

**GOA STATE INFORMATION COMMISSION**  
**AT PANAJI**

**CORAM:** Shri. M. S. Keny, State Chief Information Commissioner

Appeal No. 308/SCIC/2010

Shri Kashinath Shetye,  
Bambino Building,  
Alto Fondvem, Ribandar,  
Tiswadi - Goa

... Appellant.

V/s.

1) Public Information Officer,  
Dy. Registrar of Cooperative Societies,  
Panaji - Goa

... Respondent No. 1.

2) Deemed Public Information Officer,  
Asst. Registrar of Cooperative Societies,  
Dairy, Ponda - Goa

... Respondent No. 2.

3) Deemed Public Information Officer,  
Managing Director,  
Goa State Co-op. Milk Producers' Union Ltd.,  
Ponda - Goa

... Respondent No. 3.

4) First Appellate Authority,  
Registrar of Cooperative Societies,  
"Sahakar Sankul", Patto Plaza,  
Panaji - Goa

... Respondent No. 4.

Appellant in person.

Respondent No. 1 in person.

Respondent No. 2 in person.

Adv. Gourish Kamat for Respondent No. 3.

**J U D G M E N T**  
**(11.02.2011)**

1. The Hon'ble High Court of Bombay at Goa in Writ Petition No. 398 of 2010 observed as under:

**"4. ....**

**..... 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 for the petitioner.**

**5. In my view, therefore, the impugned order deserves to be set aside with the direction to the learned Commission to give a finding whether the provisions of the Act are at all applicable to a Co-operative Society like the petitioner.**

**6. ....**

**7. ....**

**8. Consequently, the Writ Petition is allowed. The impugned order is set aside. Rule made absolute in terms of first part of prayer clause (a) of the petition. Parties are hereby directed to remain present before the Commission on 09.12.2010 at 10:30a.m.”**

2. Accordingly parties appeared. Appellant has filed an application alongwith Xerox copies of some documents. Reply on behalf of Respondent No. 3 is filed.

3. I have heard the parties and also perused the records of the case. I need not refer to all the aspects of the case in detail as such. However I would mention a few facts material to the issue at hand.

It is seen that the applicant filed an application dated 13.10.2008 seeking certain information. By letter dated 30.10.2008, Public Information Officer,/Dy. Registrar of Co-operative Societies sent the said request to the Managing Director, Goa State Co-operative Milk Producers Union Ltd., Curti, Ponda-Goa. Copy of the said letter was also sent to Asst. Registrar of Co-operative Societies (Dairy) Ponda with a request to ensure that the information shall be provided to the Applicant within the stipulated time. Letter dated 12<sup>th</sup> November 2008 is from Asst. Registrar of Co-operative Societies (Dairy), Ponda-Goa, to the Managing Director,

Goa State Co-operative Milk Producers Union Ltd., Curti, Ponda-Goa. It appears that information was not furnished. The Appellant, being not satisfied, preferred the Appeal before First Appellate Authority on 25.11.2008. By order dated 09.01.2008 the F.A.A. dismissed the Appeal. The Appellant preferred Second Appeal bearing No. 308/SCIC/2008 and by Judgment and Order dated 23.04.2010 the same was allowed and Respondent No. 1 and 2 were directed to furnish the information which was available to them. It was also observed that Respondent No. 1 to appoint PIO to Goa State Co-operative Milk Producers Union Ltd., Curti, Ponda-Goa strictly in accordance with law. Respondent No. 3 i.e. Managing Director, Goa State Co-operative Milk Producers Union Ltd. filed the Writ Petition before the Hon'ble High Court of Bombay At Goa Panaji. The petition was allowed as mentioned herein above at para 1.

4. According to the Appellant the Respondent No. 3 Goa State Co-operative Societies Milk Producers Union Ltd. is a Public Authority and covered by R.T.I. This is vehemently denied by Respondent No. 3. According to Respondent No. 3 they being a Co-operative Society are not covered by the R.T.I. Act.

Section 2(4) of the R.T.I. Act defines 'Public Authority' as 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 Appropriate Government;
- and includes any
- (i) body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate Government.

(ii) Non-Government Organisation substantially financed, directly or indirectly by funds as provided by appropriate Government.

It is seen that the concept of Public Authority has been given very wide definition under the R.T.I. Act. The definition covers all the areas of the Government including the legislature, executive and the judiciary. The organizations established by any law of Parliament or State Legislatures are also 'public Authorities' for the purpose of the Act. The P.S.U.s and the organizations that are substantially financed, directly or indirectly by the Government are also included. In short, R.T.I. Act is applicable to institutions or non-Government organizations if any one of the conditions mentioned in section 2(h) are satisfied to bring them under the definition of "Public Authority".

