

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 428 OF 2007.

Sainik Co-operative House Building Society Ltd.
Defence Colony, Porvorim, Bardez, Goa,
through its Vice President,
Mr. Anthony Paul Feegrado.

.... Petitioner.

Versus

1 Mr. Bismark Facho
H. No. 1739, 'Dories Palace',
Alto, Porvorim, Bardez, Goa.

2 Public Information Officer,
Assistant Registration Of Co-operative Society,
North Zone, Mapusa Goa.

3 First Appellate Authority,
Registration of Co-operative Society,
Panaji-Goa.

4 Goa Information Commission,
Ground Floor, "Shrama Shakti Bhavan",
Patto Plaza, Panaji.

.... Respondents.

Mr. Vivek Rodrigues, Advocate for the petitioner.

Mr. G. R. Usgaonkar, Advocate for the respondent no. 1.

CORAM : U. V. BAKRE, J.

Date : 4th February, 2015.

J U D G M E N T :

Heard Mr. Rodrigues, learned Counsel appearing on behalf of
the petitioner and Mr. Usgaonkar, learned Counsel appearing on

behalf of the respondent no. 1.

2. By this petition, the petitioner has challenged the order dated 20/08/2007 passed by Goa Information Commission (Respondent no. 4) in Appeal No. 11/2007-08/Co-Op.

3. The petitioner is a registered housing society constituted under the Maharashtra Co-operative Societies Act, 1960 as applicable to Goa. The petitioner alleged that it has been formed to house the former and serving members of the Armed Forces of India and their families and is a private society receiving no aid or financial support from the Government but is a society constituted to look after the welfare of its own residents. The petitioner alleges that the respondent no.1 owns some land adjoining to the land of the petitioner and has been constantly harassing the petitioner society as he wishes to use the infrastructure of the petitioner to gain access to his land for development purposes. It is alleged that the respondent no.1 is trying to find faults with the functioning of the petitioner to pressurize them, and for this purpose is misusing the provisions of Right to Information Act, 2005 ('R.T.I. Act', for short) to have access to the private documents and resolutions of the society. The petitioner states that initially being naive about the position of the law the petitioner provided information sought for by the

respondent no.1 including the resolutions passed in the minutes of Annual General Meeting of various years. The petitioner has now been advised by their legal adviser that it would not fall within the purview of the R.T.I. Act.

4. The respondent no. 1 vide his application dated 21/11/2006 addressed to the respondent no. 2 i.e. Assistant Registrar of Co-Operative Society (Public Information Officer) sought certain information from the petitioner, which included minutes books and resolutions taken. The said information was not in possession of the respondent no. 2 but was in the books of the petitioner much like a private limited company under the Companies Act, 1956. On 12/12/2006, the respondent no. 2 replied to the respondent no.1 to collect the requested documents as the petitioner society had furnished the same. However, two documents were not provided/furnished as the same did not pertain to public activity or interest. The respondent no.1 thereafter on 10/01/2007 preferred an appeal to the respondent no. 3, i.e. Registrar of Co-operative Societies, against the refusal to give the said two documents and vide order dated 01/03/2007, the respondent no. 3 dismissed the said appeal holding that the petitioner does not fall within the purview of the R.T.I. Act. The respondent no. 1 preferred a Second Appeal before the respondent no. 4 i.e Goa Information Commission,

challenging the order of respondent no. 3. Vide the impugned order dated 20/08/2007, the respondent no. 4, however, held that the petitioner is a public authority within the meaning of Section 2(h)(d) (i) of the R.T.I. Act. and has to give the information requested by the citizens, unless it is exempted under any of the provisions of the Act. The respondent no. 4 allowed the appeal of the respondent no.1 and directed the respondent no. 2 to furnish the information within 15 days. Aggrieved by the said order of the respondent no. 4, the present petition has been filed. Rule was issued by this Court by order dated 23/11/2007 and the operation of order dated 20/08/2007 was stayed until the final disposal of the petition.

5. By way of reply, the respondent no.1 alleged as under:

The petitioner being a co-operative society constituted under the Maharashtra Co-operative Societies Act, 1960, is a public authority within the meaning of Section 2(h) r/w Section 5(5) of the R.T.I. Act. The petitioner has declared itself as a public authority and thus, parted with the information under the R.T.I. Act and only when the petitioner was asked to furnish the information at Sr. No. 4 and 5 with regard to sub-division of area reserved as open space into plots and selling/allotting the same to the members, the petitioner took stand that they are private society. The plea of the petitioner is by way of an after thought and is liable to be rejected.

Prior to the registration of the petitioner's society under the Maharashtra Co-operative Societies Act, 1960, the petitioner was carrying activities as Goa branch of the Sainik Co-operative Housing Building Society Ltd., Delhi, which was registered under the Multiunit Co-operative Society Act, 1942. The present society of the petitioner has been enjoying all the concessions, benefits of the Central Government in cash and kind when it was functioning as Goa branch. The parent body of the petitioner society was granted land at a concessional rate of ₹ 1/- per square metre for a vast land admeasuring 1,59,464 square metres belonging to the comunidade of Serula, by the State Government. The entire development and maintenance of internal roads, electricity and water supply facilities is carried out by the State Government. The respondent no. 4 has rightly held that the petitioner is public authority under the R.T.I. Act. The petition deserves to be rejected.

6. Mr. Rodrigues, learned Counsel for the petitioner, pointed out from the impugned order that admittedly the petitioner society does not fulfill the requirements of clauses (a), (b), (c), and (d) of Section 2(h) of the R.T.I. Act. He further pointed out that admittedly the petitioner society is neither substantially financed or directly or indirectly financed by funds provided by appropriate Government. He also pointed out that the petitioner society is not a body owned

by the appropriate Government. He urged that the finding of the respondent no. 4 that the petitioner is a public authority is based on the fact that the Registrar of Co-operative Society who is otherwise a public authority has absolute control over the Co-operative society is erroneous since the said control is not pervasive but is by way of statute. He relied upon the judgment of Hon'ble Supreme Court in the Case of "*Thalappalam Service Co-operative Bank Limited and others v/s. State of Kerala and others*" reported in [(2013) 16 SCC 82] and "*Army Welfare Housing Organisation V/s. Adjutant General's Branch and others*" [(2014) SCC OnLine Del 6435]. He therefore urged that the petitioner society is not a public authority and therefore the impugned judgment is liable to be quashed and set aside.

7. On the other hand, Mr. Usgaonkar, learned Counsel for respondent no.1 submitted that respondent no. 1 had not asked for any information from the petitioner but had asked the Registrar of Co-operative Societies, who is admittedly a public authority, to furnish the information. He read about the provision of Section 2(f) of the R.T.I. Act and submitted that the Registrar has power to call for the said information from private authorities like the petitioner. According to the learned Counsel, the question whether the petitioner society is a public authority or not does not at all arise in

the matter. He relied upon the judgment of this Court in the case of *“Rajeshwar Majoor Kamgari Sahakari Sanstha Limited v/s. State Information Commissioner and others”* [(2011) 4 MhL.J. 785].

8. I have gone through the entire material on record. I have also considered the arguments advanced by the learned Counsel for the parties.

9. Section 2(h) of the R.T.I. Act defines “ Public Authority” to mean 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;

10. A perusal of the impugned order passed by the respondent no. 4 reveals that the petitioner society is not covered under any of the four categories mentioned in the definition of the “Public Authority”, under clauses (a), (b), (c), and (d) of Section 2(h) of the R.T.I. Act. It is further seen that in the impugned order the respondent no.4 has

further held that the Co-operative Society is neither owned by the Government nor it is substantially financed by the Government and it is not a non-Governmental organization substantially financed directly or indirectly by the Government. It is seen that the respondent no. 4 rejected the contention of the respondent no. 1 that the petitioner society receives financial assistance from the Government indirectly because the roads of the society are maintained by the Government through the Public Works Department. The only point that was considered by the respondent no. 4 was whether the petitioner was a body controlled by the Goa Government though it is not owned nor substantially financed by it. The respondent no. 4 considered Sections 73(1)(3), 75(5), 76(2), 77 A , 78, 79, 79A, 80, 81, 83, 91 and 102 of the Maharashtra Co-operative Societies Act and held that there are number of provisions enabling the Registrar of Co-operative Societies to control the affairs of the said society and the control by the Registrar is absolute and final over many matters. The respondent no. 4 therefore held that the Government through the Registrar of Co-operative Societies has absolute control over the petitioner society and therefore the petitioner society is a “public authority” and has to give information requested by citizens, under the R.T.I. Act unless it is exempted under any of the provisions of the same Act. On merits, the respondent no. 4 found that the information requested

by the respondent no. 1 was not “personal information” or compromising any national security. Hence the respondent no. 2 was directed to give information withheld by the petitioner society, on questions no. 4 and 5, to the respondent no. 1 within 15 days.

11. In the case of “*Thalappalam Service Co-operative Bank Limited and others*”(supra), the Hon'ble Supreme Court has held that the Registrar of Co-operative Societies exercises only supervisory, regulatory and indirect control and the real control is exercised by the Management and governing bodies of the society and considering that there is difference between a statutory body and body governed by statute, it is private management which has the final authority and not the Registrar of Co-operative Societies. The Apex Court therefore held that Societies are neither the “State” or “instrumentality of the State” under Article 12 of the Constitution nor can be otherwise included under the definition of “Public Authority” under Section 2(h) of the R.T.I. Act. In view of the above judgment of the Hon'ble Supreme Court, it is bound to be held that the finding of the respondent no. 4, to the effect that the petitioner society is a public authority and has to give information requested by citizens unless exempted under any of the provisions of the R.T.I. Act, is wrong and bound to be quashed and set aside. It is seen that based on the said finding that the petitioner is a public authority,

the respondent no. 4 has directed the Assistant Registrar of Co-operative Societies to give information withheld by the petitioner on questions no. 4 and 5. Thus, the impugned judgment and order of the respondent no.1 is bound to be quashed and set aside.

