

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)

Central Information Commissioner

CIC/CC/A/2015/001881-SA

Bal Kishan v. PIO, Council for Indian School Certificate Examinations

Important Dates and time taken:

RTI: 12.11.2014	Reply: 14.11.2014	FAA: 29.11.2014
SA: 19.01.2015	Hearing: 20.09.2016	Decided on: 1.11.2016
Result: disposed of with directions		

Parties Present:

1. Appellant: Not present

Public authority: Represented by Advocate Mr. Vipin Tyagi.

FACTS:

2. The appellant filed RTI Application seeking information pertaining to conditions required for affiliation of schools with CICSE board, employee's salary details and entitlement for D.A etc. CPIO stated that CICSE is not a public authority under RTI Act. Appellant filed second appeal before this Commission.

Decision:

3. The official website of the CICSE <http://www.cisce.org/council.aspx> explained the origin and objectives of the Council:

The Council has been so constituted as to secure suitable representation of: Government of India, State Governments/Union Territories in which there are Schools affiliated to the Council, the Inter-State Board for Anglo-Indian Education, the Association of Indian Universities, the Association of Heads of Anglo-Indian Schools, the Indian Public Schools' Conference, the Association of

Schools for the ISC Examination and members co-opted by the Executive Committee of the Council.

Early beginning of the Council:

In 1952, an All India Certificate Examinations Conference was held under the Chairmanship of Maulana Abul Kalam Azad, Minister for Education. The main purpose of the Conference was to consider the replacement of the overseas Cambridge School Certificate Examination by an All India Examination. This set the agenda for the establishment of the Council. In October 1956 at the meeting of the Inter-State Board for Anglo-Indian Education, a proposal was adopted for the setting up of an Indian Council to administer the University of Cambridge, Local Examinations Syndicate's Examination in India and, to advise the Syndicate on the best way to adapt its examination to the needs of the country. The inaugural meeting of the Council was held on 3rd November, 1958. In December 1967, the Council was registered as a Society under the Societies Registration Act, 1860. In 1973, the Council was listed in the Delhi School Education Act 1973, as a body conducting "public" examinations.

The Council's Mission

The Council for the Indian School Certificate Examinations is committed to serving the nation's children, through high quality educational endeavours, empowering them to contribute towards a humane, just and pluralistic society, promoting introspective living, by creating exciting learning opportunities, with a commitment to excellence.

The Ethos of the Council

- Trust and fair play.
- Minimum monitoring.
- Allowing schools to evolve own niche.
- Catering to the needs of the children.
- Giving freedom to experiment with new ideas and practices.
- Diversity and plurality - the basic strength for evolution of ideas.
- Schools to motivate pupils towards the cultivation of:
 - Excellence - The Indian and Global experience.
 - Values - Spiritual and cultural - to be the bed rock of the educational experience.
- Schools to have an 'Indian Ethos', strong roots in the national psyche and be sensitive to national aspirations.

As a leader in the provision of world-wide educational endeavours, the Council's vast experience and wisdom is called upon in many forums such as the Council of Boards of School Education in India (COBSE), State Education Departments, the

Central Board of Secondary Education (CBSE), the National Council for Educational Research and Training (NCERT), the Ministry for Human Resource Development and the Planning Commission, affirming the intrinsic integrity and credibility of the Council and the system it espouses.

4. The origin, lofty ideals, objective, mission and ethos of the Council mandates it to be transparent, accountable and answerable. They may not be a Government sponsored organization, but they are public in character, they hold 'Indian' title in their name. They are morally obliged to give information to its employees, students, parents and to any person as they are a 'society'.

5. The Learned counsel on behalf of respondent, the CISCE stated that from a perusal of the bare provisions of the RTI Act, the character of the Council and the nature of functions performed by it, it was obvious that the Council does not fall within the definition of the 'Public Authority' and thus is not open to release information under the provisions of the RTI Act, 2005. During the course of the hearing the counsel for CISCE stated that the Hon'ble Allahabad High Court in the case of **A. Pavitra vs. UOI & Ors**, WPC No. 60338/2014 dated 15.12.2014 has deliberated upon the issue to determine as to whether the Board is covered under the definition of 'public authority' and has held that CISCE is not the public authority. The respondent Board is a Society registered under the provisions of the Societies Registration Act, 1860, and its byelaws provide that it functions as an independent, autonomous juristic person. After having done so the Hon'ble Court has finally recorded its finding to the effect that the Council is not a "Public Authority". Relevant excerpts are quoted herein below:

In view of the discussions made above, I am of the considered opinion that the Board does not qualify to be a 'Public authority', in view of Section 2(h) of the Act, on account of its recognition under Section 2(g) of the Delhi School Education Act 1973, or on account of the nature of the constitution of the Board itself. In view of the foresaid observations, this Court finds that the Board is not covered within the definition clause 2(h), and consequently, it is not under any obligation to provide the information, as sought by the petitioners, under the RTI Act.

