

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

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

Complaint No. 152/SCIC/2010

Adv. Atish Mandrekar,
H. No. 549/C,
Vodlem Bhat, Taleigao,
Panaji - Goa

.... Complainant

V/s.

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

.... Opponent No. 1

2) First Appellate Authority,
Registrar of Cooperative Societies,
Sahakar Sankul, Patto,
Panaji – Goa

... Opponent No. 2.

3) The Chairman,
Saha Udhar Cooperative Credit Society Ltd.,
Betim-Mala, Goa

... Opponent No. 3.

Complainant in person.

Adv. R. C. Chodankar for Opponent No. 3.

ORDER
(26.06.2012)

1. The Complainant, Shri Atish Mandrekar, has filed the present Complaint praying that information as requested by the Complainant in his application dated 17.04.2009 be furnished to him correctly and fully without reserving any information to save any person; that action be taken on all the Public Information Officers as well as against deemed Public Information Officer for not providing full information and inspection of records within stipulated time limit of thirty days; that penalty be imposed on the Public Information Officer, First Appellate Authority and deemed Public Information Officer for not providing the information as per section 20 of RTI Act, 2005; that disciplinary proceedings be initiated against Public Information Officer, First Appellate Authority and deemed Public Information Officer; that compensation and cost of present Complaint be awarded to the Complainant and that no fees be charged as under section 7(6) of RTI Act.

2. The brief facts leading to the present Complaint can be summarized as under:

That the Complainant having been aggrieved by the non-compliance with the Order passed by the Goa State Information Commission in Second Appeal No. 88/SCIC/2009 dated 07.12.2009 directing the Opponent to comply with its Judgment and Order. That the Opponents have knowingly refused access to any information. That the Opponent No. 3 has not given any compliance/response to the Judgment and Order passed by the Hon'ble Commission by remaining absent before the Commission on 04.01.2010 and 14.01.2010 to provide information within the time limit specified in the Order and that the Opponent No. 1, 2, and 3 have failed to provide the required information as per the application. That the Opponent has also failed in providing inspection of the files/documents as per the application dated 17.04.2009. That unsatisfactory reply was received from the deemed Public Information Officer/Opponent No. 3, the Chairman, Saha Udhar Cooperative Credit Society Ltd., Betim-Malim, Goa dated 11.01.2010, wherein the Opponent No. 3 requested the Complainant to collect the information and make the payment towards it which is contrary to section 7(6) of the RTI Act. That another unsatisfactory reply was received from the deemed Public Information Officer/Opponent No. 3, the Chairman, Saha Udhar Credit Cooperative Credit Society Ltd. dated 20.01.2010, wherein Opponent No. 3 refused to provide the information and thus rejected the application without mentioning the reasons under RTI Act which is mandatory. The reply dated 11.01.2010 and reply dated 20.01.2010 are contrary to each other and also against RTI Act. That the said replies are very vague, inconclusive and evasive and thus the Opponent No. 3 has miserably failed to meet the objective of RTI Act, 2005 by not providing the complete and correct information as per the application. That Opponent No. 1 and 3 has not complied with the Orders of the Commission to provide the information within the time limit specified in the Order. That the Opponent failed to give due consideration to the Judgment and Order passed by the Commission and being a Public Authority it is obligatory on the part of the Opponent to maintain the information or to call for the information from his subordinate or superior to furnish the same to the Complainant as per the application within 30 days. Since correct and complete information has not been furnished the Complainant being aggrieved has filed the present Complaint on various grounds which are set out in the Complaint.

3. The Opponents resist the Complaint and their replies are on record. In short it is the case of Opponent no. 1 that by Order dated 17.12.2009 this Commission directed Opponent No. 1/Public Information Officer to forward the application of the Complainant to the Chairman of Saha Udhar Cooperative Credit Society Ltd.. That accordingly Opponent No. 1 vide letter dated 10.12.2009 forwarded the request of the Appellant to the Chairman of Saha Udhar Cooperative Credit Society Ltd. That as per the Order of the Commission the said Society was required to dispose the request of the Complainant within 20 days from receipt of application of Public Information Officer. That the Chairman of Saha Udhar Cooperative Credit Society Ltd. on receipt of the application of the Respondent on 16.12.2009 requested the Public Information Officer to furnish the copy of application dated 17.04.2009 made by the Complainant and also copy of reply dated 11.05.2009 given by A.R. (APIO). That accordingly the copy of the application and reply were submitted by PIO to the concerned Society on 29.12.2009 and compliance of Order dated 17.12.2009 of the Commission was orally conveyed to the Commission. That the Chairman of Saha Udhar Credit Cooperative Society Ltd. vide letter dated 20.01.2010 had furnished necessary reply to the Complainant regarding point No. 7, 8, 9 and 10. As regards prayer (a) Opponent No. 1 submits that whatever information available at the level of their office has been furnished to the applicant as per his application and the information which relates to the Society was forwarded to the Society with a request to furnish the requisite information to the applicant. That accordingly the Society vide application dated 20.01.2010 had furnished the information to the applicant regarding point No. 7, 8, 9, 8 and 10. According to the Opponent No. 1 the question of taking any action/imposing of penalty does not arise since the application has been attended by the PIO within stipulated time period of thirty days from the date of application. That the application was made on 17.04.2009 and the information was furnished by the PIO on 11.05.2009 and according to the Opponent that the Complaint is not within the scope of RTI Act and hence be dismissed.

It is the case of Opponent No. 3 that the Complaint filed by the Complainant is within RTI Act and that Respondent No. 3 is not financed by the Government and that Respondent No. 3 is not the Public Authority

within the meaning of Section 2(h) of the RTI Act. According to the Opponent No. 3 the Complaint as against Opponent No. 3 be dismissed.

4. Heard the arguments. The Complainant argued in person and Adv. Shri R. C. Chodankar argued on behalf of Opponent No. 3.

The Complainant, Adv. A. Mandrekar referred to the facts of the case as well as Order dated 07.12.2009 and the two replies dated 11.01.2010 and 20.01.2010. According to him the stand taken by Opponent No. 3 is that they are not Public Authority. He also relied on some Judgments. According to him information is to be furnished. He next submitted that there is delay and that penalty proceedings be initiated.

During the course of his arguments Adv. Shri Chodankar submitted that RTI Act is applicable to Public Authorities. According to him Opponent No. 3 is a Society and as such it is not a Public Authority within the meaning of RTI consequently RTI Act is not applicable to Opponent No. 3. He relied on two rulings, the copies of which are on record.

Adv. Shri Mandrekar also relied on a Judgment of this Commission in Appeal No. 308/SCIC/2010. Advocate for Opponent No. 3 has filed written submissions stating that the said Judgment i.e. 308/SCIC/2010 is not binding in view of Judgment of the Hon'ble High Court reported in AIR 2009 BOM 75 and that as far as Saha Udhar Cooperative Credit Society Ltd. is concerned the same is not financed by the Government. According to Advocate for Opponent No. 3 the Appeal be dismissed.

5. I have carefully gone through the records of the case and also considered the arguments advanced by the parties. The point that arises for my consideration is whether the relief prayed is to be granted or not?

It is not in dispute that Appeal No. 88/SCIC/2009 was filed. By Judgment and Order dated 07.12.2009 the same was disposed, is also not in dispute. The Order reads as under:-

“The Respondent No.1/P.I.O. to forward the application of the Appellant to the concerned Society in accordance with the provisions of the RTI Act. The concerned society to deal with the application/dispose the same within 20 days from the receipt of the application. P.I.O. to report compliance by 04.01.2010.

.....”

It is seen that the Complainant, vide his application dated 17.04.2009 sought certain information from P.I.O. the Registrar, Cooperative Societies, Panaji Goa. The information sought was on 10 points i.e. (i) to (x). By reply dated 11.05.2009 the Opponent No. 1 has furnished the information in respect of point No. 1, 2, 3, 4 and 5. Regarding point No. 6 it was mentioned that no comments can be offered on this point in the absence of authentic documents with their office. Regarding point No. 7, 8, 9 and 10 it was mentioned that no such information was available in their office records.

It is seen that the Manager, the Saha Udhar Urban Credit Cooperative Society Ltd, by letter dated 11.01.2010 informed the Complainant that they have received letter from the Asst. Registrar Cooperative Societies (H.Q.), Panaji-Goa on 31.12.2009 and copy of the application dated 17.04.2009 under R.T.I. Act, 2005. The Complainant was also requested by the said letter to come and see either Chairman or the Manager for complying with the formalities under the said Act and make payment towards the same. It is not known whether the Complainant went or not.

