



Jammu and Kashmir State Information Commission
(Constituted under The Right to Information Act, 2009)
Wazarat Road, near DC Office Jammu, 0191-2520947, 2520937
Old Assembly Complex, Srinagar, 0194-2506660, 2506661
www.jksic.nic.in

File No. SIC/K/Comp/29/2015
Decision No. SIC/K/Comp/29/2015/41

Complainant : Mir Mohammad Sultan
Respondent : PIO/Kashmir Tibbia College Hospital and
Research Centre Shilvat Sumbal
Date of Decision : 17.06.2016

Brief Facts:

1. Brief facts of the case are that Shri Mir Muhammad Sultan S/O Gh. Mohammad Mir R/O Hakabara Kusumbagh Hajin Sonawari District Bandipora has filed a complaint in the Commission on 10.08.2015 submitting therein that his RTI application filed before Director Indian Medicines Parimpora Srinagar was endorsed to Principal Kashmir Tibbia College Hospital & Research Centre Shilvath Sumbal vide letter dated 02.06.2015. However, the Principal K.T.C & R Centre has not furnished him the requisite information/ documents till 08.08.2015. The complainant has requested the Commission to take necessary action against the concerned institution under provision of RTI Act, 2009.

2. As per the records the complainant has filed an application dated 25.05.2015 addressed to Director Indian Medicines Parimpora Shalteng, Srinagar under J&K RTI Act 2009 seeking following information:

- *Copies of orders of appointment issued in favour of Mohamamd Shafi Kadla as Administrative Officer New Kashmir Educational Society Saida kadal Srinagar and orders of appointment issued in favour of Ghulam Hassan as Administrative Officer Kashmir Tibiya college Shilvat Sonwari*

3. The Assistant Director/PIO Directorate of ISM forwarded the application under Section 6(3) to PIO, Kashmir Tibbia College Hospital and Research Centre Shilvath Sumbal vide letter dated 02.06.2015 with copy to complainant. Administrative Officer KTCH&R has responded to this application vide letter dated 26.08.2015 informing PIO Directorate of ISM Srinagar that college is not financed directly or indirectly any Government/Semi government agency, does not qualify as a public authority within the meaning of RTI Act.

Proceedings:

4. In response to notice of Commission the Administrative Officer Kashmir Tibbia College Hospital & Research Centre filed reply/counter statement dated 28.08.2015 with copy to complainant interalia submitting at Paras 4, 5 & 7 as under:-

***Pare—4:** The Complainant filed another application dated 25.05.2015 under the RTI Act 2009 with Director Indian System of Medicine (ISM), Srinagar seeking copies of appointment orders of Mr. Mohammad Shafi Kadla and Mr. Ghulam Hassan Kozger working as Administrative Officers in the Management Office, New Kashmir*

Educational Society (NKES) and Principal Office, Kashmir Tibbia College (KTC) of the college respectively.

Pare—5: *The Assistant Director (Public Information Officer) Directorate of ISM, Srinagar, has in turn sent the application of the complainant to the office of Principal under the cover of his letter No. DSISM/PIO/RTI/2015/26 dated 02.06.2015, asking him to provide copies of the appointment orders of both these employees of the Institution directly to the complainant. The aforesaid letter was received in the office of Principal KTC, Shilvath on 30.07.2015. The Principal KTC, Shilvath sent the case to the Management Office, NKES located at Saida Kadal, Srinagar under the cover of his letter No. KTCHRC/RTI/2015/1074 dated 30.07.2015, which was received on 08.08.2015.*

Pare—7: *The application of the complainant was considered in the terms of the provisions of Jammu & Kashmir Right to Information Act, 2009 and the rules made there under. It appears that since, Kashmir Tibbia College being a private un-aided Institution wholly owned and run by a private society and not financed directly or indirectly by any Government/ Semi-government agency, in any way, hence does not qualify as a “public authority” within the meaning of Section 2(f) of the Right to Information Act, 2009. Accordingly the letter of Assistant Director (Public Information Officer) Directorate of Indian System of Medicine, enclosing the application of the complainant was replied and communicated vide this office letter No. NKES/AO/KTC/ DISM/ 2015/ 435-36 dated 26.08.2015, both to the PIO and the complainant.*

5. During the proceedings in the Commission on 14.09.2015, the complainant sought time to file reply to response of PIO. Accordingly, two weeks time was granted to complainant to file objections with copy to respondent/ Administrative Officer, Kashmir Tibbia College.