5. Now it is to be seen whether Respondent No. 3 (G.S.C.M.P.U.) herein satisfies any one of the criteria mentioned under section 2(h) of the R.T.I. Act. Admittedly they are not covered under any of the four categories mentioned in the main definition of "Public Authority". It would not be out of place to consider the other criteria mentioned under the inclusive definition of "Public Authority" that is whether controlled or non-governmental organization substantially financed, directly or indirectly by funds provided by appropriate Government.

It is to be noted that the words "includes" is generally understood in statutory interpretation as enlarging the meaning of the words or phrases in the body of statute.

I have perused the bye laws of the Milk Producers Union particularly bye laws No. 21.2.12, 22.1.15, 22.1-17, 22.1-18 and also definition part 2.1; Funds 4.1.6, 4.1.7 etc. I have also perused the powers, responsibilities and functions of the Board.

6. The next aspect is about funding/financing. I have also perused Citizen's Charter for the office of Co-operative Societies, Government of Goa, Panaji-Goa. As per the same Government of Goa provides financial assistance for the development of Co-operative Societies to Goa State Co-operative Milk Union upto Rs. 50,00,000/- (Rupees Fifty Lakhs) can be provided as share capital till end of the 8<sup>th</sup> Five Year Plan inclusive of Government Share Capital already released to the Union. One nominee of the Registrar of Co-operative Societies is on the Board of Directors.

Appellant has relied on certain documents such as letters dated 27.07.2005 from Government of India, Ministry of Agriculture, Department of Animal Husbandry, Dairying and Fisheries, Krishi Bhavan, New Delhi signed by Under Secretary, Government of India. The same speaks of Administrative Approval for implementation of scheme during 10th Plan period under Centrally Sponsored Scheme "Strengthening Infrastructure for Quality and Clean Milk Production" in North and South Districts of Goa State by Goa State Co-operative Milk Producers' Union Ltd., Curti, Ponda-Goa. The same speaks of approved cost of Rupees of over two crores, etc. There is another letter of the same date and from same department regarding release of funds to Government of Goa for implementation of the said project. The terms and conditions of the said grant are also mentioned.

Again there is a letter produced by Appellant. The letter is dated 02.05.2008 from P.M. Naik, Asst. Registrar of Co-operative Societies Headquarters, Panaji-Goa to Managing Director, Goa State Co-operative Milk Producers' Union Ltd., Curti, Ponda-Goa. The same speaks of releasing grants/subsidy, etc to the Union and further states that R.T.I. Act is applicable to it. Copy of the Lease Deed dated 01.10.1984 is also produced. As per the same 81,485 sq. mts of land has been given on lease to the Respondent No. 3 on an annual rent of Rs. 1/- (Rupee one). I have also perused the terms and conditions of the lease. Apart from all these there is a letter dated 14.10.2005 from the Managing Director, Goa State Co-operative Milk Producers' Union Ltd. to Registrar of the Co-

operative Societies, office of Registrar of Co-operative Societies, Government of Goa, Panaji informing the Registrar of Co-operative Societies about appointing State Public Information Officer and Asst. Public Information Officer under R.T.I. Strangely and surprisingly this has been suppressed by Respondents specially Respondent No. 3.

7. I have perused the rules which were earlier relied by Advocate for the Respondent No. 3 copies of which are on record i.e. Hare Ram Singh and etc. v/s. Bihar State Co-operative Milk Producers' Federation Ltd. & Ors AIR 2008 Jharkhand 86 and Dr. Panjabrao Deshmukh Urban Co-op. Bank Ltd. V/s. The State Information Commissioner & Ors. 2009 (4) ALL MR 873. The sum and substance of the ruling is Cooperative Bank registered under Maharashtra Cooperative Societies Act is not a public authority within meaning of section 2(h) and in the case of Hare Ram Singh it was held that there is no effective control of Government over the financial management or over the funds of the federation. It was also observed that there is also no indication in the relevant bye laws that State Government has any role to play either in the policy decision for raising funds for the federation or for its expenditure. In other words as per the said ruling federation in no way can be termed as agency of the State Government and does not come within the meaning of article 12 of the Constitution of India.

I have also perused some rulings on the point. In M.P. Varghese, etc. v/s. Mahatma Gandhi University and others AIR 2007 Kerala 230, it was held that private aided colleges controlled and substantially financed directly or indirectly by funds provided by appropriate Government answer the definition of Public Authority under section 2(h) of the Act.

I have also perused some other rulings. It was observed that what amounts to substantial financing cannot be straight-jacketed into rigid formulae of universal application of necessity. Each case would have to be examined on its own facts. That the percentage of funding is not 'majority' financing, or that the body is an impermanent one are not

material. Equally, that the institution or organisation is not controlled and is autonomous is irrelevant' indeed, the concept of non-government control in its establishment, or management. That the organization does not perform or pre-dominantly perform – “public” duties too, may not be material as long as the object for funding is achieving a felt need of a section of the public or to secure larger societal goals.

