

(2012) 01 DEL CK 0582

In the Delhi High Court

Case No : Writ Petition (C) 12210 of 2009

Northern Zone Railway Employees Co-Operative Thrift and
Credit Society Ltd.

APPELLANT

Vs

Central Registrar Cooperative Society and Others

RESPONDENT

Date of Decision : 16-01-2012

Acts Referred:

Multi-State Cooperative Societies Act, 2002 — Section 2, 61
Right to Information Act, 2005 — Section 2

Citation : AIR 2012 Delhi 112

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : S.K. Bhaduri and Mr. K. Kumar, for the Appellant; Anuj Aggarwal with Mr. Gaurav Khanna for R-1 and 2, Mr. Abhishek Yadav, for R-4, Ms. Vibha Mahajan Seth, for R-6 and 7, for the Respondent

Judgement

Vipin Sanghi, J.—These are two petitions, preferred by the Northern Zone Railway Employees Co-operative Thrift and Credit Society Limited (in short "NZRE"), to assail two orders, dated 15th June, 2009 (in W.P.(C) No. 12210/2009) and dated 22nd June, 2009 (in W.P.(C) 13550/2009) passed by the CIC, whereby the learned CIC has, inter alia, held that the petitioner is a "public authority" within the meaning of Section 2(h) of the Right to Information Act, 2005 (in short "RTI Act"), and on that basis, issued directions to the petitioner and imposed penalty on the petitioner.

2. The queriests in these cases raised various queries relating to the petitioner, upon Northern Railway. In those proceedings, wherein the petitioner was not a party and was not noticed at all, the learned CIC has taken a view that the petitioner is a public authority. For this purpose, the CIC has relied upon an earlier order dated 14th July, 2008 passed in case no. CIC/OK/A/2008/00211 wherein also, the respondent/public authority before the CIC, was Northern Railway. In the said order dated 14th July, 2008 the CIC had observed as follows:-

.....During the hearing, the Respondents admitted that the NZRE was a Society of the Railway Employees and that deductions made from the employees salaries towards the payment of premium of LIC policies was sent to them. Moreover, the land on which the office of the NZRE was located was given to them by the Railways (this would amount to indirect funding) and the Railways issued free passes to the Members for attending the meetings. In fact, there was a close coordination between the NZRE and the Railway authorities. Under the circumstances, the Commission fails to understand as to how the NZRE can take a stand they were not a public authority - though they may function in an autonomous manner.

7. Accordingly, the Commission directs the NZRE to provide to the Applicant the information asked for. Infact, it seems strange that the NZRE should hold an LIC policy and not divulge its contents when the policy holder needs the detail thereof. If thereof, directs the NZRE to open up all the files and records regarding the LIC policy held by them of the employees concerned. This they should do by 5 August 2008.

3. It appears that this order was also passed by the CIC without notice to or hearing the petitioner.

4. The first submission of learned counsel for the petitioner is that the CIC should not have ruled on the status of the petitioner as being a "public authority", when the case of the petitioner was that it was not a "public authority" within the meaning of Section 2(h) of the RTI Act, without notice to, and granting hearing to the petitioner. I fully agree with this submission of the learned counsel for the petitioner, as an order, which has a bearing on the status, rights and obligations of a party qua the RTI Act, could not have been passed without even complying with the basic principles of natural justice, which are embedded and engrained in the RTI Act. On this short ground, the conclusion drawn by the learned CIC that the petitioner is a "public authority" within the meaning of Section 2(h) of the RTI Act cannot be sustained, and is liable to be set aside.

5. I would have considered remanding the case back to the CIC for determination of the said issue afresh after granting an opportunity to the petitioner and the other parties to put forward their case, but the parties have made detailed submissions on the said legal aspect before me. The submissions of the parties are premised on documents placed on record, and the said issue is a legal issue. I have heard them at length and, consequently, I proceed to consider the said submissions and decide the issue as to whether the petitioner is, or is not, a public authority.

6. The submission of Mr. Bhaduri is that the petitioner is a society which has been constituted with the object to promote the interests of all its members to attain their social and economic betterment through self help and mutual aid in accordance with the cooperative principles. The members of the petitioner association are employees of Northern Railway. The functions of the petitioner

society, as set out in the petition are the following:-

(ii) Functions

The object of the Society shall be to promote the economic interest of the members. In furtherance of the above objects, the society may undertake any or all the following:

(a) To raise funds by means of issuing shares, acceptance money on compulsory deposit or otherwise from members.

(b) To lend money to share-holder at interest.

(c) To undertake welfare activities particularly for the members and employees and their children for the promotion of their moral, educational and physical improvement.

(d) To own lands, building or to take them on lease or rent for the business of the Society and residential quarters for the staff of the Society.

(e) To open Branches within the area of operation of the society subject to the approval of the General Body.

