

CWP-10529-2015

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2023:PHHC:156024

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Date of decision : 06.12.2023

1.

CWP-10529-2015

The Haryana State Co-operative Apex Bank Limited and others

... Petitioners

Versus

The State Information Commission and others

... Respondents

2.

CWP-9665-2015

The Sirsa Central Cooperative Bank Ltd.

... Petitioner

Versus

The State Information Commission and another

... Respondents

3.

CWP-10637-2016

The Mahendragarh Central Cooperative Bank Limited Mahendragarh
(Haryana) and another

... Petitioners

Versus

The State Information Commission and others

... Respondents

4.

CWP-10218-2016

The Rohtak Central Co-operative Bank Limited Rohtak and another

... Petitioners

Versus

The State Information Commission and others

... Respondents

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CWP-11387-2015

The Haryana State Co-operative Apex Bank Limited and others

... Petitioners

Versus

The State Information Commission and others

... Respondents

CWP-11388-2015

The Haryana State Co-operative Apex Bank Limited and others

... Petitioners

Versus

The State Information Commission and others

... Respondents

CWP-11707-2015

The Kurukshetra Central Cooperative Bank Ltd.

... Petitioner

Versus

The State Information Commission and another

... Respondents

CWP-11389-2015

The Haryana State Co-operative Apex Bank Limited and others

... Petitioners

Versus

The State Information Commission and others

... Respondents

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CWP-11737-2015

... Petitioner

The State Information Commission and another

CWP-11357-2015

... Petitioners

The State Information Commission and others

CWP-14354-2015

... Petitioners

The State Information Commission and others

... Respondents

Present: Mr.Subhash Ahuja, Advocate and
Mr.Karan Veer Ahuja, Advocate
for the petitioners in CWPs-10529-2015, 10218-2016,
10637-2016, 11357-2015, 11387-2015, 11388-2015,
11389-2015 and 14354-2015.

Mr.Kuldip Singh, Advocate for the petitioners
in CWP-9665-2015, 11707-2015 and 11737-2015.

Ms.Palika Monga, DAG, Haryana.

VIKAS BAHL, J.(ORAL)

1. This order will dispose of 11 writ petitions i.e., CWP-10529-2015, CWP-9665-2015, CWP-10637-2016, CWP-10218-2016, CWP-11387-2015, CWP-11388-2015, CWP-11707-2015, CWP-11389-2015, CWP-11737-2015, CWP-11357-2015 and CWP-14354-2015.

2. With the consent of all the parties, CWP-10529-2015 is being taken up as lead case. Challenge in all the writ petitions is to the common order dated 14.01.2015 (Annexure P-12) whereby the State Information Commission, Haryana while disposing of 13 appeals had observed that the petitioners herein would fall under the ambit of Section 2(h) of the Right to Information Act, 2005 and were liable to furnish information to the respective applicants.

3. On 04.12.2023, this Court was pleased to pass the following order:-

“With consent of all the counsels, CWP-10529-2015 is being treated as the lead case.

Learned counsel for the petitioner in CWP-10529-2015 has submitted that in the present case, applicant-respondent No.3 had not led any evidence to establish that the petitioner bank was owned, controlled or substantially financed by the appropriate Government but learned State Information Commission on its own summoned the representatives of the appropriate Government, Registrar Cooperative Societies, Haryana and the NABARD and several documents were taken into consideration while passing the final order without the same being supplied to counsel for the petitioner bank before the authorities and without opportunity having been granted to learned counsel for the petitioner bank to make submissions with respect to the same. It is submitted that the documents do not form a part of the case file and the same were never supplied to the petitioner and thus, there is a grave violation of principle of natural justice. The detailed averments with respect to the said aspect have been made in paras 10, 11 and 12 of the writ petition.

Learned counsel for the petitioner has further submitted that even

perusal of paras 2 and 11 of the impugned order would show that the last date of hearing before the Commission was 27.10.2014 and in para 11, it has been noticed that the Assistant Registrar Cooperative Societies had appeared before the Bench on 27.10.2014 and had submitted a copy of the documents and the same clearly shows that the documents were submitted on the last date when the matter was reserved and the same were never supplied to counsel for the petitioner before the authorities and no opportunity was given to them to make their submissions with respect to the said documents or to rebut the said documents. It is further submitted that thus, on the short ground of violation of principle of natural justice, the impugned order deserves to be set aside and the matter deserves to be reconsidered.

Learned State Counsel prays for a short adjournment to get instructions in the matter.

Adjourned to 06.12.2023.

To be taken up at 01:45 pm.

A photocopy of this order be placed on the files of other connected cases.”

4. Learned counsel for the petitioners has further highlighted the paragraphs no.10, 11 and 12 of CWP-10529-2015 which are reproduced hereinbelow:-

“10. That it also needs to be emphasised here that though appellant-applicant/respondent No.3 had not led any evidence to establish that the petitioner-Bank was owned or controlled or substantially financed by A the appropriate government but learned State Information Commission on its own summoned representatives of the appropriate government, Registrar Cooperative Societies Haryana and the NABARD (National Bank for Agriculture and Rural Development created by the National Bank for Agriculture and Rural Development Act, 1981) and thus procured various documents, without supplying the same to petitioner-Bank which later on, after pronouncement of judgment, were supplied under RTI Act vide letter 26.3.2015, ANNEXURE: P-11 detailed reference to which shall be made at the time of hearing of the case.

