

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No.2603 (M/S) of 2013

Shri Dev Bhoomi Institution of Education &
Science and Technology

.....Petitioner

Versus

The Public Information Officer, Hemwati Nandan Bahuguna
Garhwal University Shrinagar Uttarakhand & others

.....Respondents

Present:

Mr. Jagdish S. Bisht, Advocate with Mrs. Indu Sharma, Advocate, present for the petitioner.

Mr. Paresh Tripathi, Advocate, present for respondent no.1.

Mr. Ashish Joshi, learned Standing Counsel present for the State/respondent nos. 6 to 7.

Mr. Atul Bahuguna, Advocate, present for the respondent no. 2.

Mr. Pankaj Chaturvedi, Advocate, holding brief of Mr. Rakesh Thapaliyal, Advocate, present for the respondent no.3.

Mr. Rahul Consul, Advocate, present for the respondent no.9.

Mr. Naresh Pant, Advocate, present for respondent nos.4.

Mr. T.A. Khan, Senior Advocate assisted by Mr. Aditya Verma, Advocate, present for respondent no. 8.

Hon'ble Sudhanshu Dhulia, J. (Oral)

The petitioner is a Society, registered under Societies Registration Act, which runs an educational institute. Petitioner is aggrieved by certain information being sought by respondent no.11, Mr. Shah Alam. The information is being sought by the respondent no. 11 from the Public Authority regarding the petitioner.

2. According to the petitioner, since the Institute being run by the Society does not fall within the ambit of Section 2 (h) of the Right to Information Act, 2005 (from hereinafter referred to as "the Act") i.e. within the definition of "public authority" such information cannot be taken from the petitioner. This argument of the learned counsel for the petitioner is entirely misconceived as the information is not being sought from the petitioner but it is being sought

undisputedly from authorities which are “public authorities,” under the Act. In turn, it is a “Public authority” which is seeking information from the petitioner, which relates to the petitioner, who may not be a “public authority” under the Right to Information Act. However, such information which is being sought from a third party has to be given under Section 11 of the Right to Information Act, 2005. Section 11 of the Right to Information Act reads as follows:-

“11. Third party information.- (1) *Where a Central Public Information Officer or the State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:*

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) *Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.*

(3) *Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public*

Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.”

3. With the consent of the parties, the writ petition is being disposed of with the direction to the “Public Authority” who is respondent no. 1, that if information is given under Section 11 of the Right to Information Act, 2005, relating to the petitioner, according to which in case the information is confidential in nature to the private individual, he shall give notice to the individual concerned within five days from the receipt of the request. The Public Authority/respondent no. 1, while doing so, shall also keep in mind that the intent and purpose of Section 11 of the Right to Information Act, 2005 should not be violated.

4. Writ petition stands disposed of. No order as to costs.

(Sudhanshu Dhulia, J.)

31.10.2013

ML