

GOA INFORMATION COMMISSION

Ground Floor, "Shrama Shakti Bhavan", Patto Plaza, Panaji.

Appeal No. 11/2007-08/Co-op.

Mr. Bismark Facho
H. No. 1739, 'Doris Palace',
Alto Porvorim, Bardez - Goa.

..... Appellant.

V/s.

1. The Secretary,
Sainik Co-op. House Building Society Ltd.,
Defense Colony, Alto Porvorim - Goa.
2. Public Information Officer,
Assistant Registrar of Co-op. Societies,
North Zone, Mapusa - Goa.
3. First Appellate Authority,
Registrar of Co-op. Societies,
Panaji - Goa.

..... Respondents.

CORAM:

Shri A. Venkataratnam
State Chief Information Commissioner
&
Shri G. G. Kambli
State Information Commissioner

(Per A. Venkataratnam)

Dated: 20/08/2007.

Adv. N. A. Manerkar for Appellant.

Respondent No. 1 and 2 in person. Authorized representative Shri Alvaro Silva, Cooperative Officer I for Respondent No. 3.

ORDER

This disposes off the second appeal dated 9/5/2007 filed by the Appellant against the order dated 9/3/2007 of the first Appellate Authority, Respondent No.3 herein, under the Right to Information Act, 2005 (hereinafter referred to as the RTI Act). The Appellant has approached the Public Information Officer, Respondent No. 2 herein, by his request dated 21st November, 2006 for information on 6 points including some documents. Information in respect of 4 points has been furnished by the Public Information Officer after getting information from the Respondent No. 1 who has the custody of the records. The Respondent No. 1 is a Co-operative House Building Society registered under Maharashtra Co-operative Societies Act as applied to the State of Goa,

...2/-

hereinafter referred to as "the Co-operative Societies Act". The points No. 4 and 5 for which no information was given by both the Respondents No. 1 and 2 read as follows: -

"4. Photocopy of the relevant pages of the books of the Society wherein resolution has been taken to withdraw/surrender the plots from the members of the Society (kindly refer Annexure A).

5. Copies of letters written to the plot holders conveying the above decision to withdraw/surrender the plots."

2. Based on the refusal to forward the documents by the Respondent No.1, the Respondent No. 2 has conveyed the above decision to the Appellant by his letter dated 12/12/2006. The refusal by the Respondent No. 1 is on the following grounds "Serial Nos. 4 and 5 not given as disclosure of which has not relationship to any public activity or interest". The letter of the Public Information Officer, Respondent No. 2, on this point states "As regards your requirement called for at Sr. No. 4 and 5, the Society has informed this office that they cannot provide the information as disclosure of which has no relationship to any public activity or interest".

3. The Appellant, thereafter, appealed to the Respondent No. 3, Registrar of Co-operative Societies, on 10/1/2007. The Registrar, initially, dismissed the appeal on 01/03/2007 for default of appearance by the Appellant. However, when the Appellant has taken objection of such a dismissal on 09/03/2007, the learned Registrar of Co-operative Societies by his order of the same date, namely 09/03/2007, restored the appeal setting aside his own order dated 1st March, 2007 but dismissed the appeal again on the same day on merits. The operative portion of his order dated 9/3/2007 states "In the present case, Respondent No. 2, (PIO) has furnished the information available with him and also tried to call for the information from Respondent No. 1 Society which the Respondent No. 1 Society refused to furnish. The Respondent No. 2 is, therefore, not under obligation to compel Respondent No. 1 Society to furnish the information sought for by the Appellant. In view of what is discussed above, the appeal filed by the Appellant does not hold good and hence the same is dismissed".

4. Against this order of the first Appellate Authority, which is called

impugned order, the present second appeal is filed on 9th May, 2007. On issuance of the notices, the learned Adv. N. A. Manerkar for the Appellant and both the Respondents No. 1 and 2 remained present. Respondent No. 3 is represented by an authorized representative Shri Alvaro Silva, Cooperative Officer I. The Respondent No. 1 filed two written statements one on 5th July, 2007 and another on 13th July, 2007 stating that they are not obliged to give this information because they are not covered under the RTI Act, 2005. According to them, the Society is not in receipt of any assistance either in kind or money from any Government Body, and is promoted by Ex-Servicemen/Serving Defence persons. They have also stated that the Appellant is not member of their Society. They further mentioned that the Respondent No. 3 has passed two orders on 9th March, 2007 and 30th April, 2007 stating that the RTI Act is not applicable to them. While the order dated 9/3/2007 is an order in respect of the present case, the order dated 30/4/2007 unattested copy of which is enclosed by Respondent No. 1, is in Information Appeal No. 2/2007 before the Registrar of Co-operative Societies. We are not aware about the facts of the Information Appeal No. 2 before the Registrar of Co-operative Societies. We, therefore, do not comment on it. However, we would like to observe one peculiar statement by the Registrar of Co-operative Societies in his order dated 30th April, 2007 which merits comments from this Commission. He has stated therein "the Appellant is required to be penalised but unfortunately this authority has no such powers and also RTI Act does not provide for imposition of such penalty on information seekers who sought information with the sole intention to harass the public authority and innocent people". As we have said earlier, we do not have the facts of this new case which was made a reference to by the Respondent No.1 however, the language and the substance quoted above from that order, shows that clearly the Registrar of Co-operative Societies came to the conclusion that the Appellant is seeking information only to harass the public authority and innocent people. This is not borne out by the facts of the case before us. In the view of the Respondent No. 3, the Co-operative Societies including Respondent No. 1, are not public authorities. While we will examine this view point hereafter, it is not correct to presume that Appellant is "harassing public authority and innocent people" only because the Appellant dared to ask for some more information from Respondent No. 1.

