



**OFFICE OF THE
ASSAM INFORMATION COMMISSION
JONAKEE COMPLEX, PANJABARI, GUWAHATI-781 037**

Case No. : SIC/NGN.180/2019
Complainant/ appellant : Md. Dildar Hussain.
Respondent : SPIO of the Office of the Assistant Registrar
Co-Operative Societies.
Date of hearing : 30.10.2020
Complaint/ Second : Dr. A.P. Rout, IPS (Retd.)
Appeal heard by : State Chief Information Commissioner, Assam

O R D E R
30.10.2020

1. The Appellant Md. Dildar Hussain is absent. The public authority i.e. the SPIO of the Office of Assistant Registrar Co-Operative Societies is represented by Sri Bipul Hazarika, Sub-Registrar of Co-Operative accompanied by Sri Ainul Hoque Choudhury, Secretary of M/S Niz-Dhing, G.P. S. S. Ltd.
2. On perusal of the case records, the petitioner filed RTI petition dated 26.8.2019 before the SPIO of the Office of the Assistant Registrar Co-Operative Societies, Nagaon. The Sub – Registrar & SPIO of Co-Operative Societies transferred the application to the Chairman/ Secretary, Niz-Dhing G.P. S.S. Ltd. for furnishing the information to the petitioner. In the mean time the petitioner filed first appeal petition dated 27.9.2019. The Secretary Niz- Dhing Co-Operative vide his letter dated 16.9.2019 intimated the petitioner that the Co-Operative Society is not a public authority as per WP(C)No 2200/2019 of Gauhati High Court. *Quote Before Honourable Mr. Justice Ujjal Bhuyan order dated 01.04.2019 Heard Mr. B Rahman, learned counsel for the petitioner and Dr. B. Ahmed, learned Standing Counsel, Cooperation Department, Government of Assam. Also heard Ms. K. Phukan, learned Government Advocate, Assam.*

Challenge made in this writ petition is to the various notices issued to the Secretary of Niz Dhing Gaon Panchayat Samabay Samiti Ltd. dated 06.02.2019 and 25.02.2019 by the Food, Civil Supplies and Consumer Affairs Department authorities to furnish information under the Right to Information Act, 2005.

It is stated that Niz Dhing Gaon Panchayat Samabay Samiti Ltd. is a cooperative society governed by the provisions of the Assam Cooperative Societies Act, 2007.

*Mr. Rahman, learned counsel for the petitioner submits that following the decision rendered by the Supreme Court in **Thalappalam Ser. Co-op. Bank Ltd. Vs State of Kerala**, reported in **2013 AIR SCW 5683** holding that cooperative societies registered under the Kerala Societies Act, 1969, would not fall within the definition of public authority as defined under Section 2(h) of the Right to Information Act, 2005, this Court in WP(C) No. 6161/2016 (Dhupagari SS Ltd. Vs State of Assam) has held that cooperative societies not being public authorities, no*

such direction can be issued to the cooperative societies for furnishing information under the Right to Information Act, 2005.

Dr. Ahmed, learned Standing Counsel supports the contention advanced by learned counsel for the petitioner and further submits that in subsequent orders, this Court has also upheld the said view.

In view of above, impugned notices dated 05.02.2019 and 25.02.2019 are hereby aside and quashed making it clear that cooperative society is not a public authority within the meaning of Right to Information Act, 2005 Unquote

However, IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO. 9017 OF 2013 (Arising out of SLP (C) No. 24290 of 2012) Thalappalam Ser. Coop. Bank Ltd. and others Appellants Versus State of Kerala and others Respondents WITH CIVIL APPEAL NOs. 9020, 9029 & 9023 OF 2013 (Arising out of SLP(C) No. 24291 of 2012, 13796 and 13797 of 2013) JUDGMENT K.S. Radhakrishnan J. I. Leave granted. held

“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 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 extend 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 RTI Act.”

3. The Commission after going through the order of Gauhati High Court vide Gauhati High Court WP(C) 2200/2019 and Supreme Court order vide Civil Appeal No. 9017 of 2019 (Arising out of SLP(C) No. 24290 of 2012) observed that the position of Registrar Co-Operative Society cannot be that of a Post Office to transfer the RTI application to a cooperative society (Niz-Dhing Co-Operative Society in instant case). Since Registrar Co-operative Society is a public authority, he is duty bound to comply with the obligation of the RTI Act in furnishing information subjected to the information which relates to a third party under section 11 of the RTI Act and where third party has reservation to share the same or such information under the limitation of Section 8 of the Act. The Registrar can also gather the information from the Society under his supervisory or administrative control under Co-Operative Society Act instead of routinely transferring the RTI application.

4. Further, reference to the Section 38 of the Assam Co-Operative Society Act, 2007 in the reply by the SPIO in his letter dated 7.10.2020 addressed to the Registrar of the Commission is unwarranted and has nothing to do with the RTI Act.
5. Therefore, the Commission advises the SPIO to follow the order of Supreme Court of India in totality and not in a piecemeal which suits him. The RTI Act enactment in 2005 in pursuance to the Article 19 of Constitution of India (including rights to get information) intends to furnish the information as a norm and non furnishing as an exception only.
6. The Commission therefore, orders the SPIO of the Office of the Assistant Registrar Co-operative Society to gather information from the Society, on which he has supervisory or administrative control under the Cooperative Society Act and furnish the same to the petitioner.
7. With the above direction, the second appeal petition dated 11.11.2019 is disposed off.

Sd/-
(Dr. A.P. Rout)

Authenticated true copy.

Sd/-
Registrar i/c
Assam Information Commission
Memo No. SIC/ NGN.180/2019

Dtd. 30.10.2020

Copy to:

1. Registrar of Cooperative Societies, Assam, Khanapara, Guwahati-22 for information.
2. Sri Bipul Hazarika, SPIO of the Office of the Assistant Registrar Cooperative Societies, Nagaon, Assam for information.
3. Registrar of Assistant Registrar Cooperative Societies, Nagaon for information.
4. Ainul Hoque Chodhury, Niz-Dhing S.S Ltd, Nagaon for information.
5. The Petitioner, Md. Dildar Hussain, S/O- Abdul Rajak Vill No 1 Bilotia P.O- Dhing, PIN-782123 Nagaon for information.
6. Computer Section for uploading the order in the Website.
7. Office File.
8. Order Book.

Registrar i/c
Assam Information Commission