

GOA STATE INFORMATION COMMISSION AT PANAJI

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

Complaint No. 77/2009

Mr. Michael J. A. D'Souza,
E2, Drahila Apts., Mangoor Hill,
Vasco da Gama – 403 802.

..... Complainant.

V/s.

Public Information Officer,
Goa State Co-operative Bank Ltd.,
Sahakar Sankul Bldg.,
Patto Plaza, Panaji – Goa. 403801

..... Opponent.

Complainant in person.

Adv. R. J. Pinto for Opponent.

ORDER **(18-02-2010)**

1. This is a Complaint filed by the Complainant, Michael John Anthony D'Souza, praying that information as requested be furnished to him; for penalty and for compensation.

2. The brief facts leading to the present Complaint are as under: -

That the Complainant had filed an application dated 24/09/2009 under Right to Information Act ('RTI' Act for short) requesting for certain information. That the Public Information Officer ('P.I.O.' for short)/ Opponent No. 1 failed to furnish the required information as per the application of the Complainant and replied that the RTI Act does not apply to the Bank. It is the case of the Complainant that considering the non-action on behalf of the Respondent the Complainant preferred this Complaint under section 18(1) of the RTI Act, on the ground that Order dated 24/09/2009 is bad in law as RTI Act is applicable to all banks; that

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information sought is not furnished to the Complainant and that Banks are coming under the purview of RTI Act. The grounds are fully set out in the Complaint.

3. The Opponent resists the Complaint and their reply is on record. In short it is their case that Complaint is not maintainable in law as the RTI Act is not applicable to Goa State Co-operative Bank as it does not fall within the purview of the meaning of the word "Public Authority" as defined in section 2(h) of RTI Act, 2005. That the Complaint is not filed before the rightful authority as ought to have been filed. On merits it is the case of the Opponent that Order dated 24/09/2009 passed by PIO is appropriate as the RTI Act is not applicable to the Opponent.

4. Heard the arguments. Shri Kashinath Shetye argued on behalf of the Complainant and the learned Adv. Shri R. Rivonkar argued on behalf of the Opponent.

5. Shri Shetye referred in detail to the facts of the case. According to him Goa State Co-operative Bank comes under Reserve Bank of India, and there is also Government control on the same. According to him information ought to have been furnished. He also referred to definition of Public Authority 2(h). He relied on (i) U.O.I. V/s. Central Information Commission and others (Delhi H.C. W.P.(C) 6661/2008 decided on 16/04/2009 and (ii) Poorna Prajna Public School V/s. Central Information Commission (Delhi H.C. W.P. No. 7265 of 2007 decided on 25/9/2009).

6. During the course of his arguments the learned Advocate for Opponent submitted that Bank is not Public Authority and as such not obliged to give information under RTI Act. He also submitted that

Complainant is a member of the Society and he should get information from the Society. He relied on Dr. Punjabrao Deshmukh Urban Co-operative Bank Ltd. V/s. the State Information Commissioner, Vidarbha Region, Nagpur & others 2009 (2) AIR Bom R 592.

7. I have carefully gone through the records of the case, considered the arguments advanced by the parties and also considered the rulings on which the parties placed reliance. It is seen that Complainant filed an application on 24/09/2009 seeking certain information. By letter dated 24/09/2009 the Opponent informed the Complainant that provisions of the Right to Information Act is not applicable to this Bank and as such his request to furnish the information vide letter dated 24/09/2009 cannot be considered. It is seen that the Complainant did not exhaust the recourse to First Appeal. Instead he has come by way of Complaint.

According to Shri Shetye there is control of Reserve Bank on the Goa State Co-operative Bank and that they are a Public Authority. This is disputed by Advocate for the Opponent. According to him they are not covered by the RTI Act and a private body and secondly they receive no funds from the Government or any other source. This perhaps to show that they are not a Public Authority.

The RTI Act defines the Public Authority under section 2(h) 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 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.