8. The eloquent reply to the contentions raised is found in *Krishak Bharti Co-operative Ltd & Others v/s. Ramesh Chander Bawa & Others* 2010 (2) ID 1 (Delhi High Court). In this case the Hon'ble Delhi High Court considered and relied as many as 27 rulings. The relevant observations are in paras 19, 20 and 24.

“19. The Learned Senior Counsel for the petitioners referred to case law concerning the interpretation by the Supreme Court and the High Courts of the expression “State” under Article 12 of the Constitution and whether a body is one which is discharging a public function for the purposes of Article 226 of the Constitution. In the considered view of this Court, neither case law is relevant to the questions that arise in the context of the R.T.I. Act. That is why this Court dwelt on the principles governing “contextual” interpretation. In the context of R.T.I. Act it may well be that a body which is neither a “State” for the purposes of Article 12 nor a body discharging public functions for the purposes of Article 226 of the Constitution might still be a Public Authority within the meaning of section 2(h) (d) (i) of the R.T.I. Act. To state it differently while a body which is either a State for the purposes of Article 12 or a body discharging public functions for the purpose of Article 226 is likely to answer the description of Public Authority in terms of section 2(h) (d) (i) of the R.T.I. Act. The mere fact that such body is neither, will not take it out of the definition of ‘public authority’ under section 2(h) (d) (i) of the R.T.I. Act. To explain

further it will be noticed that in all the decisions concerning the interpretation of the word “State” under Article 12 the test evolved is that of “deep and pervasive” control whereas in the context of R.T.I. Act there are no such qualifying adjectives “deep” and “pervasive” vis-a-vis the word “controlled”. To illustrate in Pradeep Biswas v/s. Institute of Chemical Biology 2002 (5) SCC 111, the Supreme Court summarized the ‘test’ as under (SCC at page 134):

“The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. **The question in each case would be whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive.** If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body as State. ....”

It was also observed that what may be a ‘public authority’ for the purposes of the R.T.I. Act need not be ‘State’ under Article 12 or amenable to Article 226 of the Constitution.

In para 24 it is observed as under:-

“24. The second limb of section 2(h) (d) (i) of the R.T.I. Act requires an examination if any of the petitioners is “substantially financed by the appropriate Government? It is important to note that the word “financed” is qualified by the word “substantially” indicating a degree of financing. Therefore, it is not enough for such bodies to merely be financed by the Government. They must be “substantially financed”. In simple terms, it must be shown that the financing of the body by the Government is not insubstantial. The word ‘substantial’ does not necessarily connote majority



financing. In an annual budget of Rs. 10 crores, a sum of Rs. 20 lakhs may not constitute a dominant or majority financing but is certainly a substantial sum. An initial corpus of say Rs. 10 lakhs for such an organization may be 'substantial'. It will depend on the facts and circumstances of a case. Merely because percentage-wise the financing does not constitute a majority of the total finances of that entity will not mean that the financing is not 'substantial'.

.....”.

“26. The approach of other High Courts in interpreting section 2(h) (d) of the R.T.I. Act is instructive. They have adopted a contextual and liberal interpretation keeping in view the purpose and object of R.T.I. Act.”

In *Dara Singh Girls High School Gaziabad v/s. State of U.P. & Others* 2008 [2] ID 179 (Allahabad H.C.) it is observed that whenever there is even an iota of nexus regarding control and finance of Public Authority over the activity of a private body or institution or an organization, etc. the same would fall under the provisions of section 2(h) of the Act. It was also observed that the provisions of the Act have to be read inconsonance and in harmony with its objects and reasons given in the Act which have to be given widest meaning..... (The relevant observations are in para 13, 14 and 15.)

In *Tamil Nadu Road Development Co. Ltd v/s. Tamil Nadu Information Commission & anr.* 2009 [1] I.D. 85 (Madras H.C.) it was observed that this Court interprets the expression “Public Authority” under section 2(h) (i) liberally, so that the authorities like the Appellant who are controlled and substantially financed directly or indirectly by the Government come within the purview of R.T.I. Act.

All these go to show that some sort of assistance and control is sufficient for coming within the purview of section 2(h) of R.T.I. Act. Clause (d) (i) of section 2 (h) R.T.I. Act does not require State control to be “deep and pervasive”. Under R.T.I. lesser degree of control would suffice. Even if control is regulatory it will attract clause (d) (i).

9. Apart from all this, as mentioned above, the said letter dated 14.10.2005 shows that there was PIO appointed under R.T.I. Act.

10. In view of all the above, I hold that Goa State Co-operative Milk Producers’ Union is a public Authority within the meaning of section 2(h) of the R.T.I. Act 2005. Consequently R.T.I. Act is applicable to it and hence I pass the following order:

### **ORDER**

The Respondent No. 3 is directed to furnish the Appellant the information sought by him vide his application dated 13.10.2008 within 15 days from the date of receipt of the order.

The Appeal is accordingly disposed off.

Pronounced in the Commission on this 11<sup>th</sup> day of February, 2011.

Sd/-  
(M. S. Keny)  
State Chief Information Commissioner

