

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

CWP-1596-2016

Decided on : 24.10.2016

The Gahor Multipurpose Cooperative Agricultural Service Society Ltd.
... *Petitioner*

Versus

The State Information Commission, Punjab and ors.
.. *Respondents*

CORAM : HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present : Mr.Ashwani Prashar, Advocate
for the petitioner.
Mr.S.S.Chandumajra, Addl.AG, Punjab.
Mr.G.S.Bal, Sr.Advoate with
Mr.ADS Bal, Advocate for respondent No.2.

G.S.Sandhawalialia, J. (Oral)

The petitioner challenges the communication dated 26.11.2015 and 02.12.2015 (Annexure P/5 and P/6) which have been addressed by respondent No.3-Assistant Registrar to it. As per the communications keeping in view the pendency of Appeal No.2922 of 2015 before the respondent-Commission, directions were issued that the information be supplied to respondent No.2, applicant.

A perusal of the order passed by respondent No.1-Commission dated 06.01.2016 (Annexure P/4) would go on to show that on one hand, the respondent-Commission has held that the petitioner society does not come under definition of the “public authority” under the Right to Information Act, 2005 (in short of the Act). Resultantly, Public Information Officer (PIO in short) was exempted from further hearing in the case. However, Mohammad

Javed, Chief Executive Officer (CEO), Central Cooperative Bank Ltd., Ludhiana who was the earlier PIO, had been issued show cause notice under Section 20(1) of the RTI Act as to why penalty be not imposed upon him for willful delay/denial in supplying the information to the applicant and why the compensation be not awarded to the information seeker under the provisions of RTI Act. It was accordingly, held that the respondent-PIO concerned has not given proper intention towards it and adverse comments were passed on the officials of the Registrar Cooperative Society. An order was also sent to the Registrar Cooperative Society with advise to intervene into the matter to make PIOs more sensitive. The case was adjourned to 18.02.2016.

Counsel for the parties are agreed that in view of the interim order passed by this Court on 25.01.2016, proceedings in the appeal have been adjourned sine die. The effect of the above order dated 06.01.2016 is apparent that on one hand, the petitioner society has been held not to be a public authority under the provisions of 2005 Act. However, on the other hand, in view of the directions issued and the proceedings pending before the respondent/Commission, the Assistant Registrar had acted upon the said order and directed that the petitioner society should supply the information asked for by the respondent No.2. Resultant effect is that a contradictory situation has taken place that the petitioner had got relief from the Commission that it being a public authority on one part was not obliged to supply information as it exempted the PIO from further hearing. However, the

respondent No.3 acting upon the pendency of the appeal, has directed that information be supplied to the applicant/respondent No.2.

The Apex Court in case **Thalappalam Ser.Coop.Bank Ltd. and others** Vs. **State of Kerala and others**, 2013(16) SCC 82 has held that whether a society is a public authority within meaning of Section 2 (h) of RTI Act, 2005, would depend upon the question whether it is substantially financed, directly or indirectly by the appropriate Government. The relevant portion reads as under:-

“34. We are of the opinion that when we test the meaning of expression “controlled” which figures in between the words “body owned” and “substantially financed”, the control by the appropriate government must be a control of a substantial nature. The mere ‘supervision’ or ‘regulation’ as such by a statute or otherwise of a body would not make that body a “public authority” within the meaning of [Section 2\(h\)\(d\)\(i\)](#) of the RTI Act. In other words just like a body owned or body substantially financed by the appropriate government, the control of the body by the appropriate government would also be substantial and not merely supervisory or regulatory. Powers exercised by the Registrar of Cooperative Societies and others under the [Cooperative Societies Act](#) are only regulatory or supervisory in nature, which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled. Management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective [Cooperative Societies Act](#) and not on the authorities under the [Co-operative Societies Act](#).

52. 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, 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](#). 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. 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. 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, 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 Co-operative Societies, there may be other public authorities who can access information from a Co-operative 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.”

The Commission in the impugned order has thus, not held or discussed the issue as to what information has been asked for, through the application filed by the respondent-applicant, which was the subject matter and the core question. The Commission was to accordingly come to the conclusion that whether the information as sought was as such, which falls within the parameter of Section 52 of

the judgment of the Apex Court in *Thalappalam's case (supra)* to the extent that the Registrar could direct, and the same could be provided under the provisions of the Punjab Cooperative Societies Act, 1961.

Thus, this Court is of the opinion that the interim orders passed by the Commission are not justified in the facts and circumstances of the case as on the one hand, the petitioner society is being given the necessary relief, having held that it is not a public authority. However, in view of the directions issued and the pendency of the appeal, the Assistant Registrar is compelling the petitioner society by issuing notice to supply the information as sought by the applicant (Annexure P/5).

Resultantly, the said order dated 06.01.2016 (Annexure P/4) and communication dated 26.11.2015 & 02.12.2015 (Annexures P/5 and P/6) are quashed. The Commission shall re-decide the issue afresh keeping in view the observations made above.

The record in the form of two registers which has been produced by Mr.Satnam Singh, Secretary of the Society has been handed over to him.

[G.S.Sandhawalia]
Judge

24.10.2016
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No