



Before The State Information Commission, Kerala
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AP.No.388/2007/SIC
File No.3546/SIC-Gen-3/2007

Shri.Elias John,
Director, NTV
Convent Road,
Trivandrum-1.

}

Appellant

Vs

Public Information Officer and
Additional Secretary,
Home Department, Govt. Secretariat,
Thiruvananthapuram.

}

Respondent

ORDER

The appellant in this case is one Mr.Elias John, Director, NTV, Trivandrum. Ext A1 is the request u/s.6(1) of the RTI Act presented by him to the State Public Information Officer, Home Department, Government of Kerala. The following details were requested:-

- "1. How many registered non Govt.Organizations in the state are receiving foreign funds?
2. Name of the organizations which are receiving foreign funds?
3. What is the amount each organization received during 2004-05, 2005-06, and 2006-07?
4. Which are the organizations submit utilisation details of the funds they received?
5. Is there any provisions to take action against the organizations which are not submitting such reports?
6. If so, did the Govt. take any actions against them? What are the actions taken? "

The State Public Information Officer had rejected the information vide Ext A2 order. It was observed that the request or questionnaire did not fall within the meaning of 'information' and, hence, the application was rejected. The appellant thereupon preferred the first appeal before the Appellate Authority viz., Principal Secretary to the Government, Home and Vigilance Department. The appellate authority had also rejected the application, upholding the decision that what was requested was not information in the strict meaning of the term defined u/s.2(f) of

the RTI Act. The order of the Appellate Authority was marked as Ext A3. This decision had driven the appellant to the State Information Commission. The decisions taken by the State Public Information Officer and the appellate authority were thus challenged by the appellant in his second appeal.

The matter was heard in detail. The appellant did not personally present his case though twice he was summoned. The State Public Information Officer had reiterated her earlier position that the information sought by the requester was not information under the RTI Act and further an affidavit was preferred stating that the State Government has got no control over the Non Governmental Organizations and there was no mechanism to find out the data of foreign contribution, its expenditure, its registration etc. However, it was admitted in the affidavit that every organization receiving foreign contribution will have to be registered under the Foreign Contribution Regulation Act & Rules and the registration requires the recommendations of either the District Collector or the Department of the State Government or by the Ministry/Department of Govt. of India.

The questions that arise for consideration are (i) whether the request u/s.6(1) is for any information? (ii) whether there is any mechanism to find out the information requested for?

Question No.(i): The State Public Information Officer and Appellate Authority vide Ext A2 and Ext A3 orders had taken a very narrow view of the interpretation of the definition of 'information' and had straight away rejected the application Ext A1 without entering into the merits. It is now open to this Commission to examine afresh whether Ext A1 request falls within the ambit of Section 2(f) by which the word 'information' had been defined in the RTI Act. **"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.** Every word in this definition requires emphasis and further clarifications. Ext A1 refers to Non Governmental Organizations, names of such Organizations, names of Organizations receiving foreign fund and such other details. These are information and activities of organizations governed by a statute viz., the Foreign Contribution Regulation Act 1976. And any opinion, advices, data material 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 also falls within the meaning of "information". So, in brief, the decision taken by the State Public Information Officer and the concurring decision taken by the Appellate Authority were erroneous and thus invalid in the eyes of law. Therefore, the Commission finds that what is requested was well within the meaning of the "information" i.e., Section 2(f) of the RTI Act.

Question No.(ii): The next question that is derived from the above conclusion is whether these information are available with the State Public Information Officer or with some other agency in the state. The request Ext A1 mainly relates to NGOs receiving foreign funds, the amount received by each organization, the

utilization and details connected with the utilization. The fact remains that such Organisations, who receive foreign contribution, could have received it only on specific recommendations of the District Collector/State Government/Central Government and all particulars of remittances received thereof have to be kept in separate account in a Nationalised Bank and information thereof, in full, sent to the Reserve Bank of India. And, logically it follows, the State Government/s should be in the know of such inflows of funds in their respective territorial jurisdiction as a prudent means to check its proper utilisation especially, considering its social impact and scope for mis/wrong utilisation. It is, therefore, found strange that the State Government is totally uninformed of the Organizations that receive foreign aid and there is no control over such association/s. The Foreign Contribution Regulation Act 1976 makes it imperative on all organizations to get it registered with the Central Government. The requester ought to have made the request before the Central Information Commission because the information was readily available with the Central Government and the Public Information Officer should have transmitted his request to the Ministry of Home Affairs, Government of India, under intimation to the requester, explaining the position. Presently the Commission finds that the State Government is not having any details of the organizations, which had or is receiving foreign aid and the affidavit of the Public Information Officer thereto is accepted. It is certainly advisable that the Home Department is in the possession of details of all Non Governmental Organizations which had been recommended to receive foreign contribution and those which are in receipt of the contributions, and kept as on date. The State Government may take this up with the Govt. of India and evolve a practical regime and operationalise the same at the earliest considering the gravity of the issue and the possible deleterious effect such contributions can make, should it reach the undesirable ones. The Commission would, therefore, urge urgent action on it, on the part of the State Government, in larger public interest.

In sum, in the light of the present state of affairs and non existence of details, the appeal could not be allowed and hence rejected.

Dated this, the 24th day of October, 2007.

Authenticated copy

Secretary to Commission

