

2. That the Appellant vide his two letters dated 11/06/2016 purportedly filed under section 4 of The Right to Information Act 2005 (**Act** for short) requested the Secretary of the Opponent NO.1 for information/documents in respect of civil works carried out in/ around the temple, the hall of Shree Dev Bodgehwar Saunthan including public toilets adjacent to the hall and the donations of Rs. 560,000/- received by the Saunthan.

3. According to the Appellant vide his letter, dated 16/06/2016 he informed the Opponent No.3, Mamlatdar of Bardez being the Administrator, about the said 2 letters Dt. 11/06/2016, however according to appellant the Opponent No.3 did not take any action.

4. That Vide letter, dated 09/07/2016 appellant was informed by the Secretary of the Opponent No.1 that the applications were placed before the Opponent No.2, who decided to inform the Appellant that the Devasthan does not fall under RTI Act 2005. Hence according to appellant, the Opponent No.2 is intentionally refusing to give information under the pretext that the Devasthan does not come under provisions of RTI Act 2005.

5. With the above contentions the appellant has approached this commission with this proceedings as an appeal on the grounds that the Opponent No.2 is hiding the information/documents and that it has refused to furnish the information on the pretext that the Managing

Committee has taken decision that the Devasthan does not fall under RTI Act 2005.

It is further according to appellant that the act is applicable to all public authorities constituted under law made by State Legislature or by notification issued or order made by the appropriate Government and that the regulation governing Hindu Temples was enacted by Portuguese Government and is applicable to all Hindu Temples in Goa and further that said regulations were subsequently amended by Legislative Assembly of Goa on various occasions.

According to appellant the constitution and management of Shree Dev Bodgehwar Saunsthan is subject to provisions under the Devasthan Regulations enacted by the Government of Goa and that according to appellant it transpires that the Opponent No.1 has not taken any steps under section 4 & 5 of the act.

With the above grounds the appellant has prayed for directions to opponents nos. 1 and 2 to appoint Public Information Officer(PIO) and the Appellate Authority under section 5 of the act and for a direction to opponent no.3 to watch over and take steps to see that Devasthan in Bardez Taluka are adhering to the act as also for direction to issue information.

6. Notices were issued to the parties pursuant to which they appeared. The attorney of the respondent no.1 and 2

is represented by Adv. V.J. Pandit whereas appellant appeared in person. The respondent nos. 1 and 2 filed their reply on 10/8/2016. the parties advanced oral arguments as also filed their submissions in writing.

7. The appellant has filed the present proceedings as an appeal purportedly u/s 19 of the Act. The act u/s 19(3) has conferred jurisdiction to this Commission to hear appeals against the orders of the first appellate Authority passed u/s 19(1) of the Act. In the present case, as per the records the

appellant has not filed any such appeal u/s 19(1) of the act and as such this appeal , if deemed as the second appeal u/s 19(3) of the act would amount to entertaining a premature appeal by by passing the powers of the First Appellate Authority.

However, if one considers the nature of grievance of the appellant, he is refused information on the ground that the Authority from whom information is sought i.e. respondents nos.1 and 2 is not a public Authority. In this appeal the appellant has also prayed for a direction from this commission to respondent Nos.1 and 2 to appoint PIO and the Appellate Authority.

8. I have perused the records and considered the submissions of the parties. The Appellant, Shri Narvekar , in the course of the argument has filed on record a copy of the order passed by the Hon'ble High Court order dated 16/03/2007 of Bombay at Goa in Writ petition NO. 139 of 2007. The said W.P was filed challenging the order passed

by this Commission, dated 19/02/2017 in complaint No.17-A/2006/MAM-PONDA wherein this Commission has held that the Devasthan are Public Authorities within the meaning of section 2(h) of the Act.

In the course of hearing of the said W.P. NO.139/2007, this Commission has withdrawn its order in view of the fact that the petitioner therein doesn't claim any of the respondents as public institution and consequently the Hon'ble High Court has set aside the order of the Commission by holding that such withdrawal of the order shall not come in the way of Commission deciding the issue whether Devasthan is a public authority in an appropriate case wherein the applicant make appropriate request in accordance with law. In the above circumstances also this Commission is required to decide firstly whether the Devasthan namely viz. the respondent No.1 herein is a public authority under section 2 (h) of the act.

9. The Hon'ble High Court of Bombay at Goa in writ petition NO.398 OF 2010 (***Goa State Milk Producers Union V/S Goa State Information Commission and others***) at para (4) of the judgment has held :

“4. I entirely agree with the submission made by the learned Counsel on behalf of the petitioner. Without giving a finding whether the petitioner i.e. Goa State Co-operative Milk Producers Union Ltd. was public authority or not within the definition of Section 2(h) of the said Act there was no question

of the learned Commission directing the appointment of a Public Information Officer much less a direction to the Registrar/Assistant Registrar to appoint one for the petitioner.”

Thus Considering the rival contentions of the parties and the prayer of the appellant for appointment of the PIO and the appellate authority and further by applying the above principal as laid down by the Hon'ble High Court of Bombay at Goa, the limited point, which has to be addressed by the commission in this proceedings at this stage is whether the opponent No.1 and 2 is a public authority u/s 2(h) of the act.

10. According to appellant, the Opponent No.1 is an institution of self government constituted by law made by State Legislature and that it is substantially financed by Government of Goa and further that it is controlled by the Government hence is a public authority. In support of his said contention that the respondent no.1 and 2 is constituted under the act of state, the grounds raised by appellant are that :

i) The body of Mahajans/Mazania of Opponent No.1 was constituted under Devasthan Regulation of 1933 by publication of bye-laws under provisions of Article 17 to 20 of the Devasthan Regulation of 1933 approved by Government of Goa in the official Gazette on 25/10/1966 and Article 17 gives legal constitution to Mazanias once the bye-laws are approved by the Government.

ii) That the working/administration of the Opponent No.1 is governed by the Devasthan Regulation enacted by the Portuguese Government "Regulamento Das Mazanias" approved by the Diploma Legislation No.645 dated 30/03/1933 and amended by the Diploma Legislation No.1898 dated 29/05/1959 and that these regulations were adopted and continued by the subsequent Government and till today by the State Government of Goa and some of the provisions including Article 40 was amended in the year 1980 by the State Legislature.

iii) That the Devasthan Regulation is a law under Article 13 of the constitution of India and Article 428 of the Devasthan Regulation requires the Mazanias which are since long in the power of being considered to be constituted, even though they do not have bye-laws approved, should get the same approved within 90 days.

iv) That the titles in the Devasthan Regulation "Regulation governing Hindu temples (Devasthans) of Goa, Daman & Diu and relating to constitution and management of bodies of members (Mazanias) of Hindu Temples (Devasthan) itself suggest that the said legislation was enacted to regulate, constitute and manage the bodies of Devasthan.

11) For the purpose of considering the above contentions it would be necessary to consider the relevant provisions

of the act. Section 2(h) of the act reads:

“2. Definitions.__ In this Act, unless the context otherwise requires,__

(a) -----

(b) -----

(c) -----

(d) -----

(e) -----

(f) -----

(g) -----

(h)“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 organization substantially financed, directly or indirectly by funds provided by the appropriate Government;

(i) -----”

Thus for any body to be a public authority, the requirements are :

- a) Establishment or constitution of authority itself by or under the Constitution/ any other law made by Parliament/ any other law made by State Legislature/ notification issued or order made by the appropriate Government,

b) Authority should be owned, controlled or substantially financed

c) Non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government

12) If one analyze the above requirements vis a vis the respondents nos.1 and/or 2 herein, undisputedly the related legislation is the "Regulamento das Mazanias" as approved by Diploma Legislative No.645 dated 30/3/1933 which are also called as "Devasthan Regulation".(Hereinafter referred to as REGULATIONS for short)

13) The phrase "*established* or *constituted* by or under " as used in said section 2(h) suggests that the legislation itself should have the intent to constitute such authority and they should exist and function as per the law promulgated for its establishment.