It is seen that concept of the Public Authority has been given very wide definition under the RTI Act. The definition covers all the arms of the Government including the legislature, executive and the judiciary. The organizations established by any law of the Parliament or State Legislature are also 'public authorities' for the purpose of the Act. The PSUs and the organizations that are substantially financed, directly or indirectly by the Government are also included. In short RTI 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'.

8. Now it is to be seen whether the Opponent herein, Goa State Co-operative Bank satisfied any one of the criteria mentioned under section 2(h) of the RTI 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". The Goa State Co-operative Bank is a Scheduled Bank. It is neither owned by the Government nor it is substantially financed by the Government, nor directly or indirectly by the Government. I have perused the bye-laws of the said Bank and also perused Multi-State Co-operative Societies Act 1984. It is seen that there

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is no much control of the Government of Goa on this institution and it is independent in their day to-day administration. No doubt technically speaking there may be some control.

9. It is interesting to note that the object of the RTI Act is to ensure greater and more effective access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. The basic postulate of accountability is that people should have information and the citizens should know the facts, the true facts.

The main thrust of the argument of the Advocate for Respondent is that the Bank is not the 'Public Authority' and as such they are not obliged to give the information. The short question that is to be seen is whether the Respondent Bank is 'Public Authority' and covered under the 'RTI' Act?

In fact this Commission has held earlier in Bismark Facho V/s. Sainik Co-op. House Building Society & others that Co-operative Society is a 'Public Authority' within the meaning of 2(h) of RTI Act and has to give information requested by the citizens. However, in Writ Petition No. 428 of 2007 Sainik Co-operative House Building Society Ltd. through Vice President Mr. Anthony Paul Feegrado V/s. Bismark Facho & 3 others, the Hon'ble High Court of Bombay at Goa (Panaji Bench) was pleased to stay the operation of the said Order.

10. Shri K. Shetye has relied on (1) Bhagat Singh V/s. Chief Information Commissioner & others W.P. (c) No. 3114/2007 decided on 03/12/2007 (Delhi H.C.) (ii) Poorna Prajna Public School V/s. Central Information Commission & Others W.P. (Civil) No. 7265 of 2007 decided

on 25/09/2009 (Delhi H.C.); (iii) U.O.I. V/s. Central Information Commission & Ors. W.P. (c) 6661/2008 decided on 16/04/2009 and (iv) Union on India through Director of Ministry of Personnel PG & Pension V/s. Central Information Commission & anr. W.P. No. 8396 of 2009 decided on 30/11/2009 (Delhi H.C.). This is a common judgment in a bunch of Writ Petitions. I have carefully gone through the same. There is no dispute about the propositions laid. However, the same are on a different factual backdrop of the case.

Advocate for Respondent has relied on Dr. Punjabrao Deshmukh Urabn Co-operative Bank Ltd. V/s. State Information Commissioner Vidarbha Region, Nagpur & others 2009 (2) AIR Bom R 592 (Nagpur Bench). This ruling is on the subject at hand i.e. concerning a Co-operative Bank. It was held that Co-operative Bank registered under Maharashtra Co-operative Societies Act (1961) is not Public Authority within meaning of section 2(h). It was observed that State is not having deep and pervasive control over Co-operative Bank and it was also held that mere regulatory control over Bank is not sufficient. The sum and substance of the ruling is that Information about Co-operative Bank cannot be sought under the provisions of Right to Information Act.

The relevant observations are in para 7, 8, 9, 10, 11 and 12.

11. I have also perused some other judgments. Such as: -

(i) S. S. Angadi V/s. State CIC Karnataka 2008 [2] ID 221(Karnataka High Court). In this case the petitioner was a member of Basava Samiti a Society registered under the provisions of the Karnataka Societies Registration Act 1961. He filed an application under section 6 of the RTI Act to the

President of the Basava Samiti Bangalore requesting to furnish certain information and inspection of records. Since the request was not considered the petitioner lodged a Complaint under section 18 of the Act. The Information Commissioner rejected the Complaint on the ground that Second Respondent does not come under the provisions of the RTI Act, 2005. Hence, Writ Petition was filed in the Karnataka H.C. The relevant observations are in para 8. It is observed as under: -

"8. -----

The provisions of the Societies Registration Act, 1960 is applicable to all societies are under the control of Government only to regulate its activities and to see that it shall not misuse the funds of its members. Therefore, such association cannot be treated as public authority as contended by the petitioner."

The Writ Petition was rejected.

(ii) In the Bidar District Central Co-operative Bank Ltd. represented by its Managing Director and Public Information Officer V/s. Karnataka Information Commission represented by State Chief Information Commissioner 2008 (1) 617 it is observed that supervision and control over the Co-operative Societies by the Registrar under Co-operative Societies Act cannot be construed as a control of such nature, so that the petitioner/Co-operative Bank can be brought within the definition of 2(h)(d)(i) of the Act.

(iii) Shri Rajender Goel & others V/s. Registrar Co-operative Societies 2008 [2] ID 211 (CIC Delhi).

These were eight second Appeals by different Appellants and were disposed off by a common Order. It was observed that Co-operative Societies do not qualify to be public authorities under section 2(h) of the RTI Act. In para 9 it is observed as under: -

"9. A request for information under RTI Act by an applicant cannot be said to meet the requirement of the condition precedent unless the condition set out in the Co-operative Societies Act for eligibility to access information are fully met. It also implies that the Registrar is not obliged to seek information from a Co-operative Society under section 2(f) of the RTI Act nor is the Co-operative Society obliged to provide information to the Registrar merely because some applicant has chosen to invoke the provisions of the RTI Act for such information -----
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(iv) Again in Shri Pawan Kumar Sood Ludhiana & other V/s. The Tagore Nagar 'A' Welfare Society (Regd) Ludhiana E[2008]1 ID 114 (CIC Pb) this was a Society registered under the Societies Registration Act, 1860. It was held that Respondent Society is not a public Authority as defined under sub-clause (ii) of clause (4) of section 2 RTI Act 2005, and is thus, not within the purview of the RTI Act, 2005.

Of course these were the cases under Karnataka, Delhi and Punjab Co-operative Societies Act. However, principle applies to the Co-operative

Societies in general.

12. Shri K. Shetye also referred to the case of Raj Naraina, S. P. Gupta & others. The same were in the context of giving information and/or lifting the veil of secrecy. It is to be noted that subsequently RTI Act came into force.

13. The decision cited by the Advocate for Respondent and mentioned by me above is of Hon'ble High Court of Bombay (Nagpur Bench) and applicable to the case before me on all fours. The rulings mentioned above of Hon'ble Karnataka High Court and various Commissions mentioned as above endorse the same view. In view of this I have to hold that Respondents are justified when they contend that they are not Public Authority and not obliged to give information.

14. The Appellant is a Senior Citizen. He is a member of Dramila Co-operative Housing Society. He also held the post of Treasurer for some time. The Appellant is also having an account with the Opponent Bank Vasco-da-Gama Branch. As such the information sought by him ought to have been given in a normal course and in a routine manner as he is entitled for the same. The Bank is obliged to provide the same as per law. It is the duty of any institution to meet the requirement of its clients by providing proper service. Timely service on the part of the concerned Bank could have avoided this whole exercise. Hope Respondents will lose no time in performing their duty and provide the information sought by him in a routine manner. Again mentioning of the name of Appellant in the records has also added to the problem. Banks should see that names are properly and clearly mention to avoid mischiefs in future.

15. In view of all the above and law bearing on the point, I do not find any infirmity in the Order of the Public Information Officer and this Complaint is liable to be dismissed. Hence the Complaint is dismissed.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 18th day of February, 2010.

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