6. In compliance to directions of Commission, complainant filed objections vide communication dated 05.10.2015 giving brief of his service tenure in the college & has submitted at Para 7 as under:-

“Under the article of the constitution, I am vested with the fundamental right to protect and safeguard by dignity, honour and respect in the social life and all other laws/ rules are superseded by the said law and as such seeking of documents from any office weather private or public cannot be stopped by any such office/ department. Besides this, the college is recognized by the State Government and is affiliated with the Kashmir University Hazratbal, Srinagar and it is as such a public authority and the management is raising unnecessary issues to dodge the furnishing of requisite documents as demanded by me under the RTI Act, 2009. My plea may kindly be accepted and the requisite documents may kindly be got furnished to me so that I can institute a legal suit against the concerned offices in the competent court as envisaged under the constitution and the law. Also requisite penalty as prescribed under the RTI Act 2009 may kindly be imposed upon the concerned in situations for delaying the furnishing of the said documents uptill now.”

7. During proceedings in the Commission on 05.10.2015, Mr. Muhammad Nazir Ahmad, CEO Tibbiya College, sought two weeks time to file response to objections, which was granted.

8. The Administrative Officer filed objections vide his communication dated 20.10.2015 with copy to complainant. The respondent Administrative officer in his objections has evaluated as to how Kashmir Tibbiya College Hospital & Research Centre does not fall within the definition of Public Authority as defined under Section 2(f) of J&K RTI Act, 2009. The

respondent Administrative Officer at paras 8 (C) and (d) and Para 9 has submitted as under as under:-

Para 8 (c): *The Respondent College has never been paid any fund or grant or aid not even of a nominal value. Therefore, it cannot be termed as “substantially financed” by the Government to bring the college within the fold of “Public Authority” under Section 2 (f) (iv) (A) of the Act.*

Para 8 (d): *“The present college is run by a present society and not by a non-grant organization (NGO). The society namely New Education Society has never been funded or provided any grant-n-aid for running its affairs or the affairs of its college. It is only those private organizations which are, though not owned or controlled but substantially financed by the Government which fall within the definition of “public authority” under Section 2(f)(iv)(B) of the Act.*

Para 9: *A private unaided college like Kashmir Tibbia Hospital & Research Centre does not attain the status of a public authority merely because it is recognized by the government and affiliated to a University. Unless a college satisfies the condition or comes under any one of the categories mentioned in section 2(f) of the RTI Act 2009, which exhausted itself as elaborately discussed hereinabove, the RTI Act cannot be invoked to seek any information from such an institution/ college.”*

9. The Commission vide letter dated 29.10.2015 requested Director Indian System of Medicines J&K Srinagar to intimate as to whether any financial assistance or funds are being provided to the college by the Government. In response, Assistant Director/ PIO Directorate General ISM J&K Jammu vide letter dated 08.12.2015 informed that no such funds have been provided to Kashmir Tibbia College Srinagar, through his department.

10. During proceedings in the Commission on 29.03.2016, the complainant submitted a representation as under:-

(1) “I have learnt the Department of AYOUSH Ministry of Health & Family Welfare Government of India New Delhi is financing the college for undertaking schemes of the (AYOUSH) in the concerned College. Further details can be collected from the Ministry of health & Family Welfare New Delhi.

(2) After receipt of the reply from the concerned Department the plea of the Kashmir Tibbia College and its management may kindly be disposed off accordingly.”

Chairman Kashmir Tibbia College Srinagar submitted that they are affiliated with Kashmir University for academic purposes only and Indian System of Medicine Government of J&K has no controlling authority of them. The case was adjourned with following directions:-

1. *“CEO NKES Saidakadal Srinagar is directed to produce the terms and conditions of affiliation of the Institute with the Kashmir University on the next date of hearing.*
2. *Appellant is directed to file documentary evidence to substantiate that Department of Ayoush Ministry of Health & Family Welfare Govt. of India is financing the College.”*

11. In compliance to directions of the Commission Chief Executive Officer Kashmir Tibbia College Hospital & Research Centre vide letter dated 18.04.2016 submitted the copy of university statutes governing affiliation and recognition of the colleges with the university.