(f) To undertake other measures designed to encourage in the members the spirit and practice of thrift and mutual help.

(g) To do all such things as are incidental or conducive to the attainment of any or all the above objects.

(i) The Society shall help, maintain and promote the aims and object of the following funds, the rules of the working of which shall be framed by the General Body from time to time.

(1) The "Share holder Death Cum Retirement Benefit Funds"

(2) The "Share holder relief funds".

(3) The "Staff Welfare Funds."

(4) The "Building Fund."

(ii) Such other funds as may be considered necessary by the General Body from time to time,

(h) To raise funds from the members through Saving Accounts and Fixed Deposits with the approval of General Body.

7. The petitioner has made a categorical averment that it does not receive any financial assistance or help from the government. The petitioner society is neither owned nor funded, nor controlled by the State. It is also not the case of either of the parties that in the management of the petitioner society, the Railways have any direct or indirect role to play. On this basis, it is urged that the petitioner is not a "public authority" within the meaning of Section 2(h) of the

RTI Act.

8. The petition is opposed by the respondents and, in particular, by the queriest. Learned counsel for the queriest Ms. Vibha Mahajan Seth submits that the members of the petitioner society are all Railway employees and deductions are directly made from their salaries, which are transmitted to the petitioner for being invested in LIC policies etc. She has also drawn the attention of the Court to Chapter XXIII of the Indian Railway Establishment Manual (Vol.-II) which deals with the aspect of Co-operative Societies. It is argued that Clause 425 of the said manual provides that special facilities shall be provided to cooperative societies by the Railway, which are categorized as (i) Consumer Co-operative Societies and (ii) Co-operative Credit Societies Consumer Co-operative Societies are those which are engaged in retail trade to provide the needs of their members. She submits that the petitioner is a Co-operative Credit Society. Clause 2321 of the said manual provides for special casual leave and special passes to railway servants who are the members of the Managing Committee of such societies. In the case of Co-operative Credit Societies, special casual leave may be allowed as per actual requirement upto a maximum of 30 days in a calendar year. Under Clause 2323 it is provided that the co-operative societies shall adopt the model bye-laws framed by the Railway Board in consultation with the Registrar of Co-operative Societies concerned. The petitioner co-operative society is provided with premises by the Railways under Clause 2340, which provides that such societies shall be provided with accommodation on reasonable rent. The manner of fixation of such rent is also provided under Clause 1960 of the said manual. It is argued that the Railways have, in fact, not recovered any rent at all from the petitioner society for the accommodation provided to it.

9. Ms. Vibha Mahajan Seth further submits that u/s 2 of the Multi-State Co-operative Societies Act, 2002, the said Act shall apply to, inter alia, all co-operative societies, with objects not confined to one State which were incorporated before the commencement of the said Act. She submits that the petitioner being a co-operative society with objects not confined to one State, the Multi State Co-operative Societies Act, 2002 is applicable to the petitioner society. It is argued that u/s 2(h) of the RTI Act a public authority means any authority or body or institution of self-government established or constituted, inter alia, "by any other law made by Parliament".

10. She submits that there is no requirement of registration of a co-operative society under the Multi State Co-operative Societies Act, 2002 and by force of Section 2(a), the said Act is applicable to the petitioner society. Consequently, it can be said that the petitioner is a body which has been established or constituted by a law of Parliament and is, therefore, a public authority. She also places reliance on an order passed by the CIC in the case of Food Corporation of India Employees Co-operative Credit Society Limited in File No. CIC/PB/C/2007/00397/LS dated 18.03.2009 wherein the same view has been taken by the CIC.

11. She further submit that u/s 61 of the Multi State Co-operative Societies Act, 2002 the Central Government or the State Government, on receipt of a request from a Multi State Co-operative Society, with a view to promote co-operative movement, may subscribe to the share capital of a Multi-State Co-operative Society or give loans or make advances to the said society. Financial assistance in various other forms can also be provided to a multi-state co-operative society.

12. The expression "public authority" is defined in Section 2(h) of the RTI Act as follows:

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 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 organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;

13. For an authority or body or institution to be classified as a public authority under clause (b) of Section 2(h), what is necessary is that the authority, body or institution is established or constituted by a law made by Parliament. Consciously, the Parliament has not used the expression "under any other law made by Parliament". Therefore, the authority or body or institution should be created by, and come into existence by the statute framed by the Parliament, and not under the statute so framed. For example, a company is constituted under the Companies Act. It cannot be said that a company is constituted "by a law made by Parliament". For it to be classified as an authority or body or institution under clause (b) or Section 2(h), it should be a statutory corporation.