6. The Chief Information Commission Mr R K Mathur has held recently on 15.7.2016, in a Complaint No.CIC/DS/C/2013/000633 by Mr Mukesh Jain, relied upon this judgment and rejected the complaint.

7. Shri OP Kejriwal, Central Information Commissioner, in appeal CIC/OK/A/2006/00303 dt. 24.10.08 stated:

The Commission recalled that in the earlier case dealing with the CISCE it had ordered: "After hearing the submissions of the Respondents, the Commission came to the conclusion that prima facie CISCE was not covered by the definition of a public authority since it was neither funded nor controlled by the Government or any other public body. However, going by the definition of the term 'information' under 2(f) of the RTI Act, which includes 'information relating to any private body which can be accessed by a public authority under any other law for the time being in force to be disclosed, the Commission reiterated its stand." The Respondent emphasized the fact that there was no law for the time being in force under which the information could be passed on to the Appellant. However, the Commission felt that since the information could be accessed by the Government, the Respondents were obligated to disclose the information sought for by the Appellant. The CIC advised the Respondents to call the Appellant to the office and, wherever possible, to open up all the files containing the information the Appellant has asked for.

8. The Commission also directed the Respondents that in case the Appellant had to come again for another hearing in this case, he should be compensated to the extent of to and fro travel from Mumbai to Delhi in the second class AC and be given DA of Rs.500/- for his stay in Delhi. The Commission authorised the Appellant to take photocopies of the pages of the records related to the issues of his enquiry raised in the original RTI-application free of cost. Again the Commission ordered: Finally, in case the Appellant has to come to the Commission again for a hearing complaining of non-compliance of the Commissions Orders, the CIC ordered that "the Appellant may be once again paid to and fro 2 AC train Mumbai-Delhi train fare and Rs.1,000/- for his stay in Delhi. In case the Appellant has to come again, he may purchase the ticket and ask the Respondents for a compensation of this amount".

9. This order of the Commission had been upheld by the Single Bench of the Delhi High Court vide their order dt 30.5.2011 (W.P.(C)8537/2008 and CM 16410/2008).

10. In an appeal filed by the CISCE (LPA 617/2011) a Division Bench of the High Court of Delhi vide their judgement delivered on 24.7.12, had observed as follows:

Earlier the Delhi High Court in ***Council for Indian School Certificate Examinations vs Ajay Jhuria & Anr*** on 24 July, 2012, observed that "Council is a registered society under the Societies Registration Act, 1860. There is also a letter on record issued on 24.03.2006 by the Ministry of Human Resource Development which indicates clearly that the Council is not owned or controlled by the Ministry of Human Resource Development. Therefore, according to the learned counsel for the petitioner since the Council is neither owned nor it is substantially financed and, because of the clear statement made in the said communication dated 24.03.2006, nor is it controlled by Central Government, the question of the Council being regarded as public authority does not arise at all". High court further stated that "we set aside the impugned order passed by the learned Single Judge as also by the Central Information Commission. We leave the question of, whether the Council is a public authority or not within the meaning of The Right to Information Act, 2005, open and to be decided in an appropriate case." Thus it is left to the Central Information Commission to decide whether CISCE was public authority in an appropriate case.

11. Justice Shivakant Prasad of Calcutta High Court, in ***Dinesh Sinha vs. CISCE***, has held that the Council for the Indian School Certificate Examinations (CISCE) does not come within the purview of a public authority under Section 2(h) of the Right to Information Act. The CISCE is a private, non-governmental board of school education in India and holds the Indian Certificate of Secondary Education (ICSE) examination for Class 10. The court held that as the council is not a body or institution of self- government established or constituted under the

Constitution, under the law enacted by the Parliament or by the State Legislature or body owned, controlled or substantially financed, directly or indirectly by the fund provided by the appropriate government, accordingly, it does not come within the purview of a public authority under Section 2(h) of the said Act. The Council's origin being established by the University of Cambridge legally with the assistance of the interested Board for Indians by the Societies Registration Act No XXI of 1860 it does not fall within the definition clause of 2(h)(d)(ii) of the RTI Act and thus, cannot be said to be a public body in possession of a document.