14) For the purpose of better understanding the nature such legislation an analogy can be drawn in case of law like **The Reserve bank of India Act 1934**.The said act was enacted for the purpose of constituting Reserve Bank itself. This intent for promulgating such act is contained in the preamble of the said act as under:

"An Act to constitute a Reserve Bank of India.

*Whereas it is expedient **to constitute a Reserve Bank** for India to regulate the*

issue of Bank notes and the keeping of reserves with a view to securing monetary stability in India] and generally to operate the currency any credit system of the country to its advantage;”

Another analogy with reference to state legislation can be drawn pertaining to the acts like “**The Goa, Daman and Diu Industrial development Act 1965**”. The said act is promulgated with an aim of orderly development of the Industries and also for setting up of Industrial Development corporation. Such intention is found in the preamble of the said act as under:

*"An Act to make special provision for securing the orderly establishment in industrial areas and industrial estates of industries in the State of Goa and to assist generally in the organisation therefore, and **for that purpose to establish an Industrial Development Corporation**, and for purposes connected with the matters aforesaid.*

Thus from the nature of its constitution the said authorities like Reserve bank of India and the Goa Industrial development Corporation, it is seen that the acts itself are enacted for the purpose of constitution and establishment of such entities.

15) Coming to the case of regulations, the preamble reads "*Regulations Governing Hindu Temples (Devasthan) of Goa, Daman and Diu*". The said regulations contains several Titles each dealing with various aspects governing the Hindu temples.

16) The term "**REGULATION**" is defined in the **Wharton's law dictionary** as a "*rule or order prescribed for management or governance*". In **Black's law dictionary** it is defined as "*The act of regulating; a rule or order prescribed for management or government; a regulating principle; Rule of order prescribed by superior or competent authority relating to action of those under its control.*" And the term "**Regulate**" is defined as "*To fix, establish, or control; to adjust by rule, method, or established mode; to direct by rule or restriction; to subject to governing principles or laws.*"

Thus considering the above meaning, if a body is already in existence and if any legislation is enacted for governing its management or functioning, such a body cannot be construed as a body constituted under such legislation.

17) By referring to Title I of the regulations, appellant has submitted that the said regulations are also for constitution of the temples and hence it should be held

that the Devasthanans are constituted under the state legislation.

I am unable to accept the above contention. Title I of the regulations are preceded by preamble being "*Regulation Governing Hindu Temples (Devasthanans) of Goa, Daman & Diu*". It does not state as Regulations for constituting the Hindu temples. The terms "*Constitution and management of the bodies of members*" used in Title I read with the preamble of the regulations as above shows that the regulations are enacted for constitution of the bodies of members and management of the bodies. The management of the temples includes the constitution of the bodies by election as provided under the regulations. It also contains the administration of the Devasthanans by such constituted committee, management of funds, property etc. Thus the word constitution as used in title-I shows that the constitution of the committee, which also forms an integral part of management is regulated by said regulations.

The phrase "*The bodies of members (mazanias) which are since long in the power of being considered to be constituted, -----*" as used in article 428 of the regulations itself shows that the regulation came into effect after the constitutions of Hindu temples. Thus these regulations were framed for regulating such existing temple. These institutions thus are not constituted under said regulations. It is only in view of the necessity for governing the functioning of such constituted institutions that the regulations are framed.

The generality of these regulations is also evident from the fact that under Article 435 the regulations are extended to the institutions of other religions also till they have a special Regulations.

18) Another point in support of the said contention raised by the appellant is that as required under Article 17 of The Regulations, the respondent has its bye laws duly approved by the Government. Hence according to him the respondent nos. 1 and 2 are to be held as public authorities. Here again I am unable to subscribe to this view.

Section I of Chapter II and Regulations 17 and 18 at Section I of chapter-II of the regulation reads:

"Section I

Relating to the bye-laws of the bodies of members(mazantias)

Art. 17 --The bodies of member (mazantias) in order to have a legal constitution, shall be required to have bye-laws approved by Government, wherein, it should be mentioned the designation of the Devasthans and their dependent temples, of the groups or family groups of which the bodies of members (mazantias) are composed, tribe, "gotra" (progeny comprising various families), when the associates are Brahmins, class and surnames (mazantias) rights and obligations, honours and responsibilities of each family

group, and of families within the family groups, cult, obligatory religious acts and festivities, fund receipts and expenditure, servants and their obligations and pay, rates of cultural and festive acts, and any other provisions that may not be in opposition to this Regulation and to the general law.

Art. 18 __ The drafts of the bye-laws shall be prepared by special committees appointed by Governor General, and they should be written in an ordinary paper, in duplicate, with their Marathi or Gujarati or Urdu translation, and accompanied by the respective lists of member (mazanias)."

Thus on careful reading of the above it is clear that firstly the bye laws are framed by the Mazania through a special committee and the Government has only to approve it. Secondly the requirement of approvals is for the purpose of having a legal status for existing bodies. The approval of bye laws is not *sine qua non* to existence of the such bodies.

Notwithstanding the approval of bye laws the bodies can continue its existence , may be without any legal sanctity and rights. Thus such a requirement under Article 17 and 18 does not by itself qualify the respondent nos.1 and 2 as Public Authority.

19) Hon'ble Supreme court, in the case of ***Thalappalam Service Coop. Bank Ltd. V/S State of***

Kerala (2013) 16 Supreme Court Cases 82, as relied upon by the respondent nos. 1 and 2, while distinguishing the law enacted for constitution of bodies and those enacted for regulating the functioning, has held:

"44. We are of the opinion that when we test the meaning of expression "controlled" which figures in between the words "body owned" and "substantially financed", the control by the appropriate government must be a control of a substantial nature. The mere 'supervision' or 'regulation' as such by a statute or otherwise of a body would not make that body a "public authority" within the meaning of Section 2(h)(d)(i) of the RTI Act.

In other words just like a body owned or body substantially financed by the appropriate government, the control of the body by the appropriate government would also be substantial and not merely supervisory or regulatory. Powers exercised by the Registrar of Cooperative Societies and others under the Cooperative Societies Act are only regulatory or supervisory in nature, which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled.

Management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Cooperative Societies Act and not on the authorities under the Co-operative Societies Act.

45. We are, therefore, of the view that the word "controlled" used in Section 2(h)(d)(i) of the Act has to be understood in the context in which it has been used vis-a-vis a body owned or substantially financed by the appropriate government, that is the control of the body is of such a degree which amounts to substantial control over the management and affairs of the body."

In the aforesaid circumstances as the said regulations were not framed for establishing the Devasthan and as said regulations are only for regulating the governance of hindu temples , it cannot be held that the respondent nos.1 and 2 are constituted under the state act.

20) The next requirement of a public Authority is "*control or substantial finance from the Government*".

According to appellant the respondents nos.1 and 2 are **controlled** by the Government. To substantiate his submissions the appellant in his arguments has cited

various articles of the said Regulations where under Administrator has been granted powers to approve budgets, dissolve the body. The appellant also has the submissions that under various articles of the regulation the government can exercise powers for superseding the committee, approval of the budget, action against employees etc. The powers and nature of duties of Administrator are covered under Chapter-I of Title- II of the regulations. Said provision reads:

"Relating to the Administrator

Art. 70 – It shall be incumbent on the Administrator of Talukas (concelho) as Administrator of the bodies of members (mazanias):

1) To watch over the execution of this Regulation and of the bye-laws, and over the strict discharge of the duties that belong to their subordinates;

Art. 71.-----

Art. 72-- -----

Art; 73 - The Administrators shall receive the fees prescribed under the schedule annexed to this Regulation, besides half the amount of common fees, after the deduction of expenses mentioned in the respective schedule for the service of administrative executions.

