

GOA STATE INFORMATION COMMISSION
'Kamat Towers', Seventh Floor, Patto, Panaji –Goa

Tel No. 0832-2437908/2437208 email: spio-gsic.goa@nic.in website: www.gsic.goa.gov.in

Appeal No.77/2021/SCIC

Shri. Nilesh Amonker,
21-T1/T2, Kamat Kinara,
Miramar, Panaji Goa. 403001

.....Appellant

V/S

1. The Chairman,
The Prudential Pristine Co-operative Housing Society Ltd,
Grand Vanelim, Colva,
Salcette-Goa.

2. The Secretary,
The Prudential Pristine Co-operative Housing Society Ltd,
Grand Vanelim, Colva,
Salcette-Goa.

3. Shri. Vikas Gaunekar,
First Appellate Authority,
The Registrar of Co-operative Societies,
Panaji-Goa.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 18/11/2020

Decided on: 07/12/2021

FACTS IN BRIEF

1. The Appellant, Shri. Nilesh Amonker, 21-T1/T2, Kamat Kinara, Miramar, Panaji Goa by his application dated 25/01/2020 filed under sec 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information from the Public Information Officer (PIO), The Chairman, Prudential Pristine Co-operative Housing Society Ltd, Grand Vanelim, Colva, Salcete-Goa.
2. The said application was replied on 23/02/2020. Not satisfied with the reply of the Respondent No. 1, the Appellant filed first

appeal before the Registrar of Co-operative Societies, Panaji-Goa, being the First Appellate Authority (FAA).

3. The FAA by its order dated 05/10/2020 dismissed the said appeal and has held that Respondent Society cannot be considered as a public authority under the Act.
4. Aggrieved with the order of FAA, the Appellant preferred this second appeal under sec 19(3) of the Act, before the Commission.
5. Parties were notified, accordingly Adv. Omkar Thakur appeared on behalf of Respondent No. 1 and 2 and filed his reply on 20/09/2021, representative of Respondent No. 3, Mr. Sudhakar Gawde appeared, however opted not to file reply in the matter, Appellant duly served but not appear throughout the proceeding.
6. Perused the pleadings, scrutinised the documents on record and considered the written and oral arguments advanced by Adv. Omkar Thakur.
7. According to Appellant, he sought information from the PIO, Chairman of Prudential Pristine Co-operative Housing Society Limited at Colva, Salcete Goa being a member himself of the Respondent Society.

According to him, he has reason to believe that there has been unauthorised and/or fraudulent transactions as well as decisions that have been undertaken by the Managing Committee of the Society which are detrimental to the interest of the Appellant.

Further according to him, the information and records pertaining to the Co-operative Housing Societies is indisputably accessible to the Registrar of Co-operative Societies under the Goa Co-operative Societies Act 2001 and the Registrar i.e the

Respondent No. 3 is itself a "Public Authority" within the definition of the Act, therefore it is imperative for the Registrar to direct the Respondent No. 1 and 2 to provide the information to the Appellant.

Further according to Appellant, the Respondents are a Co-operative Housing Society registered and governed under the Goa Co-operative Societies Act, 2001 under the supervision and control of the Registrar of Co-operative Societies and as such they are deemed to be public authority within the meaning and context of sec 2(h)(d)(1) of the RTI Act.

8. According to the Respondents, the above society does not have any Government control and / or public funding and/or is not notified as public authority by the appropriate competent authorities. Therefore, the Respondent Society is not a public authority within the ambit of the definition as envisaged under the relevant provisions of RTI Act.

Further according to Respondents, since the Respondent Society is not being governed and /or bound by the provisions of the RTI Act, the Commission does not have jurisdiction to grant relief to the Appellant.

9. Therefore only issue before the Commission is that whether Co-operative Societies would fall within the definition of public authority. In the case of **Thalappalam Service Co-operative Bank Limited and Ors v/s State of Kerala and Ors. [(2013) 16 S.C. 82]** the Hon'ble Supreme Court has held that:-

"34. The RTI Act, therefore deals with bodies which are owned, controlled or substantially financed, directly or indirectly, by funds provided by the appropriate Government and also non-government organisations

substantially financed, directly or indirectly, by funds provided by the appropriate Government, in the event of which they may fall within the definition of Section 2(h)(d)(i) or (ii) respectively. As already pointed out, a body, institution or an organisation, which is neither "State" within the meaning of Article 12 of the Constitution or instrumentalities, may still answer the definition of public authority under Section 2(h)(d)(i) or (ii).

50. 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 or the appropriate Government and can be examined by the State Information Commission or the Central Information Commission as the case may be, when the question comes up for consideration. A body or NGO is also free to establish that it is not owned, controlled or substantially financed directly or indirectly by the appropriate Government."

In view of the above judgement of Hon'ble Supreme Court, the onus to prove that the authority is owned, controlled and substantially financed by Government under sec 2(h) lies on the Appellant. The Appellant herein miserably failed to prove that Respondent Society is owned, controlled or substantially financed by Government.

10. The Adv. Thakur, appearing for the Respondents also relied upon the judgement of Hon'ble High Court of Bombay at Goa in **Goa State Co-operative Milk Producers Union Ltd. v/s Goa**

State Information Commission (W.P. No. 162/2011)

referring the case of the Thalappalam (Supra) wherein it is observed that:-

*"22. In **Thalappalam** (supra), the Apex Court considered the function of Public Authority as defined in Section 2(h) of the Act, observed that the Societies admittedly did not fall in such categories because none of them was either a body or institution of self-government, established or constituted under the Constitution, by law made by Parliament, by law made by the State Legislature or by way of a notification issued or made by the appropriate Government, considered the scope of the expression "control", the expression "substantially financed" and observed that the burden to show that a body is owned, controlled or substantially financed or that a non-government organisation was on the applicant who seeks information. The Apex Court considered the scope and intent of the Act also within the constraints of right to privacy and ultimately held that **cooperative societies registered under the said Act would not fall within the definition of a Public Authority under the Act.**"*

Considering the ratio laid down by Hon'ble Supreme Court and High Court as discussed above, I find that Respondent society not being a public authority, I am unable to direct the Respondents to furnish the information sought for by the Appellant.

11. Approach of the Appellant appears to be casual. He filed this present appeal and put the entire machinery in to motion but failed to pursue the matter. In spite of a fair opportunity he did not

remain present for hearing before the Commission on 16/07/2021, 23/08/2021, 20/09/2021, 21/10/2021, 17/11/2021 and 07/12/2021 thereby rebutting the contention of the Respondents.

In the above circumstances, the appeal is therefore disposed by following:-

ORDER

- The appeal is dismissed.
- Proceedings closed.
- Pronounced in the open court.
- Order to be communicated to the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner