

(2011) 06 BOM CK 0095

In the Bombay High Court

Case No : Writ Petition No. 1256 of 2011

Rajeshwar Majoor Kamgari Sahakari Sanstha Limited

APPELLANT

Vs

State Information Commissioner, Assistant Registrar,
Cooperative Societies and Sachin Arunrao Nawale

RESPONDENT

Date of Decision : 15-06-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Maharashtra Co-operative Societies Act, 1960 — Section 12(1), 2
Maharashtra Co-operative Societies Rules, 1961 — Rule 10(1)

Citation : (2011) 5 ALLMR 69

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : P.B. Patil, for the Appellant; R.D. Bhuibhar, for Respondent No. 1,
A.D. Sonak, Assistant Government Pleader for Respondent No. 2 and A.R.
Prasad, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Savant, J.—Rule, made returnable forthwith. Heard finally with consent of the learned Counsel for the parties.

2. The above petition filed under Articles 226 and 227 of the Constitution of India takes exception to the order dated 23/6/2010 passed by the State Information Commissioner, Amravati in the Appeal filed by the Respondent No. 3 whereby the said appeal was disposed of by issuing a direction to the Assistant Registrar of Cooperative Societies, Motala to procure the information from the Petitioner, which is sought by the Respondent No. 3 herein and furnish the same to him. The Petitioner also challenges the order dated 28/9/2010 passed in the Review Application filed by the Petitioner.

3. The facts involved in the petition can be stated thus:

The Petitioner is a Cooperative Society registered under the Maharashtra Cooperative Societies Act, 1960 and is classified as a Producers (Labours)

Society under the provisions of Section 12(1) of the said Act and Rule 10(1) of the Maharashtra Cooperative Societies Rules, 1961. The principal object of the Petitioner Society is to provide work to its members. The Petitioner in terms of the Government policy is entitled to get Government work on contract basis upto a limit of Rs. 15 lakhs. The Petitioner is accordingly awarded work and the payment is made at the pre-determined rates fixed by the State Government. It is the case of the Petitioner that no financial assistance is given by the State Government and the Petitioner Society sustains itself from the funds, which are self generated. The Respondent No. 3 herein, who is a Press Reporter of Malkapur town, filed an application dated 10/7/2009 seeking various documents, which were mentioned in the said application. The Petitioner Society did not furnish the said information to the Respondent No. 3 on the ground that the Right to Information Act, 2005 (for the sake of brevity, hereinafter referred to as "the said Act") was not applicable to it. The Respondent No. 3 aggrieved by the non-furnishing of the information by the Petitioner, filed an Appeal before the First Information Officer of the Cooperative Societies, who is the Assistant Registrar, Cooperative Societies, which appeal came to be numbered as 2/2009. The said appeal was allowed by the Assistant Registrar, Motala by his order dated 27/8/2009. The Respondent No. 3 thereafter filed an Appeal before the State Information Commissioner on the ground that the said order has not been complied with by the Assistant Registrar, Cooperative Societies. The Petitioner filed a reply, inter alia, contending that the First Information Officer had passed an order without hearing the Petitioner and also taking a stand that the Petitioner was not a "public authority". The State Information Commissioner by the order dated 23/6/2010 disposed of the Appeal, inter alia, holding that though the Petitioner is not a "public authority" within the meaning of the said Act, the information is directed to be provided by the Assistant Registrar in terms of Section 2(f) of the said Act. The Petitioner thereafter filed a review application, inter alia, seeking clarification of the said order. The said review application was disposed of by the State Information Commissioner by his order dated 28/9/2010. By the said order, the State Information Commissioner directed the original Applicant, i.e. Respondent No. 3 herein to approach the Assistant Registrar of Cooperative Societies by making an application and if such an application was received, the Assistant Registrar was directed to furnish the information by resorting to his powers under the Maharashtra Cooperative Societies Act, 1960. As indicated above, the said orders passed by the State Information Commissioner are impugned in the present petition.

4. Heard the learned Counsel for the parties. Shri Patil, learned Counsel for the Petitioner, contended that the Authority under the said Act erred in exercising jurisdiction in view of the fact that the said Act was not applicable to the Petitioner. It was submitted that the Petitioner is not a "public Authority" within the meaning of Section 2(h) of the said Act. The learned Counsel in support of the said submissions, relied upon the judgment of a learned Single Judge of this Court in Dr. Panjabrao Deshmukh Urban Cooperative Bank Ltd., Amravati v. State

Information Commissioner, Vidarbha Region, Nagpur and Ors. (2009 (3) Mh.L.J. 364) wherein it has been held that the Cooperative Society established under the Maharashtra Cooperative Societies Act is not a "public Authority" as it does not satisfy the pre-requisites of being a "public Authority" within the meaning of Section 2(h) of the said Act. It has been held that when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a "State" or "public Authority". It is held that in the absence of existence of deep and pervasive control with reference to the Institution, it cannot be called a "State" or "public Authority" within the meaning of the said Right to Information Act, 2005. The learned Counsel for the Petitioner further relied upon another judgment rendered by a learned Single Judge of this Court in Shikshak Sahakari Bank Ltd. v. Murlidhar Pundlikrao Sahare and Anr. (2010 (2) Mh.L.J. 240) wherein the learned Single Judge in that case relying upon the judgment in the case of Dr. Panjabrao Deshmukh Urban Cooperative Bank Ltd. (supra) held that the Cooperative Bank concerned in that case was not a "public Authority". The learned Counsel for the Petitioner, therefore, contended that direction issued by the State Information Commissioner in the impugned orders was unwarranted and unjustified.

5. Per contra, it was submitted by Shri Bhuihar, learned Counsel for the Respondent No. 1 State Information Commissioner, that in the impugned order dated 23/6/2010 the State Information Commissioner has in fact accepted the contention of the Petitioner that it is not a "public Authority" and has also referred to the judgment of this Court in Dr. Punjabrao Deshmukh Urban Cooperative Bank Ltd.'s case (supra). However, the State Information Commissioner relying upon Section 2(f) (wrongly mentioned as 2(c) in the order) has issued a direction to the Assistant Registrar, Cooperative Societies to provide the information to the Applicant by having recourse to the power conferred upon him under the Maharashtra Cooperative Societies Act, 1960. It was, therefore, contended that the Petitioner is proceeding on a misconception that the Authority under the said Act has issued the directions on the ground that the Petitioner is a "public Authority". It was further contended that in the review application filed by the Petitioner, the State Information Commissioner by his order dated 28/9/2010 has modified the said order, so as to provide, that in the event the original Applicant makes an application to the Assistant Registrar, the Assistant Registrar in his capacity as a "public Authority" would provide the said information to the Applicant. It was, therefore, contended that since the Assistant Registrar is a public Authority within the meaning of the said Act, the State Information Commissioner was within his powers to issue the directions to him considering the definition of "information" u/s 2(f) of the said Act.

6. The learned Counsel for the Respondent No. 3 adopted the arguments of Shri Bhuihar, but additionally contended that the Assistant Registrar being a "public Authority", was obliged to provide the said information.

7. In rejoinder, the learned Counsel for the Petitioner contended that in view of

the fact that the said Act is held to be not applicable, the State Information Commissioner was not within his powers to issue directions even to the Assistant Registrar. He contended that what the State Information Commissioner could not have done directly against the Petitioner Society cannot be got done indirectly through the Assistant Registrar of Cooperative Societies.

8. I have heard learned Counsel for the parties and given my anxious consideration to the rival contentions. In the instant case, as mentioned earlier in this judgment, admittedly the Petitioner is a Society registered under the Maharashtra Cooperative Societies Act and its objective is to provide work to the persons, who are mainly labour force in respect of the works that would be awarded to such type of Labour Societies by the State Government. In the teeth of the judgments of the two learned Single Judges of this Court (*supra*), there cannot be any dispute that the Petitioner Society is not a "public Authority" within the meaning of the said Act. As can be seen, the said fact has also been accepted by the State Information Commissioner in the order dated 23/6/2010 and, therefore, the contentions of the learned Counsel for the Petitioner relying upon the said judgments (*supra*) that the Petitioner is not a "public Authority" neednot be considered in view of the fact that the said issue is no more *res integra*.

9. It is required to be noted that the State Information Commissioner after accepting the position that the Petitioner Society is not a "public Authority" has taken into consideration the definition of "information" as provided for in Section 2(f) of the said Act. It would be material to reproduce the said definition:

"information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, log books, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body, which can be accessed by a public authority under any other law for the time being in force.

(emphasis supplied)

Perusal of the said definition discloses that any information relating to any private body, which can be accessed by the Public Authority under any other law for the time being would come within the ambit of "information" as provided for in the said Act. In the instant case, the information was sought from the Assistant Registrar of the Cooperative Societies, who is admittedly a public Authority within the meaning of the said Act. The information being sought in respect of the Petitioner Society, which can be said to be a private Body, can be accessed by the Assistant Registrar under the powers conferred upon him by the Maharashtra Cooperative Societies Act, 1960. The State Information Commissioner, therefore, considering the said definition of "information" was within his rights to direct the Assistant Registrar, who is a Public Authority, to provide the said information by having recourse to his powers under the Maharashtra Cooperative Societies Act, 1960, thereby what has been done is that

the information, which the Assistant Registrar can statutorily access, has been directed to be provided to the Applicant.

10. The fact that the information is in respect of a private Body would make no difference as the direction is to a Public Authority and it is precisely to cover such a situation that the Legislature thought it fit to provide for a wider definition of the term "information". The submission of the learned Counsel for the Petitioner that what could not have been done directly, is sought to be done indirectly, therefore, can only be stated to be rejected as the Assistant Registrar is obliged to provide the said information as a public Authority exercising powers under the Maharashtra Cooperative Societies Act, 1960. The contention of the learned Counsel for the Petitioner, therefore, that since Petitioner is not a public Authority, no information can be sought to be provided by the Assistant Registrar cannot be accepted. In that view of the matter, no case for interference with the impugned orders dated 23/6/2010 and 28/9/2010 passed by the Respondent No. 1 is called for. The writ petition is accordingly dismissed. Rule discharged. No order as to costs.