12. Whether the respondent body is public authority or not, is not under consideration before this Commission. Appellant wanted the information pertaining to conditions required for affiliation of schools with CISCSE board, employee's salary details and entitlement for D.A etc.

Any person's right to information

13. The CISCSE is claiming to be a registered society. As per the Section 19 of the Societies Registration Act, 1860, the society is under an obligation to give information to '**any person**'. Section 19 of the Societies Registration Act, 1860

19. Inspection of documents.—**Any person** may inspect all documents filed with the Registrar under this Act on payment of a fee of **one rupee** for each inspection; and any person may require a copy or extract of any document or any part of any document, to be certified by the Registrar, on payment of **two annas** for **every hundred words of such copy or extract**; and such certified copy shall be *prima facie* evidence of the matters therein contained in all legal proceedings whatever.

14. Much before the advent of Right to Information Act, hundred and fifty six years ago, the right to information about the Societies registered was given to each and every person. As claimed by CISCSE, it is a society, and got registered as such, it should have understood, or advised by experts and educationists it has within its fold, that it has a trusty like responsibility to educate the people about their affiliation process. It could have given this information and contended that it was not public authority. They are expected to understand the objective of the 1860 enactment, which is as follows:

An Act for the registration of literary, scientific and charitable societies:
Whereas it is expedient the provision should be made for improving the legal condition of societies established for the promotion of literature,

science, or the fine arts, or for **the diffusion of useful knowledge**, the diffusion of political education, or for charitable purposes;

15. Presuming that the CISCE has those great objectives, they should have voluntarily disclosed the information to the seeker.

16. The purpose of registration is giving notice of their existence with a seal of legal approval for their laudable objectives and to tell the people that some socially interested gentlemen are heading the society. The registration process includes filing of memorandum of association under Section 2, to keep the whole world informed about their names, addresses, and occupations of the governors, council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted. They have to file a copy of rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body along with the memorandum of association. A society may not be a public authority under RTI Act, but it is a public body, by virtue of their registration, which means they cannot keep their affairs out of public. They cannot plead privacy, or refuse to give their addresses etc, if they are the governors of the society. Every person has a right to verify the claims of these society leaders examine their performance and question them. A registered society cannot claim itself to be aloof or away from the social obligations, it has entrusted to itself by their rules and registration. They have to file annual list of managing body with full details of contacting addresses (Section 4)

17. As per section 11, any member of the society who shall steal, purloin etc shall be subject to same prosecution and if convicted shall be liable to be punished in like manner as any person not a member would be subject and liable to in respect of the like offence. That means state can prosecute him on complaint by any person or on its own.

‘Indian’ character

18. Especially this society is using expression ‘Indian’ reflecting its national reach and character. It has claimed in its official website <http://cisce.org/>:

The Council has been so constituted as to secure suitable representation of: Government of India, State Governments/Union Territories in which there are Schools affiliated to the Council, the Inter-State Board for Anglo Indian Education, the Association of Indian Universities, the Association of Heads of Anglo-Indian Schools, the Indian Public Schools' Conference, the Association of Schools for the ISC Examination and members co-opted by the Executive Committee of the Council.

19. It is offering concessions to children with Special Needs. It claimed: Council for the Indian School Certificate Examinations, celebrating over 50 years of providing excellence in education. Such a society is not expected to hide the information pertaining to conditions required for affiliation of schools with CICSE board, or an employee's salary details and entitlement for D.A etc. Section 2(f) in the Right to Information Act, 2005, provides access to information held by private body:

(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;**

20. Assuming that the CISCE is not public authority, it is not acceptable or believable that CISCE, being a registered society, is not a public body. Even agreeing that it is a private body, still it has an obligation to provide access to information as mandated by the law through Section 2(f) of RTI Act, 2005 and 156 year old RTI provision codified under Section 19 of Societies Registration Act, 1860. The information sought by the appellant is accessible according to the provisions of Societies Registration Act and hence it is 'information' as defined by RTI Act. Once what was sought was 'information' the appellant can approach the Commission seeking the enforcement of that right to information supported by two enactments. Hence the Commission directs the CPIO, the Registrar of Societies to collect the information sought from the CISCE and provide the same to the appellant within one month from the date of receipt of this order.