5. It is interesting to note that, though on the one hand the Respondent No. 1

claims that they are not public authority, they had given a part of the information requested by the Appellant to the Respondent No. 2 who had forwarded it to the Appellant. If they are not public authority as claimed by them, we do not see why and how they have issued part of the information under the very same Act even if they did not give it directly to the Appellant but to the Public Information Officer of the Co-operative Department. Again, the observations by the Appellate Authority that the Public Information Officer issued the information whatever is available with him and refused whatever is not with him is not correct. He gave part of the information to the Appellant after calling for and obtaining it from the Respondent No. 1 Society under the very same RTI Act. It is, therefore, factually not correct to say that the Public Information Officer has given the information available with him. Similarly, when he himself assumed the powers of the Public Information Officer, he cannot plead helplessness and reject a part of the information only because it is not given by the Co-operative Society. In such a case, the Respondent No. 1 becomes a "deemed Public Information Officer" under Section 5(5) of the RTI Act. In other words, he has to obtain and give the entire information or refuse the entire information on the ground that the Co-operative Society is not a public authority. Again, we do not find any averment or document stating that the Respondent No. 1 has taken up the plea that they are not a public authority before the first Appellate Authority. The impugned order dated 9/3/2007 does not say so. On the other hand, it mentions that the Society refused the information on the ground that there is no obligation to give the information which relates to "personal information and the disclosure of which has no relationship to any public activity or interest". Thus, the Society takes a plea they are covered by the RTI Act but have refused the information because it is "personal information", one of the exempted category under RTI Act. We do not know how and why the first Appellate Authority has gone into issue not before him namely, whether the Society is a "public authority" within the meaning of Section 2(h) of the RTI Act.

6. Such a position has been taken now before the Commission for the first time by the Co-operative Society. The grounds taken by them to say that they are not covered by the RTI Act are: - i) "We are a very private body of members living peacefully looking after our own affairs but we are being continuously harassed for absolutely no fault of ours"; (ii) The second ground taken by them to say they are not public authority is that they receive no funds from

Government or any other source.

7. In the impugned order, the Respondent No. 3 has disposed off this contention on the ground that the Respondent No. 1 being a Co-operative Society registered under the provision of Co-operative Societies Act, 1960 as applicable to the State of Goa is a "Body Corporate". Suddenly, he jumps to the conclusion that it is not covered under the RTI Act but does not mention why it is so. By implication, he means to say that no Corporate Body is a public authority under the RTI Act. We are surprised at such a conclusion. It is common knowledge that many public sector undertakings of both Central and State Governments are corporate bodies registered under the Companies Act. They are all "public authorities" under the RTI Act if they satisfy one of the eight criteria laid down under Section 2(h) of the RTI Act which is further explained by us, hereafter. The first Appellate Authority considers that the Respondent No. 2 who is an Asst. Registrar of Co-operative Societies can call for any information sought by the Appellant under the regulatory functions of the Asst. Registrar under the Co-operative Societies Act, which cannot be denied to the Appellant if he makes a request to that effect. In other words what the Commission understands from the impugned order is that: - (i) the Co-operative Society is not a public authority simply because it is Corporate Body registered under the Co-operative Societies Act; (ii) that the Appellant as a citizen can seek information from the Respondent No. 2 Asst. Registrar of Co-operative Societies, under the Co-operative Societies Act and not under RTI Act; (iii) the Appellant can seek information under the RTI Act only from the Respondent No. 2, Asst. Registrar of Co-operative Societies, of only those documents and information readily available in the office of the Respondent No. 2.

8. As we have said already, the first Appellate Authority has not given any valid reasons for excluding the Co-operative Society from the purview of definition of public authority under Section 2(h) of the RTI Act. However, it has been raised before us and as it is a legal issue which can be raised at any stage of judicial proceedings, we have to answer this issue before we proceed further on the merits of the second appeal. Briefly stated, we have held that any authority or body or institution which is established or constituted either under constitution of India, a law made by the Parliament or a law made by the Legislature or by a notification or order issued by the appropriate Government is a public authority. All these four conditions are independent of one another and

if any one is met, it satisfies the definition of the “public authority” under the RTI Act. Similarly, in the inclusive definition under the same sub-section 2(h), four more categories of institutions are also defined as “public authority”. These are the bodies owned, controlled or substantially financed by the appropriate Government or any non-Governmental organization substantially financed directly or indirectly by the funds provided by the appropriate Government. According to us, these are four more independent criteria and any one single criteria is necessary but sufficient to bring the institution under the definition of the “public authority”. We have also held that no notification by the appropriate Government is necessary for any institution to bring under the inclusive definition of public authority if any one of the four criteria are satisfied. In other words, in our considered opinion, the RTI Act is applicable to institutions, or non-Government organizations, if any one of the eight conditions mentioned in Section 2(h) are satisfied, to bring them under the definition of “public authority”.

