

(2008) 06 KAR CK 0078

In the Karnataka High Court

Case No : Writ Petition No. 16901 of 2006

Dattaprasad Co-Operative Housing Society Ltd.

APPELLANT

Vs

Karnataka State Chief Information Commissioner and
Another

RESPONDENT

Date of Decision : 30-06-2008

Acts Referred:

Right to Information Act, 2005 — Section 2 (h) (d)

Citation : AIR 2009 Kar 1 : (2008) ILR (Kar) 4105 : (2009) 1 KarLJ 641 :
(2008) 4 KCCR 2357 : (2009) 5 RCR(Civil) 833

Hon'ble Judges : K. Bhakthavatsala, J

Bench : Single Bench

Advocate : S.G. Bhat and Jayshree Bhat, for the Appellant; R.B. Satyanarayana Singh, HCGP for R1 and R2, for the Respondent

Final Decision : Allowed

Judgement

K. Bhakthavatsala, J.—The petitioner-Dattaprasad Co-operative Housing Society Ltd., Malleswaram, Bangalore, is before this Court under Article 226 of the Constitution of India praying for the following reliefs:

(i) to declare that the petitioner-Society is not a public authority under the provisions of the Right to information Act, 2005 (in short "the Act"), and the Government Notification dated 22.9.2005 at Annexure-"B" issued by respondent No. 2-Registrar of Co-operative Societies is not applicable to the petitioner-Society, and

(ii) to issue a writ of certiorari for quashing the directions issued by Respondent No. 2 in the letter dated 30.10.2006 bearing No. ADMN/MPH/97/2006-07 at Annexure-"D".

2. The brief facts of the case leading to the filing of the writ petition may be stated as under:

It is the case of the Society that in the month of February 1970, the society was

registered under the Karnataka Co-operative Societies Act, 1959. The society is governed by bye-laws approved by the respondent No. 2. It is contended that the Society has not received any financial assistance from the State Government and therefore the Society cannot be a public authority within the scope of the Act. But the respondent No. 2/Registrar of Co-operative Societies has issued a Notification dated 22.9.2005 (Annexure-"B") to the effect that all Co-operative Societies in the State are public authorities. The petitioner-Society has not received the Notification or intimation. When certain members sought for information, the other members of the society opposed divulging information pertaining to them. Therefore, the Society rejected their request to furnish the information on both counts. When the appeal was preferred to the Chairman of the Society, he wrote a letter (annexure-C) to respondent No. 2 pointing out the provisions of the Act. The Respondent No-2 by his reply dated 30.10.2006 (Annexure-D) intimated the Chairman of the Society stating that u/s 2(h)(d) of the Act all Co-operative Societies are public authorities. The respondent No. 1/ Karnataka Information Commission, on the basis of the Notification dated 22.9.2005, by order dated 1.9.2006 (vide Annexure-E) directed the Registrar of Co-operative societies to seek information from the society and furnish the same to the applicant. The petitioner-Society is before this Court praying for the relief as mentioned above.

3. The respondent/State has filed statement of objections/additional objections denying the grounds urged in the writ petition and contending that as per the provisions of the Co-operative Societies Act, respondent No 2/the Registrar has supervision and control over the society. It is also contended that as per Section 127A the Co-operative Societies Act every office bearer, Member and employee of Co-operative institutions is a "public servant". Further, as per Clause (e) of Sub-section 12 of Section 2 and explanation thereto in the Karnataka Lokayukta Act, 1985, the office bearers of Co-operative society are "public servants" and there is no illegality or infirmity in the impugned Notification/communication.

4. Sri S.G. Bhat, Learned Counsel appearing for the petitioner submits that the petitioner-Society has not taken any financial assistance from the State Government. Further, the supervisory control by the Registrar of the society over the petitioner-Society cannot be a good ground to hold the petitioner/society, is a public authority within the definition of Section 2(h)(d) of the Act, 2005. In support of his contention, learned Counsel for the petitioner has cited the following decisions:

1. Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, on the point that the Board of Control for Cricket in India is not financially, functionally or administratively dominated by the Govt.

2. P. Bhaskaran and Others Vs. Additional Secretary, Agricultural (Co-operation) Department, Trivandrum and Others, on the point that the Co-operative Societies are not created by the Co-operative Societies Act and they are not statutory bodies. They are only functioning in accordance with the provisions of the Act.

These institutions would have legal existence, even if the Co-operative Societies Act was not in force. Moreover, the Government have no shares in the Co-operative Societies. There is no deep and pervasive state control. The management of the societies does not vest in the Government or in the representatives of the Government Bank. The management is under the effective control of a committee elected by the members of the societies. The statutory regulation or restriction in the functioning of the societies is not "an imprint of State under Article 12." Hence no writ will lie against a Co-operative society governed by the Kerala Co-operative Societies Act.

5. The object of the RTI Act is to secure access to information from the public authorities in order to promote transparency and accountability in the working of every public authority so as to curtail corruption and to hold the Government and their instrumentality accountable.

6. It is useful to refer to Clause (h) of Section 2 of the RTI Act, which reads as under:

Section 2(h): "public authority" means 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 the 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;

7. As per Sub-clause (d) of Clause (h) of Section 2 of the RTI Act, the appropriate government can include an institution within the scope of public authority, provided it is owned, controlled or substantially financed, directly or indirectly funded by the appropriate Government. In the instant case petitioner/society is neither owned nor funded nor controlled by the State. It is not the case of the State that the Notification dated 22.9.2005 (Annexure-B) has been issued u/s 2(h)(d) of the RTI Act. Solely on the basis of supervision and control by the Registrar of societies; and the definition of "public Servant" in the Co-operative societies and in the Karnataka Lokayukta Act, 1984 a society cannot be termed as "Public authority". So as to include a society within the definition of the term "Public authority", it should fulfill the conditions stipulated in Sub-clause (d) of Clause (h) of Section 2 of the RTI Act. The decisions cited by the learned Counsel for the petitioner/society fully support the case of the petitioner. The petitioner-society does not fulfill the requisite conditions laid down in Sub-clause (d) of Clause (h) of Section 2 of the Act. Therefore, the petitioner society is not a

"public authority" under the provisions of the RTI Act, 2005. Hence, the directions issued by the Registrar to the petitioner/society, by his communication dated 30.10.2006 by the respondent No. 2 at Annexure "D" are not binding on the petitioner/society.

8. For the reasons stated supra, the petition is allowed holding that the petitioner-Society is not a public authority under the provisions of the RTI Act, 2005. Further, the directions issued by respondent No. 2 by communication dated 30.10.2006 at Annexure-D is quashed.

No costs.

9. Learned Govt. Pleader is granted three weeks time to file his memo of appearance for respondent No. 2.