21. It shall be the duty of Registrar of Societies or his CPIO to explain the Commission if any person is restricting or refusing to provide information so that the Commission can consider whether such person could be the deemed PIO as per RTI Act and be proceeded with penalty provisions of RTI Act.

22. The object of RTI Act is brought "in order to promote transparency and accountability in the working of every public authority". Unfortunately some public bodies are trying to escape from accountability by raising technical arguments that they do not fall under the definition of public authority. The CISCE is a public body. It uses the expression "Indian" reflecting its 'national' character. It has thousands of schools affiliated all over the country. Several lakhs of students are connected to it. They are morally and contractually expected to be transparent and provide access to their information. They should be answerable and accountable.

23. Recently the "Ministry of Human Resource Development has asked the heads of CBSE, CISCE and NCERT to explore the feasibility of indicating Class XII results in percentile score. According to a report in Indian Express the ministry has held a meeting on August 3, 2016 on the practice of 'marks moderation' and 'grace marks' followed by the boards. It was attended by R K Chaturvedi, chairman of the Central Board of School Education, Hrishikesh Senapaty, director of the National Council of Educational Research and Training, Gerry Arathoon, head of the Council for the Indian School Certificate Examinations, and the then school education secretary S C Khuntia". (<http://indianexpress.com/article/education/cbse-icse-ncert-cisce-marking-system-percentage-percentile-score-3099524/>). The report in Indian Express, New Delhi, on 24th October 2016, also says:

According to the minutes of the meeting, Khuntia suggested that CBSE, CISCE and NCERT form a committee to "develop a sound procedure" for marks moderation that can be recommended to all Boards for the sake of "uniformity, objectivity and clarity". The panel could commission statistics experts from the Indian Statistical Institute (ISI), IITs and any other reputed institute for this purpose, he advised. .."The feasibility of indicating percentile score in addition to percentage of marks or grades in the marks statement of the students may also be analysed," state the minutes of the meeting.

A percentile rank or score explains how well an examinee did in comparison to other test takers, while a percentage score reflects how well a test taker did on the test itself. So, for instance, a 99 percentile would mean the student scored better than 99 per cent of students who took the test. The suggestion to explore the feasibility of using percentile rank in Board results was made as percentiles are difficult to manipulate at the institutional level and remain largely immune to any distortion caused by awarding higher marks.

Moderation of marks is a common practice adopted to "bring uniformity in the evaluation process". In other words, marks scored by students are tweaked to align the marking standards of different examiners, to maintain parity of pass

percentage of candidates across years, and to compensate students for difficulties experienced in solving the question papers within the specified time.

24. This report shows how the Boards 'moderate' the marks of students and how that affects the admissions of the students in higher education institutions. Because the actions and decisions of these boards seriously affect the career and lives of the young generations, the boards have a duty to be transparent and give entire information on their own and when asked. Why should it not give the details about affiliation or employment.

25. The CISCE has to disclose this information on their own, in any means of their convenience, to act like a trustee to keep up the trust of the people and provide the details sought. Fighting tooth and nail for hiding this general information such as conditions of affiliation or employment details will not go well with the high reputation of any organization. The CISCE has an obligation to be transparent and cannot escape accountability which is ordained by the Societies Registration Act and their memorandum of Association. They have a duty as a registered society and as a trustee or a public body to publish its objects, working to fulfil those objects, rules of the Society along with annual lists, reports, statement of income and expenditure as audited etc to help any person to seek, verify and question them, in true spirit of transparency and accountability. Reading Section 2(f) Right to Information Act, together with Section 19 of Societies Registration Act, the Commission directs the respondent authority CISCE to provide the information sought by the appellant within one month from the date of receipt of this order and also direct them to periodically update their disclosures as per Section 4 of Right to Information Act.

Sd/-

(M. Sridhar Acharyulu)
Central Information Commissioner

Authenticated true copy

(Dinesh Kumar)
Deputy Registrar

Addresses of the parties:

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