12. It is the contention of Mr. Usgaonkar, learned Counsel for the respondent no. 1, that under Section 2(f) of the R.T.I. Act the public authority has power to assess the information relating any private body. Section 2(f) of the R.T.I. provides as under :

“2(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;”

13. In the case of “**Rajeshwar Majoor Kamgari Sahakari Sanstha Limited**” (supra), relied upon by the learned Counsel for the respondent no. 1, the learned Single Judge of this Court has held that though the petitioner is a private body being a co-operative society, Registrar of Co-operative Society who has the power to

assess information with regard to the petitioner society is a public authority and hence the direction of Information Commissioner to the Registrar of Society to furnish all the information with regard to the petitioner under his custody is upheld.

14. There is, thus, no dispute that the Registrar of Co-operative Societies, being a “public Authority” is authorised to furnish information which can be accessed by him under any law for the time being in force.

15. In the present case, the information in the form of questions no. 4 and 5 was not in possession of the Registrar of the Co-operative Societies but he had called for the said information from the petitioner society and the petitioner society had refused to furnish the said information. The respondent no.1 did not raise the question of Section 2(f) of R.T.I. Act before any authority including the Goa State Information Commission. There is, thus, no finding by any authority that the information sought for by the respondent no. 1 by way of questions no. 4 and 5, could be accessed by the Registrar of Co-operative Societies, under the Maharashtra Co-operative Societies Act or any other law for the time being in force, at the relevant time. A perusal of the reply filed before this Court also reveals that the respondent no. 1 did not raise the said point

before this Court. For the first time in the arguments today, the learned Counsel for respondent no. 1 has pointed out the provision of Section 2(f) of the R.T.I. Act. The impugned order which is based on the finding that the petitioner is a public authority, is wrong and this order is sought to be quashed and set aside and therefore is bound to be quashed and set aside. This Court cannot incorporate Section 2(f) of R.T.I. Act and some provisions of the Maharashtra Co-operative Societies Act or any other law for the time being in force, if at all are there, allowing the Registrar of Co-operative Societies Act to have access to the information called for by the respondent no. 1, in the impugned order and hold that the same is correct and legal, which order otherwise on the face of it is wrong.

16. In paragraph no. 67 of the judgment in the case of ***“Thalappalam Service Co-operative Bank Ltd. and others”*** (Supra), the Hon'ble Supreme Court observed thus :

“67. The Registrar of Cooperative Societies functioning under the Cooperative Societies Act is a “public authority” within the meaning of Section 2(h) of the Act. As a public authority, the Registrar of Co-operative Societies has been conferred with lot of statutory powers under the respective Act under which he is functioning. He is also duty-bound to comply with the obligations under the RTI Act and furnish information to a

citizen under the RTI Act. The information which he is expected to provide is the information enumerated in Section 2(f) of the RTI Act subject to the limitations provided under Section 8 of the Act. The Registrar can also, to the extent law permits, gather information from a Society, on which he has supervisory or administrative control under the Cooperative Societies Act. Consequently, apart from the information as is available to him, under Section 2(f), he can also gather those information from the Society, to the extent permitted by law. The Registrar is also not obliged to disclose those information if those information fall under Section 8(1)(j) of the Act. No provision has been brought to our knowledge indicating that, under the Cooperative Societies Act, a Registrar can call for the details of the bank accounts maintained by the citizens or members in a cooperative bank. Only those information which a Registrar of Cooperative Societies can have access under the Cooperative Societies Act from a Society could be said to be the information which is "held" or "under the control of public authority". Even those information, the Registrar, as already indicated, is not legally obliged to provide if those information falls under the exempted category mentioned in Section 8(j) of the Act. Apart from the Registrar of Cooperative Societies, there may be other public authorities who can

access information from a cooperative Bank of a private account maintained by a member of Society under law, in the event of which, in a given situation, the society will have to part with that information. But the demand should have statutory backing.”

17. In view of the above, the petition is bound to succeed. Hence the same is allowed. The impugned order dated 20/08/2007 of the respondent no. 4 to the effect that the petitioner society is “public authority” and has to give the information requested by the citizens under the R.T.I. Act unless it is exempted under any of the provisions of the same Act, and therefore the respondent no. 2 shall give information withheld by the petitioner, is quashed and set aside. Rule is made absolute in the aforesaid terms.

U.V. Bakre, J.

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