

LAWS(BOM)-2009-4-179

HIGH COURT OF BOMBAY (AT: NAGPUR)

Coram : C.L.PANGARKAR J.

Decided On : April 28, 2009

Appellant(s) :

BHASKARRAO SHANKARRAO KULKARNI

Respondent(s) :

STATE INFORMATION COMMISSIONER

Advocate(s) :

DHUMALE, N.W.SAMBRE, R.L.KHAPRE

Equivalent Citation :

AIR(BOM)-2009-0-163, LAWS(BOM)-2009-4-179, MHLJ-2009-4-802, RCR(CIVIL)-2010-5-956, KHC-2009-0-6452, AIRBOMR-2009-5-443

Referred Act(s) :

- Bombay Public Trusts Act, 1950, S.2(13)
- Right To Information Act, 2005, S.4

Headnote:

A. BOMBAY PUBLIC TRUSTS ACT, 1950 - S.2(13) - Definitions, RIGHT TO INFORMATION ACT, 2005 - S.4 - Obligations of public authorities - The question related to the legality of the order passed by the first appellate authority as well as the jurisdiction of the first appellate authority to take cognizance of the appeal. - A Public Trust has been defined in section 2 of sub-section (13) of the Bombay Public Trust Act as follows - "public Trust" means an express or constructive trust for either religious or charitable purpose or both and includes a temple, a math, (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 (XXI of 1860). - The definition of public authority as given in the Act reads as follows : "public authority" means any authority or body or institution of self government established or constituted - (a) by or under the Constitution; - (d) by notification issued or order made by the appropriate government, and includes any - (i) body owned, controlled or substantially financed; - 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.

B. 3, therefore, preferred an appeal to the Information officer i. - The petitioner, therefore, preferred second appeal to the State Information Commissioner at Nagpur. - Hence this writ petition. - It should have, therefore, dealt with the contention. - WE have therefore now to consider the question if a public trust registered under the Public Trust Act and Societies Act is governed by the Right to Information Act. - It is, therefore, clear from the provisions of this definition that the Act cannot apply to the Public Trust. - Any public trust, therefore, is not at all covered by the definition of the public authority. - Until that is done, it must be held to be falling outside the scope of the Right to Information Act.

C. The definition of public authority as given in the Act reads as follows : "public authority" means any authority or body or institution of self government established or constituted - (a) by or under the Constitution; - 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.

Judgment :

- (1.) RULE. Rule is made returnable forthwith. Heard finally with consent of the parties.
- (2.) THIS writ petition is preferred by the Trust against the order passed by the State Information Commissioner as well as the Information Officer.
- (3.) A few facts may be stated as follows -Respondent No. 3 claims to be a disciple of Sadguru Pralhad Maharaj. There is a trust known as Shree Govind Ramnand Samarth Sadguru Pralhad maharaj (Ramdasi) Sansthan. The petitioner is the Chief Trustee of the said trust. Respondent No. 3 made an application to the said trust to supply certain information to him under the Right to Information Act. The petitioner trustee informed to respondent No. 3 that information being confidential cannot be supplied. Respondent No. 3, therefore, preferred an appeal to the Information officer i. e. the Charity Commissioner. The Charity Commissioner ordered upon payment of fees the information to be supplied. The petitioner, therefore, preferred second appeal to the State Information Commissioner at Nagpur. The state Information Commissioner rejected the appeal. Hence this writ petition.
- (4.) I have heard the learned counsel for the petitioner and the respondents.
- (5.) IT is not necessary to go into the question as to what information was sought from the trust at all. The only contention of the petitioner is that Right to information Act itself is not applicable to it and both authorities fell in error in directing the information to be supplied. The State Commissioner has refused to entertain this plea on the ground that it was not raised before the first appellate authority. The question related to the legality of the order passed by the first appellate authority as well as the jurisdiction of the first appellate authority to take cognizance of the appeal. It should have, therefore, dealt with the contention. Be that as it may.

(6.) WE have therefore now to consider the question if a public trust registered under the Public Trust Act and Societies Act is governed by the Right to Information Act. A public trust to my mind cannot certainly be said to be falling within meaning of Article 12 of the Constitution of India. It is neither a local authority or other authority of India or an authority under the control of government. It is not disputed that the present public trust is not provided any sort of grant by the Government. The only exception would, however, be the trust created by the Government and financed by the Government. A Public Trust has been defined in section 2 of sub-section (13) of the Bombay Public Trust Act as follows - "public Trust" means an express or constructive trust for either religious or charitable purpose or both and includes a temple, a math, (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 (XXI of 1860).

(7.) A trust is thus established for religious and charitable purpose. It is created upon dedication of certain property by certain persons for certain purpose, such as religious or charitable. The question as to whether the public trust is or is not governed by the Right to Information Act has to be decided on the basis of the provisions of the Right to Information Act. It would be necessary to look into certain provisions of the Act. Section 4 of the Right to Information act casts a duty on every public authority to maintain the record in such a manner to facilitate the supply of information. Section 5 speaks of appointment of Information Officer while section 6 speaks of making an application to the information Officer. Section 7 deals with the disposal of such request. It is clear from section 4 that Act applies to the public authorities. The definition of public authority as given in the Act reads as follows :

"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 directly or indirectly by funds provided by the appropriate government.

(8.) A bare reading of definition would make it clear that public trust does not fall in either of the categories. It is not established or constituted under the constitution of India, bye-law passed by the parliament, by any law of the State legislature or by Notification issued by any appropriate Government. It is also not a body substantively financed or controlled by the Government nor is it a ngo financed by the Government nor does the trust receive any contribution or grant from the Government. It is not the contention of the State that the State provides any funds to the petitioner trust. It is, therefore, clear from the provisions of this definition that the Act cannot apply to the Public Trust. Any public trust, therefore, is not at all covered by the definition of the public authority. It is only the public authority which is bound by the provisions of the act. 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. Until that is done, it must be held to be falling outside the scope of the Right to Information Act. If any person interested in the information of the trust, he can definitely apply to the Charity Commissioner under the provisions of the Public Trust Act to have such information, which the Charity commissioner may deem fit to be provided. But as far as Right to Information act is concerned, there is no need for any public trust to appoint any Information officer and to entertain any such application under the Right to Information Act. In the circumstances, the petition has to be allowed. Order passed by both the authorities are set aside and quashed. Petition is allowed. Rule is made absolute. Petition allowed.