



Jammu and Kashmir State Information Commission

شنیشن کمیٹی انفارمیر اسٹینڈ کشمیر جموں ا

(Constituted under the Right to Information Act, 2009)

Wazarat Road, near DC Office Jammu, 0191-2520947, 2520937

Old Assembly Complex, Srinagar, 0194-2506660, 2506661

www.jksic.nic.in

File No. SIC/J/A/102/2017

Decision No. SIC/J/A/102/2017/21

Final Order

(Second Appeal)

Appellants : Sh. Anmol Gupta

Respondents : First Appellate Authority (FAA) and Public Information Officer (PIO)/ Co-operative Societies, Jammu.

Date of Registration : 06.03.2017

Date of Decision : 13.06.2017

Brief Facts:

The appellant Sh. Anmol Gupta, R/o. Indra Bhawan, Wazarat Road, Jammu filed RTI application under section 6 of the J&K Right to Information Act, 2009 (hereinafter Act for short) before the PIO, O/o. Registrar, Co-operative Societies, J&K, Jammu seeking information pertaining to leased shops at Super Shopping Complex, Old Hospital Road, City Chowk Jammu by the Jammu Co-operative Wholesale Ltd., Super Bazar, Jammu. On not receiving any information from the PIO, the appellant preferred First Appeal before the FAA/Additional Registrar, Co-

operative Societies, J&K, Jammu on 10.05.2016. The FAA disposed of the First Appeal on 22.11.2016 interalia holding as under:

“After examining both the application/communications of the PIO and General Manager, Super Bazar, Jammu, it has been foreseen that no doubt the efforts were taken out by the PIO DR Counsel O/o Registrar Co-operative Societies J&K Srinagar but did not follow the observation made out by the General Manager Super Bazar Jammu regarding letter No. Coop/Legal/21/2014 dated: 16.05.2015 of the Administrative Department which is self explanatory in nature and needs to be adhered to strictly in future.”

The reply of the FAA did not satisfy the appellant as such he filed 2nd Appeal before the Commission under section 16(4) of the Act.

Proceedings:

The case came up for hearing before the Commission for the first time on 25.05.2017. Hearing was attended by Ms. Anjana Tickoo, Additional Registrar, Co-operative Societies, Jammu/FAA and Dr. Mudrasah, Deputy Registrar (C), Co-operative Societies, J&K, Srinagar/PIO. The appellant was also present.

After hearing both the parties and on perusal of record following issues were identified by the Commission for adjudication:

1. Whether the transfer of the RTI application by the PIO to the General Manager, Super Bazar, Jammu was right. An option was available to the PIO of the office of the Registrar Co-operative Societies to seek information from General Manager, Super Bazar, Jammu under section 5(4) of the RTI Act and provide the same to the appellant.

2. Whether the Super Bazar comes within the ambit of section 2 (f) of the J&K RTI Act 2009 to be treated as a Public Authority (Supreme Court judgment in the case titled Thalappalam Ser. Co-operative Bank Ltd. and others v/s State of Kerala and others, SLP (C) 24290 of 2012).

The case was finally listed before the Commission on 13.06.2017. The hearing was attended by Deputy Registrar (Hqrs) (on behalf of the FAA), General Manager, Super Bazar and the appellant.

The parties were heard viz-a-viz the queries raised by the Commission and relevant record was perused. Rival contentions of the parties were considered by the Commission.

Decision:

The Commission had raised two issues relating to this case which are based on the facts of the case. These issues are mentioned at point 1 and 2 supra. Now in regard to the issue No. 1 the Commission observes that the Deputy Registrar, Co-operative Societies-cum-PIO to whom the RTI application dated: 14.03.2016 was addressed, transferred the RTI application to the General Manager, Super Bazar, Jammu on 01.04.2016 i.e. after the gap of nearly 16 days. In pursuance of section 6(3) of the Act the maximum period of transfer of RTI application to another public authority is 05 days. Though the PIO has not expressly invoked section 6(3) of the Act but the transfer of application would involve the said time limitation. Under section 6(3) of the Act, RTI application is transferred when whole or part of the information is held by another public authority, which was not the case here.