Para __ The common fees shall be divided quarterly and those towards audit of

accounts shall be withdrawn after the same accounts are audited by the office of Administrator concerned.”

Thus on a careful scrutiny of the above provision it is revealed that the said powers are granted only for the purpose of watching the execution of the regulations which regulates constitution of committees, finance, budget, management of assets etc. The fees for such functions are payable to the administrator by the Mazania and not by Government. There are no powers under the regulation authorizing Government to take over the management of the Mazania. On the contrary Article 45 read with para thereto grants powers to the Administrator to replace the dissolved committee till the election from the capable members from the respective list. The said provision does not confer powers to the administrator to take over the management.

21) For the purpose of holding that the body is **substantially financed** by the government the funds should be substantial and for the day to day functioning of the authority.

Under the Regulations the nature of funds and regulation thereof are contained at Article 77. The type of receipts contemplated there under are the rents, income from shares interest on capital, annual rents (forro) and contingent receipts. The said provision does not contemplate any receipt by way of funds from the government.

22) The appellant has emphasized that the Government has undertaken certain developmental activities in the precincts of the Devasthan like undertaking illumination works, constructing toilets, developing nallah, beautification of temple precincts etc. In the said case of *Thalappalam Service Coop. Bank Ltd. (supra)* Hon'ble Supreme court, while considering the nature of finance for constituting substantial finance received by such authorities at para (48) there of has held:

"48. Merely providing subsidiaries, grants, exemptions, privileges etc., as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist. The State may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD etc., but those facilities or assistance cannot be termed as "substantially financed" by the State Government to bring the body within the fold of "public authority" under Section 2(h)(d)(i) of the Act. But, there are instances, where private educational institutions getting ninety five per cent grant-in-aid from the appropriate government, may answer the definition of public authority under Section 2(h)(d)(i)."

Thus by applying the said ratio, though the benefits of such works is used by Devasthan, the said works are undertaken by the Government itself. In other words the Government has not financed respondents for undertaking said works but has granted benefit of some of its schemes to the Devasthan. Such grant of scheme to my mind itself cannot be construed as substantial finance by the Government.

23) There is one more aspect of the act which also requires a consideration for the purpose of the arriving at the finding whether the respondents nos.1 and 2 is public Authority. Under section 19(1) of the act the first appeal against the response of the PIO is provided to the appellate authority. Such appeal is required to be preferred to such an officer who is senior in rank to the PIO in each public authority.

If one considers the hierarchy of the officials as is recognized under the regulations, the management is undertaken by the elected representatives in terms of Article 40. It comprises of chairman, treasurer, attorney and their substitutes. Distinct duties are assigned to each of them. All the said office bearers are equal in powers and function collaterally. There is no member in the said institution to be qualified as a senior officer to be qualified as Appellate Authority.

24) In the facts and circumstances and considering the nature of the regulations and the functioning of the

respondents nos.1 and 2, I find that the respondent No.1 and 2 are neither constitutional bodies, nor constituted under any central or State act. The powers which are permitted to be exercised by the Government authorities are only supervisory in nature and hence such powers cannot constitute a control over the Respondent Nos. 1 and 2. I also do not find any substantial finance received by said respondents from the Government. In the result I hold that the respondents' nos.1 and 2 are not Public Authorities as defined under section 2(h) of The Right to Information Act 2005. In the light of the above finding the reliefs of the appellant cannot be granted.

The appeal disposed accordingly.

Parties to be notified.

Pronounced in the open proceedings.

Sd/-
(Mr. Prashant S. Prabhu Tendolkar)
State Chief Information Commissioner
Goa State Information Commission
Panaji-Goa