

Case No. : SIC/KPM 125/2022
Complainant/ Appellant : Sri Harinarayan Pathak
Respondent : SPIO/Secretary, Assam Apex Weavers &
Artisans Co-operative Federation Ltd.,
A.K.Azad Road, Rehabari, Guwahati
Date of Hearing : 25/05/2022
Complaint/ Second : Dr. A.P.Rout,
Appeal heard by State Chief Information Commissioner, Assam

O R D E R
25/05/2022

1. The petitioner Sri Harinarayan Pathak has filed one RTI petition before the SPIO of Assam Apex Weavers & Artisans Co-operative Federation Ltd.(ARTFED), Rehabari Guwahati on 18.11.2021 seeking two numbers of information relating to Public Documents issued from the Managing Director, AIIDC, Bamunimaidam, Guwahati.
2. On non receipt of any information, the petitioner filed 1st appeal before the First Appellate Authority, Assam Apex Weavers & Artisans Co-operative Federation Ltd.(ARTFED), Rehabari Guwahati on 20.12.2021 and then he filed 2nd appeal before the Commission on 29.3.2022.

Accordingly, the matter was taken up for hearing.

3. The petitioner Sri Harinarayan Pathak is present.
4. The Public Authority is represented by Bipul Kalita, Secretary i/c, ARTFED. The i/c Secretary of ARTFED, Rehabari, Guwahati has submitted a written statement dated 25.5.2022 which is taken into records.

In the written statement, it is mentioned that the applicant was informed vide letter dated 9.12.2021 about the rejection to furnish the information as sought by the applicant, on the ground that the ARTFED is a Co-operative Society registered under the Co-operative Societies Act, 1949 which does not fall within the definition of "Public Authority" as defined under Section 2(h) of the RTI Act, 2005.

The Ground of rejection of the RTI application was based on the ratio of the judgement of Division Bench of Hon'ble Supreme Court dated 7.10.2013 rendered in Thalappalam Service Cooperative Bank Ltd. & Ors. – vs – State of Kerela & Ors. (Civil Appeal No. 9017/2013 with Nos. 9020, 9023 & 9029/2013). In para 69 of the said judgement, the Hon'ble Supreme Court held that the Co-operative Societies registered under the Kerela Co-operative Societies Act will not fall within the definition of "Public Authority" as defined under section 2(h) of the RTI Act.

5. However, the Commission would like to refer to earlier decisions of Commission, **Case No. KP(M) 177/2018 Dated 13.12.2018** *Quote* The petitioner Smti Aparna Devi is absent without any information. The public authority, i.e., the ARTFED is also absent. However, the Managing Director, ARTFED has sent a written statement dated 13.12.2018 which is entered into the case records. In his WS the MD, ARTFED has stated that the RTI petition of Smti Aparna Devi was rejected vide letter dated 25.5.2017 on the following grounds i) That the ARTFED is a Cooperative Society registered under the Cooperative Societies Act, 1949. The Hon'ble Supreme Court in its order dated 7.10.2013 in Thalappalam Ser. Coop. Bank Ltd. & Ors. – Vs.-State of Kerela & Ors., held that the Cooperative

Societies do not fall within the definition of “Public Authority” as defined under Section 2(h) of the RTI Act. Therefore, the ARTFED is also not a public authority for the purpose of the RTI Act 2005. ii) That the information sought for by the petitioner involves personal informations relating to service records of one Sri Nibaran Das, an employee of ARTFED. The MD,ARTFED has stated that disclosure of such personal information has no relationship to any public activity or interest and would cause unwarranted invasion of the privacy of the individual, unless the applicant is satisfied that the larger public interest justifies the disclosure of such information. This Commission agrees with the submission that in terms of the Hon’ble Supreme Court’s order referred to above ARTFED cannot be deemed to be a public authority. This Commission, would, however, like to refer to the last line of Section 2 (f) of the RTI Act,2005 under which, subject to relevant provision of the RTI Act 2005, information relating to any private body which can be accessed by a public authority under any other law for the time being in force is disclosable information under the RTI Act. The petitioner is, therefore, advised, if she is interested, to submit her RTI petition before the Registrar of Cooperative Societies, Government of Assam, who, if empowered under the Assam Cooperative Societies Act, 2007 and any other relevant law, to have access to such information and obtain the same from ARTFED and subject to the provision of sections 8 and 9 of the RTI Act,2005, furnish the same to the petitioner provided the petitioner can satisfy the concerned public authority that there is larger public interest involved, which will justify disclosure of personal information relating to the third party, and that such disclosure will outweigh in importance any possible harm and injury to the interest of the 3rd party. With the above order the 2nd appeal petition dated 24.1.2018 is disposed of. *Unquote.*

Another Decision SIC/NGN.180/2019 Dated 30.10.2020 *Quote.* 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 Case No. SIC/NGN.180/2019 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. 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 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 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. *Unquote.*

6. The Commission accepts the written statement seeking exemption by the SPIO, ARTFED and would like to mention that the Registrar of Co-operative Societies, Govt. of Assam is not exempted under the provisions of RTI Act, 2005 as well as Supreme Court Order.
7. The petitioner may take necessary action accordingly.
8. In view of the above, the case is disposed off.

Authenticated copies to be given to all concerned.

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

Authenticated true copy.

Sd/-
Registrar
Assam Information Commission

Memo No. SIC/KPM.125/2022

Dtd. 25.5.2022

Copy to:

1. The SPIO/Secretary, Assam Apex Weavers & Artisans Co-operative Federation Ltd., A.K.Azad Road, Rehabari, Guwahati 08 Assam for information.
2. The petitioner Sri Harinarayan Pathak, Padumpukhuri, Uzanbazar, Guwahati 01 Assam for information.
3. Computer Section for uploading in the Website.
4. Office File.
5. Order Book.

Registrar
Assam Information Commission