Coming to the next issue as to whether the Jammu Co-operative Societies (Super Bazar) comes within the ambit of section 2(f) of the Act which defines a public authority.

The General Manager, Jammu Co-operative Society (Super Bazar) while giving response to the RTI application cited the Hon'ble Supreme Court decision in Civil Appeal No. 9017 of 2013 titled Thalappalam Ser. Co-operative Bank Ltd. and others v/s State of Kerala and others (2013) stating thereby that in view of said decision, Co-operative Societies do not fall within the ambit of section 2(f) of the Act and, therefore, are not 'public authorities'. This view was reiterated by the First Appellate Authority also in his order.

Now the next question arises, whether even if it is presumed that Co-operative Societies are not public authorities, can information which has been sought by the appellant through Registrar be also denied.

Hon'ble Supreme Court in the Thalappalam case had addressed this question. The Court has interalia held that:

“Registrar of Co-operative Societies functioning under the Co-operative 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 under 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 Co-operative 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 Act. No provision has been brought to our knowledge indicating that, under the Co-operative Societies Act, a Registrar can call for the details of the bank accounts maintained by the citizens or members in a Co-operative bank. Only those information which a Registrar of Co-operative Societies can have access under the Co-operative Societies Act from a Society could be said to be information which is "held" or "under the control of public authority". Even those information, Registrar, as already indicated, is not legally obliged to provide if those information falls under the exempted category mentioned in Section 8(j) of the Act. Apart from the Registrar of Co-operative Societies, there may be other public authorities who can access information from a Co-operative Bank of a private account maintained by a member of Society under law, in the event of which, in a given situation, the society will have to part with that information. But the demand should have statutory backing.

The appellant in this case has accessed information through the office of Registrar of the Societies which as per the above referred verdict of the Court is a public authority who under the Co-operative Societies Act is competent to access information held by the Co-operative Societies.

The J&K Co-operative Societies Act, 1989 gives certain powers to the Registrar of the Co-operative Societies who is appointed under the Act by the Government for all types of Societies. Under section 64 of the J&K Co-

operative Societies Act, 1989 Registrar has all the powers of audit which gives him the powers to have access to all the books, accounts, documents, papers, etc. and other properties belonging to or in the custody of the society. He can summon any person for that purpose and every members of society has obligation to furnish all the requisite information in regard to the transaction and working of society as the Registrar may require.

On reading of the above provision of the J&K Societies Act, 1989 it is clear that Registrar can have access to record pertaining to this case. Accordingly, though the society in question may not be a public authority as defined under the J&K Right to Information Act, 2009, the Registrar who is a public authority as per section 2(f) of the Act can be approached for getting the information which the appellant has done in this case.

In view of the above, Commission directs that RTI application of the appellant shall be considered by the Registrar. The said information in both the situations has to be provided to the appellant if it is readily available with the office of Registrar and if it is not available with him the Registrar shall collect the information from the concerned society on which he has supervisory and administrative control. No provision has been brought to our knowledge that the information sought by the appellant is exempted from disclosure. This information shall therefore be given within 15 days from the date of receipt of this order.

The Commission observes that J&K RTI Act is aimed at bringing within its ambit the practical regime of Right to Information for citizens to secure access to information under the control of the public authorities in

order to promote transparency and accountability in the working of every public authority.

With the above directions/observations the second appeal is disposed of.

Copy of this decision be given free of cost to the parties.

Sd/-

(Khurshid A. Ganai) *IAS Retd.*
Chief Information Commissioner
J&K State Information Commission

No: SIC/J/A/102/2017_____

Dated: . .2017

Copy to:

1. Registrar, J&K SIC for information and necessary action.
2. Registrar, Co-operative Societies, J&K, Srinagar for information and necessary action.
3. FAA/Additional Registrar, Co-operative Societies, Jammu for information and necessary action.
4. PIO/Deputy Registrar (Hqrs), Co-operative Societies, J&K, Srinagar for information and necessary action.
5. General Manager, Super Bazar for information and necessary action.
6. PS to HCIC for information.
7. Appellant/Sh. Anmol Gupta, R/o. Indra Bhawan, Wazarat Road, Jammu for information.
8. Office file.

(Rita Koul)
Deputy Registrar
J&K State Information Commission