12. Shri Mohammad Nazir Mir, CEO Kashmir Tibbia College Hospital and Research Centre in his communication dated 02.06.2016 has reiterated that the institution is run by New Kashmir Educational Society and has never been funded or provided any grant-in-aid for running its affairs or affairs of

the College by the Government of J&K or Government of India or any other agency/organization, which could have lead them to fall within the definition of Public Authority within the meaning of Right to Information Act. Further, it is submitted that Kashmir Tibbia College Hospital and Research Centre being an unaided institution does attain the status of public authority merely because it is recognized by Government and affiliated to University of Kashmir.

Decision:

13. In his RTI application complainant has sought copies of appointment orders of Administrative Officer of New Kashmir Educational Society Saidakadal Srinagar and that of Administrative Officer Kashmir Tibbia College Shilvath Sonawari. The Administrative officer Kashmir Tibbia College Hospital and Research Centre Saidakadal Srinagar has denied information on the ground that Kashmir Tibbia College is a private unaided Institute wholly owned and run by a private society viz New Kashmir Educational Society and is not financed directly or indirectly by Government/Semi Government agency in any way . In his rejoinder dated 20.10.2015, the administrative officer Kashmir Tibbia college Hospital and Research Centre has established as to how the College do not fall within the definition of Public Authority as defined under Section 2 (f) of J&K RTI Act, 2009 (refer para 8 & 12 above) . The AD Directorate of General ISM J&K Vide his letter dated 08.12.2015 has informed the Commission that no such funds have been provided to Kashmir Tibbia College Srinagar through his department. The complainant in his objections dated 05.10.2015 has submitted that college is recognized by State Government and affiliated with Kashmir University Srinagar. However, he could not produce any documentary evidence to substantiate his allegation that Kashmir Tibbia College is a Public Authority as defined under Section 2(F) of J&K RTI Act.

Further, the complainant in his communication dated 29.03.2016 has informed that he has learnt that Department of AYUSH Ministry of Health and Family Welfare Government of India, New Delhi is financing the college for undertaking schemes of the AYUSH in the concerned college. However in spite of giving opportunity vide notices dated 04.04.2016 and 20.04.2016 complainant could not produce any documentary evidence in this regard.

14. The Hon'ble Supreme Court of India in the case of **Thalappalam Ser. Coop. Bank Vs State of Kerala and others Civil Appeal No.9017 of 2013** at Para 40 has held that *"The burden to show that a body is owned, controlled or substantially financed or that a non-government organization is substantially financed directly or indirectly by the funds provided by the appropriate Government is on the applicant who seeks information....."*

15. In light of the above decision of the Hon'ble Supreme Court, the complainant was required to produce substantial evidence that Kashmir Tibbia College is financed directly or indirectly by Central/State Government. However, complainant has failed to produce any documentary evidence in support of his statement/arguments.

16. In view of the above, the Commission is of the view that Kashmir Tibbia College Hospital and Research Centre Saida Kadal Srinagar does not fall within the definition of Public Authority as defined under Section 2 (f) of J&K RTI Act, 2009.

The Complaint is accordingly disposed of.

Sd/-
(Nazir Ahmed)
State Information Commissioner

Copy to the:-

1. Chief Executive Officer NKES Saida Kadal Srinagar

2. PIO Kashmir Tibbia College Hospital & Research Centre Shilvath,
Sumbal, Bandipora
3. PIO/ Asstt. Dir. Directorate General ISM J&K Srinagar
4. Pvt. Secy to HSIC (K)
5. Sh. Mir Mohammad Sultan S/o Late Ghulam Mohamamd Mir, R/o
Hakabara Kusumbagh Sonwari, Distt. Bandipora

(G.Q.Bhat)
Registrar,
J&K State Information Commission