

ODISHA INFORMATION COMMISSION
BHUBANESWAR

Present : Shri Tarun Kanti Mishra,
State Chief Information Commissioner

Date 25th February, 2013

Second Appeal No. 60 / 2012

Patitapaban Das,
S/o Gopinath Das,
Vill-Nelia, PO-Chhatia,
PS-Barachana, Dist-Jajpur-754 023 Appellant

-Vrs-

1. Public Information Officer,
O/o The General Manager,
District Industries Centre, Jagatpur, Cuttack.
2. First Appellate Authority,
O/o The General Manager,
District Industries Centre, Jagatpur, