

# GOA STATE INFORMATION COMMISSION AT PANAJI

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

Appeal No. 308/SCIC/2008

Shri Kashinath Shetye,  
R/o Bambino Building,  
Alto Fondvem, Ribandar,  
Tiswadi – Goa.

..... Appellant.

V/s.

1. Public Information Officer,  
Dy. Registrar of Co-operative Societies,  
Panaji - Goa.
2. Deemed Public Information Officer,  
Asst. Registrar of Co-operative Societies,  
Dairy, Ponda – Goa.
3. Deemed Public Information Officer,  
The Managing Director,  
Goa State Co-op. Milk Producers,  
Ponda – Goa.
4. First Appellate Authority,  
Registrar of Co-operative Societies,  
"Sahakar Sankul", Patto Plaza,  
Panaji - Goa.

..... Respondents.

Appellant present in person.

Respondent No. 1 and 2 in person.

Adv. G. Kamat on behalf of Respondent No. 3.

## **J U D G E M E N T** **(23-04-2010)**

1. The Appellant, Shri Kashinath Shetye, has preferred this Second Appeal praying that the information as requested by the Appellant be furnished to him free of cost as per section 7(6); to fine erring officer; for penalty and also for compensation.

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

That the Appellant had filed an application dated 13/10/2008 under Right to Information Act, 2005 ('RTI' Act for short) seeking certain information. That the Appellant, considering the said refusal of information on behalf of Respondent No. 1 under the RTI Act preferred a

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First Appeal before Respondent No. 2, however, the Respondent No. 2 passed an Order without giving correct reasonings. That the Public Information Officer/Respondent No. 1 failed to furnish the required information as per the application of the Appellant.

Being aggrieved by the Order of the First Appellate Authority, the Appellant has preferred this appeal on various grounds as set out in the memo of appeal.

3. It is seen that Respondents appeared in pursuance of the notice. However, Respondent No. 3 did not remain present. Notices sent came back as unclaimed.

4. It is the case of Respondent No. 1 that the Appellant vide his letter dated 13/10/2009 under RTI Act, 2005 has asked certain information in respect of the Goa State Co-operative Milk Producers Union Ltd., Curti, Ponda – Goa. That since the information asked for was pertaining to the Goa State Co-op. Milk Producers Union Ltd., Curti, Ponda – Goa, the said application of the Appellant was transferred to the Managing Director of the said Union asking to furnish the requisite information under RTI Act directly to the Applicant under intimation to their office. That the request was transferred since the information sought was not available in the office of Public Information Officer. However, the Respondent No. 3 has neither taken any pain to furnish the information to Appellant nor he replied the letter of Respondent No. 1. That being aggrieved by the action of Respondent No. 1, the Appellant preferred Appeal before the First Appellate Authority. That on the day of hearing the Appellant remained absent, the Respondent No. 2 was absent and the representative of Respondent No. 1 and Advocate for Respondent No. 3 remained present.

That the matter was fixed on 9/1/2009 however the Appellant remained absent. However, the Respondent No. 2 and 3 remained present. That during the course of arguments, it was contended by the Respondent No. 3 that the Goa State Co-op. Milk Producers Union Ltd., Curti, Ponda Goa does not fall with the meaning of section 2(h) of RTI Act, 2005 and therefore, the provision of RTI Act, 2005 is not applicable to Respondent No. 3. That in such circumstances the information sought by the Appellant could not be procured from the said Milk Union. It is also the case of the Respondent No. 1 that under the provisions of the RTI Act whatever information available on the records of Public Information Officer is to be furnished on request. So much so, the Public Information Officer is not supposed to generate the information. According to the Respondent No. 1, appeal is dismissed.

5. It is the case of the Respondent No. 2 that the application dated 13/10/2008 under RTI Act, 2005 was forwarded to Respondent No. 3, the Managing Director, Goa State Co-op. Societies, Panaji – Goa, vide letter No. 42/3/2007/TS/RCS/2013 dated 13/10/2008. That the Respondent No. 1 vide said letter requested Respondent No. 3 to furnish the information to the Applicant/Appellant directly within 10 days from the date of issue of the letter under intimation to their office. That it was also requested that the Appellant may also be allowed to inspect the files which contains the desired information. That the information pertains to Respondent No. 3 and the same is not in possession of Respondent No. 2. That the Respondent No. 2 is not in default.

6. Respondent No. 3 was served but he remained absent. Many attempts were made to serve but he refused to accept service. At the First

Appellate stage he was present. But one does not know why he refused to take letters. Only when letter was addressed to the Managing Director, Goa State Co-op. Milk Producers Union Ltd., Ponda Goa then only he appeared. This is most unfortunate as the Respondent No. 3 had appeared before First Appellate Authority and also knew about the matter.

It is the case of Respondent No. 3 that impleadment of Respondent No. 3 as party is illegal and that proceedings may be dropped as against them. That the information sought was not pertaining to the Respondent No. 3 and therefore, question of violation of the provisions of Right to Information Act, 2005 and Rules by Respondent No. 3 does not arise and therefore, appeal is liable to be dismissed. That the Respondent No. 3 does not come within the purview of 'Public Authority' within the meaning of 2(h) of the Act and therefore provisions of the Act are not applicable to it and consequently question of violation of the provisions of the Act by the said Union does not arise. That there is no notification issued by the Government of Goa extending the application of the Act to the Milk Union/Respondent No. 3. That the term "Deemed Public Information Officer which said term is nowhere referable to the provisions of the Act, which itself goes to prove that Milk Union/Respondent No. 3 does not come within the purview of 'Public Authority' within the meaning of section 2(h) of the Act. Respondent No. 3 relied on the following rulings: -

- (i) Hare Ram Singh V/s. Bihar State Co-operative Milk Producers Federation Ltd. & others AIR 2008 Jharkhand 86.
- (ii) Dr. Punjabrao Deshmukh Urban Co-operative Bank Ltd. V/s. The State Information Commissioner and others 2009 (4) ALL MR 873.

7. Heard the arguments. Adv. Mandrekar argued on behalf of Appellant and Respondent No. 2 argued in person.

According to Adv. Mandrekar, Respondent No. 2 is the custodian of the information and as such liable to furnish the information. He referred to the facts of the case in detail.

According to Respondent No. 2 information is with Respondent No. 3 and they have to furnish the information. Referring to the bye laws the Respondent No. 2 submitted that Managing Director is the custodian of all documents. He referred to various letters on record.

According to Respondent No. 3, RTI Act is not applicable to Co-op. Society and besides they are not Public Authority within the meaning of 2(h) of the Act. He relied on rulings. Xerox copies of which are on record.

8. 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 Appellant is entitled for the relief prayed?

It is seen that applicant filed an application dated 13/10/2008 seeking certain information. By letter dated 30/10/2008, Public Information Officer/Dy. Registrar of Co-op. Societies sent the said request to the Managing Director, Goa State Co-operative Milk Producers Union Ltd., Curti, Ponda. Copy of the said letter was also sent to Asst. Registrar of Co-op. 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-op. Societies (Dairy), Ponda Goa to the Managing Director, Goa State Co-op.

Milk Producers Union Ltd., Curti, Ponda – Goa. It appears that information was not furnished. So the Appellant preferred the First Appeal on 25/11/2008. BY Order dated 9/1/2009, the First Appellate Authority dismissed the appeal. It is pertinent to note that Appellant remained absent though opportunity given.

9. I have perused the Bye laws of the Milk Union particularly bye-law No. 21.2.12, 22.1.15, 22.1.17, 22.1.18. I have also perused about Chairman his powers and also Managing Director.

I have also perused Citizen's Charter for office of the Registrar 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-op. Milk Union upto Rs.50.00 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.

The Co-operative Societies though are independent in their day to-day administration, are controlled by the Registrar of Co-operative Societies under the Co-operative Societies Act. Even disputes are settled by the Registrar. In many matters the control by the Registrar of Co-operative Societies over the Co-operative Societies is final. Suffice it to say that there are a number of provisions of the Act enabling the Registrar of Co-operative Societies Act to control the affairs of the Co-operative Societies.

The recent ruling of the Honourable High Court of Judicature at

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Bombay Nagpur Bench (2009 (4) ALL MR 873) it has been held that Co-operative Bank registered under Maharashtra Co-operative Societies Act (1961) is not Public Authority within meaning of section 2(h).

I have also perused some rulings including rulings of Central Information Commission. The sum and substance of the same is that even though Co-operative Banks are not Public Authority in terms of RTI Act they come under the control of Registrar of Co-operative Societies Act in terms of section 2(f) for any information.

In Shri S. K. Bose V/s. Registrar of Co-operative Societies [Appeal No. CIC/WB/C/2006/00080] it has been held that "Whether the Cooperative Society in question falls within the definition of public authority or not u/s 2(h)(d) is for the Office of Registrar to decide. However, the application in this case has been made to the public authority, the office of Registrar Cooperative Societies. It has been agreed by all parties in the hearing that the information sought, even if the Cooperative Society in question is deemed a private body, it falls within the definition of information u/s 2(f) of the Act, because it is accessible to the public authority, Registrar Cooperative Societies, under the Delhi Cooperative Societies Act, 2003".

In Shri R. N. Aggarwal V/s. Registrar of Co-operative Societies Delhi. [Complaint No. CIC/WB/C/2006/00129 dated 7/7/2006] it has been held "we find that although the Society concerned made claim to be outside the classification of Public Authority u/s 2(h) of the RTI Act, any information which is accessible to the office of Registrar of Coop. Societies has to be made available u/s 2(f) of the Act as has in fact been sought to be done by Asstt. Registrar (East) and intimated to the applicant".

In another ruling R.B.I. was directed by C.I.C. to provide information about Co-operative Bank under section 2(f).

10. In view of the above rulings, I am of the opinion that Respondent No. 1 and 2 can give information which is with them and which is available to them in the normal course of their business.

11. It is seen that Appellant remained absent at the hearing before the First Appellate Authority though opportunity was given. It is to be noted here that Respondent No. 3 i.e. Deemed Public Information Officer the Managing Director, Goa State Co-op. Milk Producers Union Ltd., Curti, Ponda – Goa remained present. However, he refused to accept the notice from this Commission only when notice was sent as “Managing Director” he received it. The Commission does not approve such an attitude. It is high time that Registrar/Asst. Registrar/Public Authority should appoint a Public Information Officer strictly in accordance with law so that citizens may not face problem. If Public Information Officer is appointed the citizens will have a proximity of approach. This has to be done strictly within the parameters of law.

12. Appellant prays for penalty from Public Information Officer as well as First Appellate Authority. In the instant case the request was sent to Respondent No. 3 in time. Respondent No. 3 clothed with the fact that they are not covered might not have responded to the request. The Appellant did not remain present before First Appellate Authority. Therefore, in his factual background, I do not think that penalty is attracted.



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

**ORDER**

The Appeal is allowed. The Respondent No. 1 and 2 are hereby directed to furnish the information to the applicant vide his application dated 13/10/2008 which is with them and which is available to them in the normal course of business within 30 days from the date of receipt of this Order.

Registrar, Asst. Registrar/Respondent No. 1 to appoint a Public Information Officer to Goa State Co-op. Milk Producers Union Ltd., Curti, Ponda- Goa, strictly in accordance with law.

Appeal is accordingly disposed off.

Pronounced in the Commission on this 23<sup>rd</sup> day of April, 2010.

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



