were wholly or substantially funded by the appropriate Government or not cannot

be undertaken in a writ petition. Similarly, the question as to whether the funding received by the petitioner from such organizations/societies can be said to be a substantial funding or not is also a matter which cannot be gone into a writ petition. All these, in my view, are the matters which need to be examined by the Commission.

4. Hence, the impugned order dated 23.04.2012 is set aside and the matter is remitted back to the Commission to decide in the light of this order as to whether the petitioner is substantially funded either directly or indirectly by the appropriate Government or not. The parties shall appear before the Registrar of the Commission on 27.09.2013.

The writ petition stands disposed of accordingly.

V.K. JAIN, J

SEPTEMBER 16, 2013

BG

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