14. Admittedly, the petitioner is not a statutory corporation as it is a cooperative society stated to have been constituted in the year 1960. It is not relevant whether it was constituted under the Cooperative Societies Act, 1912 or under any other law relating to any cooperative society in force, or in pursuance of the Multi State Cooperative Societies Act, 1942 (MSCS Act) or not, since it is not in dispute that it is a cooperative society. All that Section 2(a) of the Multi State Cooperative Societies Act, 2002 purports to do, is to state to which class of cooperative societies the said act would "apply". Section 2(b) states that the said Act "shall apply to" Multi-State Cooperative Societies "registered or deemed to be registered under this Act....."[See Section 2(b)]

15. It is also not the case of the contesting respondents that the petitioner

society receives any funds or financial aid from the Government. Even if the petitioner society is provided some facilities in the nature of accommodation on a reasonable rent or rent free accommodation, and its office bearers are provided casual leaves or special passes for travel on the railways to attend the affairs of the cooperative society, the same cannot be said to be a provision of "substantial finance" by the appropriate government, i.e. the Central Government to the petitioner cooperative society. Firstly, these facilities are provided to the office bearers, and not the petitioner society. Secondly, the respondents have not been able to show that the said facilities and amenities provided by the Central Government/Railways forms a significant fraction of the funds generated by the petitioner or the budget of the petitioner.

16. The petitioner is stated to be an organization of 72,000 railway employees, who contribute to the funds of the petitioner on a regular basis for being invested in schemes of LIC etc. There is no reason to accept that the amenities/facilities provided by the railways to the petitioner cooperative society translates into a "substantial finance" when compared to the revenues and budgets of the petitioner cooperative society. The method of collection of contributions is wholly irrelevant. That is only a mechanism evolved to enable smooth and punctual transmission of the subscription of the railway employees. It has no bearing on the issue at hand.

17. It is not even shown that the model bye laws in any way vest the Central Government/Railways with any direct or indirect control in the functioning, and in the organization of the petitioner cooperative society. The mere adoption of the model bye laws as prescribed by the railways is, therefore, of no consequence. The adoption of the model bye laws appears to be insisted upon, only to ensure that the funds entrusted to the petitioner cooperative society by its members is properly utilized and are not defaulted or dissipated.

18. The mere fact that the petitioner comes within the purview of MSCS Act also makes no difference to the status of the petitioner in relation to the RTI Act. If the submission of learned counsel for the respondents/querists were to be accepted, it would mean that every cooperative society to which the MSCS Act applies would, ipso facto, qualify as a public authority. This position cannot be accepted.

19. The enabling provision contained in Section 61 of the MSCS Act, which enables the Central and State Governments to provide aid to such multi state cooperative societies in one or the other way, specified in the said section by itself cannot lead to the inference that the petitioner is a public authority. For it to fall within the said definition, the respondent should have established that the Central Government or the State Government have, as a matter of fact, either subscribed to the share capital of the petitioner cooperative society; or given loans and made advances to the petitioner; or guaranteed repayment of principal and payment of interest on debentures issued by the petitioner society, or like, which amounts to "substantial finance".

20. Unless and until, the said aid qualifies to be termed as "substantial finance", when looked at in the light of the overall financial dealings and budget of the petitioner, the grant of aid u/s 61 of the MSCS Act would not be sufficient to clothe the cooperative society with the character of a public authority.

21. The earlier decision of the CIC in the case of Food Corporation of India throws no light on the subject, as it does not disclose any reasons. In fact, the petitioner has pointed out that in various other cases, the CIC rejected the applications for disclosure of information, simply on the ground that the multi state cooperative society was not a public authority within the meaning of the RTI Act.

22. For all the aforesaid reasons, the finding returned by the learned CIC that the petitioner is a public authority is quashed, and it is held that the petitioner is not a public authority, in the light of the aforesaid discussion. However, in case the petitioner does receive substantial finance from the appropriate Government, or is otherwise controlled by the appropriate Government at any time in future, the said character may undergo a change.

23. As aforesaid, the queries were directed to, in all these cases, the Northern Railway. In respect of various queries, pertaining to which the Northern Railways itself had the information and should have provided the information, it forwarded the queries to the petitioner instead. Such conduct of the Northern Railway was not in accordance with the provisions of the RTI Act. For instance, it is for the Northern Railway to disclose as to how many passes it had issued to the officer bearers of the cooperative society in terms of its aforesaid manual. This information would be available with the Railways, as it pertains to the actions and conduct of the Railways. Similarly, it is for the Northern Railways to explain as to what action it has taken on the complaints made against the office bearers of the petitioner association, as the complaints were made to the Northern Railways and not to the petitioner, and the action was also required to be taken by the Northern Railways.

24. So far as the impugned orders direct disclosure of information by the Northern Railways, the same are sustained. The imposition of fine on the petitioner cannot be sustained, since it proceeds on the assumption that the petitioner is a public authority.

25. Accordingly, these petitions are disposed of with a direction that the matters be again placed before the learned CIC to decide the appeals afresh in the light of the aforesaid decision.

26. Let the parties appear before the learned CIC on 22.02.2012.