9. We have now to find out whether the Respondent No. 1 Co-operative Society satisfies any one or more of these eight 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 the “public authority”. We have to, therefore, consider the four other criteria mentioned under the inclusive definition of “public authority”. Here again, the Co-operative Society is neither owned by the Government nor it is substantially financed by the Government nor is it a non-Governmental organization receiving substantially financed directly or indirectly by the Government. However, the only point that remains is whether it is a body which is controlled by the Goa Government though it is not owned nor substantially financed by it. The Appellant, while arguing his case, has submitted that the Respondent No. 2 receives financial assistance from the Government indirectly because the roads of the Society are maintained by the Government through the Public Works Department. The representative of the Co-operative Society replied that the roads which are maintained by the Public Works Department in their Society are public roads used by all the members of the public. Accordingly, this money spent by the Public Works Department on these roads cannot be taken as a indirect assistance by the Government. We agree with him and reject the argument of the Appellant on this ground.

10. 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. The disputes are settled by the Registrar, the elections to Societies of the Managing Committee of the Co-operative Societies are held under the observation of the Registrar's nominee if there is a failure by the outgoing Managing Committee to do so, audited accounts are submitted to the Registrar and finally the Registrar has the powers to dissolve the Managing Committee of the Society and appoint an Administrator in case he finds on an inquiry that the Managing Committee is guilty of mis-conduct as defined under the Co-operative Societies Act. The control by the Registrar of the Co-operative Societies on all the Co-operative Societies to see that they follow not only the Co-operative Societies Act but the bye laws enacted by them, is absolute and pervasive. The bye laws of the Co-operative Societies need the approval of the Respondent No. 3.

11. The control by the Registrar of Co-operative Societies (RCS) over the Co-operative Societies is absolute and final over many matters. A short list of the provisions of Maharashtra Co-operative Societies Act as applied to the State of Goa and to the Respondent No. 1 Society are mentioned below: -

Section	Powers of the RCS
73(I)(3)	Convening a special meeting of a Society to consider no confidence motion against officers of a Co-operative Societies. Powers to appoint the presiding officer at the special meeting.
75(5)	On failure to call a general meeting by the Co-operative Societies to impose of penalty of disqualification on the office bearers.
76(2)	Convening a special meeting of a Co-operative Society requisitioned by the 1/5 th members of the Co-operative Society and imposing penalty on office bearers for failure to call the meeting.
77 A	Powers to appoint an Administrator in case of failure of election.
78	Powers to remove the Managing Committee under certain circumstances.
79	Powers to enforce performance on obligation by a Society.
79 A	Government's power to give directions in public interest.
80	RCS power to seize the records of a Society.

81	RCS powers to audit, inspect the accounts of every Society.
83	Inquire into constitution, working and financial condition of a Society.
91	Power to adjudicate disputes between Societies, the members Vs. members and Society members Vs. others.
102	Power to liquidate a Society after an inquiry.

The above is only an illustrative and not an exhaustive list of powers of control of the Registrar of Co-operative Societies. In respect of specified Societies, the control is even more comprehensive.

12. It can be seen from the above, that there are a number of provisions of the Act enabling the Registrar of Co-operative Societies to control the affairs of the Co-operative Societies. The Department of Cooperation constantly breathes down the necks of all Co-operative Societies to ensure that they follow the Co-operative law strictly. We, therefore, have no hesitation in holding that the Government through the Registrar of Co-operative Societies has absolute control over the Respondent No. 1, Co-operative Society and therefore, is a “public authority” within the meaning of Section 2(h)(d)(i) of the RTI Act, and reject the preliminary objection of the Respondent No. 1 regarding jurisdiction of this Commission.

13. For the above reasons, we hold that the Respondent No. 1 Co-operative Society is a public authority and has to give the information requested by the citizens, though not member of the Society, under RTI Act unless it is exempted under any of the provisions of the same Act.

14. On merits, the Appellant argued that the information requested is about the improper utilization of the open spaces earmarked by the Society and its illegal allotment to some members which was subsequently cancelled. He wants to get the access to the resolutions and documents in such cases. We do not find this information is “personal information” or compromising any national security while releasing information by the Respondent No. 1. We, therefore, direct the Respondent No. 2 to give information withheld by the Society on the questions No. 4 and 5 to the Appellant within next 15 days from the date of this order.

15. In the circumstances of the case, we are not inclined to grant either compensation demanded by the Appellant nor do we initiate any penalty proceedings against the Public Information Officer.

Announced in the open court on this 20th day of August, 2007.

Sd/-
(A. Venkataratnam)
State Chief Information Commissioner, GOA.

Sd/-
(G. G. Kampli)
State Information Commissioner, GOA.

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sf./km.