

ASSOCIATION OF THE MANagements OF POLYTECHNICS

(Reg. No. MH / 75 / 2005 / Nashik, dtd. 24-2-2005)

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Ref. No. :

Date :

Ref: KKWES/ Poly. Asso./ 438/2008

Date: 04/04/2008

To,
The Director,
Directorate of Technical Education,
Maharashtra State,
3, Mahapalika Marg,
Mumbai-400 001

Sub.: Regarding applicability of the provisions of the Right to Information Act, 2005 to the un-aided Polytechnics in the State of Maharashtra.

Dear Sir,

The Association of Polytechnics is the registered organization of the un-aided Polytechnics in the State of Maharashtra. The Association is the registered association having Registration No. MH/75/2005/Nashik dated 24/02/2005. There are about 108 unaided minority and non-minority Polytechnics. As on date 41 Polytechnics have become member of this Association. At present the major issue is about applicability of provisions of the Right to Information Act, 2005 to the un-aided Polytechnics in the State of Maharashtra.

1. The said subject was kept for discussion in the meeting of the Association. The members have expressed their views and accordingly we have consulted our Legal Advisor. After discussing with our Legal Advisor we would like to inform you our views / suggestions and also we would like to invite your attention to the provisions of the Right to Information Act.

2. If we consider the very scope of the Right to Information Act 2005, we have to take into consideration its origin. Our Legal Advisor has shown us the various Judgments of the Apex Court i.e. Supreme Court of India and he was of the opinion that the right to information is arising out of the fundamental right under Article 19 guaranteed by the constitution and enforceable as against the State. If we consider the provisions of Section 2 (h), which is reproduced below, which gives the definition of the word "public authority"

"Public Authority" means any authority, body or institution of self government established or constituted -

- by or under the Constitution
- by any other law made by the Parliament
- by any other law made by the State Legislature
- by notification issued or order made by the appropriate Government, and includes any -

- Body owned, controlled or substantially financed,
- Non-Government organization substantially financed directly or indirectly by funds provided by the appropriate Government.



After going through the said definition it reflects that the public authority means any authority or body or institution of self-Government established or constituted by or under the Constitution. Here we have to consider what is meant by established and constituted by and under the Constitution.

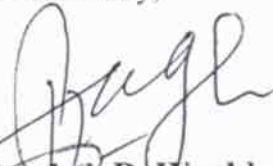
3. For that matter I would like to invite your attention to the definition of the word "established". According to the definition given in the Book Supreme Court on Words and Phases written by Justice R. P. Sethi on Page No. 365, he has referred the definition given in the Dr. Annandale's Edition of the New Gresham Dictionary the word "establish" means, amongst other things, "to found permanently, to establish, to enact or decree, to ordain, to ratify, to make firm". Justice R. P. Sethi, former Judge of the Supreme Court had further observed that "it follows that the word 'established', its ordinary natural sense means, amongst other things 'enacted'. 'Established by law' will, therefore, mean, 'enacted by law'. He has further relied upon the Judgment of the Supreme Court reported in AIR 1950 SC Page 27. Considering the scope of the said definition admittedly none of the member colleges of our Association can be said to be "established by or under any law".
4. We have to consider the scope of the word "constituted". Justice R. P. Sethi has also given the definition of the word "constituted" connected with an instrument of partnership and for that he has relied upon a Judgment of the Supreme Court reported in AIR 1959 SC Page 869. Same Judgment has been referred in the Legal Dictionary i.e. Law Lexicon by Justice Y. V. Chandrachud, in which he has specifically stated that "the word "constituted" in its wider significance, would include both the idea of creating or establishing. Thus it is an admitted fact that none of our member colleges have been created by any law made by the Parliament or State Legislature.
5. In the light of the above mentioned aspects thus our member colleges are not at all covered under the definition given in Section 2 (h) sub clauses (a) (b) (c), as they are neither established nor constituted by or under the Constitution, by any law made by the Parliament or State Legislature. In short, the provisions of the Right to Information Act, 2005 are not applicable to un-aided self financed.
6. Now I would like to invite your attention to the other part of the definition i.e. Section 2 (h) (d) (i) and (ii). In the said definition it is mentioned that "any authority or body or institution of self government established or constituted by notification issued or order made by the appropriate Government." I will pause here and so far as the rest of the definition is concerned I would like to take this authority later. Now I will invite the attention of this authority to the first part. It says that notification should have been issued or atleast order should have been made by the appropriate Government. The definition of the "appropriate Government" is also given in Section 2 (a) of the Right to Information Act. It says that "appropriate Government means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly by the Central Government or Union territory administration, the Central Government, and by the State Government.



7. Considering the above aspects this authority can not be said to be an appropriate Government as contemplated by Section 2 (h) (d) of the Right to Information Act. As such, we are not directly controlled or substantially financed by the funds provided directly or indirectly. As such, the Directorate of Technical Education, Maharashtra State can not be said to be an appropriate Government as contemplated by Section 2 (a) of the said Act. Moreover, the Ministry of Higher and Technical Education, Maharashtra State also can not be an appropriate Government for the reason that it does not control the activities of our member associations or even it does not substantially finance directly or indirectly to our member colleges. In view of this whatever orders or notifications that may have been issued by you or by the Ministry of Higher and Technical Education are beyond the definitions given in the Right to Information Act.
8. Now coming to the rest of the part of the definition which says that the public authority also includes any body owned, controlled or substantially financed and non-government organization substantially financed directly or indirectly by funds provided by appropriate Government. Admittedly all the member colleges are the registered institutions as per the provisions of the Bombay Public Trust Act or the Societies Registration Act. Admittedly they are not established or constituted by or under any law. Moreover, they are not owned, controlled or substantially financed directly or indirectly by the funds provided by the appropriate Government. Considering the above aspects the second part of the definition i.e. Section 2 (h) (d) is also not applicable to our member colleges.
9. In view of the above mentioned aspects we are of the opinion that we can not be termed or referred as 'public authority' and therefore, the provisions of Right to Information Act, 2005 are not applicable to our member colleges.
10. In view of the above mentioned aspects our member colleges can not be called upon to follow the guidelines given under the Right to Information Act as we are separately and independently governed by either the Bombay Public Trust Act or the Societies Registration Act. We are also ready and open for the discussion on the above mentioned points and hence we are sending our suggestions by way of the present letter by anticipating a positive reply from your office.

Thanking you,

Yours faithfully,


[Balasahab D. Wagh]
President



Association of the Managements of Un-aided Polytechnics