11. That impugned order passed by ld. Commission is wholly arbitrary, illegal and perverse solely based on information/documents/material collected from offices of NABARD Registrar, Cooperative Societies, Haryana and the appropriate Government which did not form part of case-file and were not even parties to the case.

12. That impugned order passed by learned Commission suffers from the vice of principles of natural justice. The learned Commission even did not supply copies of documents/materials collected by it from the agencies/ bodies/offices to petitioner-Bank NOR any opportunity of hearing on these documents was provided. Infact the learned Commission in a pre-determined manner directed the petitioner-Bank to submit certain documents viz., Balance-sheets of last three years, List of Members of the Board of Directors and also directed the officials of NABARD; Registrar Cooperative Societies Haryana and appropriate Government-Haryana to submit certain documents desired by it for deciding the case and then had reserved the judgment. After collecting the documents learned Commission firstly reserved the judgment then pronounced the judgment on 14.1.2015 conveyed vide its letter dated 23.1.2015, ANNEXURE: P.12. Thus, an eye wash formality was completed by learned Commission.”

5. It has been argued that a perusal of the impugned order dated 14.01.2015 (Annexure P-12) particularly paragraphs 10, 11 and 12 would show that the respondent no.1 had sought several documents from various authorities but however the copies of the same were never supplied to the petitioners herein so as to enable the petitioners herein to make the submissions regarding the same.

6. In pursuance of the order passed by this Court on 04.12.2023, learned State counsel has sought instructions and has handed over a letter / communication from the State Information Commission to the office of the

Advocate General, the relevant portion of the same is reproduced hereinbelow:-

“Subject:- CWP no. 9665 of 2015 Sirsa Central Cooperative Bank Ltd. V/s State Chief Information Commissioner, Haryana and Another.

Sir,

I have been directed to invite your attention to your memo no 79719 dated 05.12.2023 on the subject cited above.

In this regard, it is submitted that to adjudicate the issue as to whether the Central Cooperative Banks of the State are public authorities as per section 2 (h) of the RTI Act, 2005, the State Information Commission, Haryana constituted a Larger Bench. The Bench after detailed deliberation with the appellants and the respondents along with the officers of RCS, Haryana and NABARD came to the conclusion vide its orders dated 14.01.2015 that all the Cooperative Banks are under the ambit of section 2 (h) of the RTI Act, 2005.

In this regard, it is submitted that since the documents mentioned in para 10, 11 and 12 of the order dated 14.01.2015 upon which the Larger Bench relied were in public domain, hence they were not shared with the respondents.

However, I have been directed to convey to you that the Commission has no objection if the same are ordered to be shared with the respondents by the Hon'ble High Court.

Yours faithfully,

Sd/-

*Registrar,
State Information Commission,
Haryana”*

A perusal of the above would show that it has been stated that the documents mentioned in paragraphs 10, 11 and 12 of the order dated 14.01.2015 were in public domain and thus, the copies of the same were not shared with the petitioners herein and further it has been stated that the

Commission has no objection if the same is ordered to be shared with the petitioners herein. It is a matter of settled procedure that any document on which any party relies or which are summoned by the concerned authorities i.e., Commission in the present case, then a copy of the same is required to be given to the opposite side i.e., the petitioners herein in the present case. It is only after the said documents have been given to the opposite party, an opportunity to study the same is given to them and after arguments have been addressed on the said documents by both the sides that the said documents should be considered while deciding the case. It is not possible for a party appearing before the authorities to be aware of all the documents which are in public domain. Since in the present case, it has been fairly stated in the communication dated 04.12.2023 by the State Information Commission, Haryana that the said documents in paragraphs 10, 11 and 12 of the impugned order were not supplied to the opposite party i.e., petitioners herein, thus, on the said ground alone, the impugned order dated 14.01.2015 deserves to be set aside and the matter requires to be reheard and redecided. It is also relevant to note that in the present writ petitions, no one has appeared on behalf of the private respondents to oppose the present writ petitions or to even rebut the averments / arguments raised on behalf of the petitioners.

7. Keeping in view the above said facts and circumstances, the present writ petitions are partly allowed and the impugned order dated 14.01.2015 is set aside with the following observations / directions:-

i). The parties through their counsel are directed to appear before the State Information Commission, Haryana on 18.12.2023.

ii). It would be open to all the petitioners herein or even the

applicants before the authorities to move an application for supply of documents which are part of the record within a period of 3 weeks from 18.12.2023.

iii). In case any such application is moved, the State Information Commission would supply the documents which have been sought by the petitioners/ applicants before the authorities within a period of one month from the date of filing of the application. The Commissioner would be entitled to charge Rs.2/- per page which is the rate prescribed and has been brought to the notice of this Court by Mr.Yagya Dutt, Under Secretary Haryana State Information Commission, who is present in Court.

iv). After the documents have been supplied, the State Information Commission would provide opportunity of hearing to all the parties concerned and then re-decide the matter after taking into consideration the arguments raised by all the parties present before the State Information Commission.

v). In case the State Information Commission requires further documents / assistance for adjudication, it would be open to the State Information Commission to seek the said documents / assistance from the authorities concerned, in accordance with law.

vi). The said documents in case supplied by any such authority in pursuance of the said direction issued under direction no.(v), would also be supplied to the parties concerned on a request made by the parties.

7. It is made clear that this Court has not opined on the merits of the case and the State Information Commission would decide the same independently, in accordance with law, as expeditiously as possible.

(VIKAS BAHL)
JUDGE

December 06, 2023.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No