Then there is another letter dated 20.01.2010 which states that information regarding point No. 1, 2, 3, 4 and 5 has already been furnished by Office of the Registrar of Cooperative Societies.

Regarding point No. 6 the information is furnished.

Point No. 7 is request to furnish the copies of the minutes of Board meetings held during last one year, more specifically Board meeting held in the month of October to December 2008.

The reply is as under:-

“As regards point No. 7 you have to deposit amount towards the furnishing of the copies, the amount is Rs.100/- and for postage of Rs.50/- on working day i.e. 27.01.2010.”

It is not known whether the Complainant paid the said amount or not.

Point No. (viii) (8), (ix) (9) and (x) (10) are as under:-

“(viii) Request to furnish the details of account No. 26 and 43 with Porvorim Branch of Saha Udhar Urban Credit Cooperative Society

Ltd. of last one year. Also request to furnish the copies of withdrawal slips No. 1008 and 1009 dated 29.10.2008.

(ix) Names of the responsible persons who have signed those withdrawal slips? Who are the authorized signatories of the said account holders?

(x) If any withdrawal has been made without appropriate signatures of the authorized signatories does it amount to “misappropriation” or “embezzlement”.”

The replies are as under:-

“ As regards point No. 8, the account No. 26 and 43, since the Account is not belonging to you we cannot furnish the details of the said Account to you.

As regards point No. 9, since the said Account is not pertaining to you, the details are confidential, hence you are not entitled for the same.

With references to details of point No. 10, same is the opinion sought for, which is not coming in the scope of Right to Information Act.”

6. It is seen that good or bad information is furnished. The only thing to be seen whether information in respect of point No. 8, 9 and 10 can be given or not.

I have perused some of the rulings of C.I.C. on the point. They are as under:-

(i) Arvinda Shah v/s. Erstwhile State Bank of Indore (State Bank of India) (F. No. CIC/SM/A/2010/000462-AT dated 22.11.2010).

In this case it was observed as under:-

“I am not convinced by the reasoning of the Appellant. Before a relationship of such exclusivity and confidentiality as that obtains between a banker and its customers is allowed to be breached, there has to be very strong and overwhelming reason to do so. A mere allegation and some peripheral evidence about the supersession of the Society by the Registrar of Cooperative Societies cannot be a ground enough for breaching that

relationship between the bankers and its customers

.....
.....
A banker's relationship with customers is one of highest confidentiality, which was crucial not only to the Bank and to the customer but to the Banking Operation. Unless sufficient countervailing reasons are available this relationship must be allowed to remain in wallet.

In my view Section 8(1) (j) as well as Section 8(1)(d) commend non-disclosure of this variety of information. Nothing what the appellant has stated in this matter persuades me to take a view to the contrary.”

- (ii) Badam Kumar Jain *v/s.* Dena Bank (Appeal No. 32/IC/(A)/06 F. No. CIC/MA/A/2006/00079 dated 02.05.2006). In this case the Appellant had requested P.I.O. Dena Bank Raipur to provide details of the Savings Bank A/c. No. 1711 and 2017 of Chhattisgarh Housing Board maintained by the Bank. The P.I.O. refused to provide information on the ground that the information relates to third party, which has serious objection in disclosure of the information. The F.A.A. contended that the Bank is under obligation to maintain secrecy in respect of the accounts of its customers. The decision of P.I.O. is thus justified. In the Appeal before C.I.C. it was held:-

“ The Banker are under obligation to maintain the secrecy of the Bank accounts of its customers, including the accounts of the public authorities. There is no overriding public interest in disclosure of such information. The decision of the Appellate Authority of the Bank is upheld.

The Appeal is, therefore, dismissed.”

- (iii) In Amit Jain *v/s.* Central Bank of India (Appeal No. CIC/PB/A/2008/00652-SM dt. 04.04.2008, decided on 19.01.2009) it was upheld that the details about the loan account of the third party are held by the Bank in commercial confidence. Obviously the disclosure of such information to

somewhat unrelated with the third party is likely to harm the competitive position of that party.

(iv) In *P. Krishnan v/s. Indian Bank* (Appeal No. CIC/PB/A/2008/00979-SM decided on 31.01.2009) it was held that the C.P.I.O. and the Appellate Authority were right in denying the information as it pertained to the account details of a Third Party maintained in Commercial Confidence in the Bank. It was further observed that as far as the Bank is concerned, the information sought is exempt under Section 8(1)(d) of the RTI Act being in the nature of commercial confidence, the disclosure of which would adversely impact the Commercial Confidence of the Third Party.

(v) *Ram Jethmalani and Ors. Vs. Union of India (UOI) and Ors.* (Writ Petition (Civil) No. 176 of 2009 and I.A. No. 1 of 2009 decided on 04.07.2011). This was under RTI Unaccounted monies issue – Denial of Information on the ground of infringing Right to privacy on individuals concerned. It was held:-

“Right to privacy is an integral part of right to life, a cherished constitutional value. Revelation of bank account details of individuals without establishment of prima facie grounds to accuse them of wrong doing, would be a violation of their rights to privacy. Mere fact that a citizen has a bank account in a bank located in a particular jurisdiction cannot be a ground for revelation of details of his or her account that the State has acquired. State cannot compel citizens to reveal or itself reveal details of their bank accounts to the public at large, either to receive benefits from the State or to facilitate investigations, and prosecutions of such individuals, unless the State itself has, through properly conducted investigations, within the four corners of constitutional permissibility, been able to establish prima facie grounds to accuse the individuals of wrong doing.....”

In view of all the above no fault can be found with the reply of the Manager.

7. Regarding point No. (x) (10). What the Complainant is asking about is the opinion of the P.I.O. Under R.T.I., this is not permissible.

8. The main contention of the Opponent No. 3 is that Opponent No. 3 is not Public Authority within the meaning of Section 2(h) of R.T.I. Act. The Complainant as well as Adv. for Opponent No. 3 has relied on various rulings on this point.

At the outset I must say that application was made to P.I.O./Opponent No. 1. In the Order passed in the Second Appeal this Commission observed that Respondent No. 1/P.I.O. to forward application of the Appellant to the concerned Society and the concerned Society to deal with the application etc. In the present Complaint Opponent No. 3 is made a party. Normally the ruling relied including of Hon'ble Bombay High Court lay down that Cooperative Banks are not public Authorities. Some other High Courts also have held the same view. In the instant case this issue has cropped up only at the stage of Complaint. The Opponent No. 3 as well as Complainant should get a proper opportunity to canvass their respective views. Again this issue is to be properly addressed by the Commission and the same should come properly. Again the Opponent No. 3 has initially furnished the information. Therefore, this issue is not decided but the same will have to be taken properly so that parties get ample opportunity to put forth their views. The decision of this Commission relied by the Complainant was in the factual backdrop of that case. In any case the question whether Opponent No. 3 is public Authority is kept open. The Complainant, if at all interested can take the same properly.

9. Coming to the information sought. Some information has been furnished i.e. 1, 2, 3, 4 and 5 by Opponent No. 1. Point No. 6 is also furnished. Regarding point No. 7 Complainant was told to deposit the amount and take the same. Regarding (viii), (ix) and (x) I have already referred hereinabove.

Irrespective of the issue about 'Public Authority' Opponent No. 3 offered to furnish the information regarding point No. 7 on payment of fees. It appears that Complainant did not comply with the request.

In any case Opponent No. 3 can furnish the same on payment of required fees/charges. This can be done without prejudice to the contention of the Opponent No. 3 that Opponent No. 3 is not Public Authority as contemplated by R.T.I. Act.

10. Now I shall refer to the aspect of delay. Original request is dated 17.04.2009. Reply of Opponent No. 1 is dated 11.05.2009. The available information was furnished. This is in time. By Judgment and Order dated 07.12.2009 the P.I.O. was to forward the application and the same was to be disposed within 20 days from the date of receipt of the application. Letter dated 11.01.2010 mentioned that the same was received on 31.12.2009. Reply dated 11.01.2010 and 20.01.2010 are in time. In any case there is no delay as such.

11. It is to be noted here that by letter dated 20.01.2010 the Complainant was called to pay certain amount towards furnishing copies of documents sought. The Complainant can avail of the same after making the necessary payment. Needless to mention here, whether Opponent No. 3 is public authority or not is kept open. The Opponents on their party since they offered to give should give the same by accepting the said payment.

12. In view of all the above, I pass the following Order:-

ORDER

Complaint is partly allowed. The Opponent No. 3 to furnish the copies as sought by the Complainant at point (vii) (7) of his application dated 17.04.2009 after making the required payment and in view of observations in para 11 above within 15 days from the date of receipt of this Order.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 26th day of June 2012.

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

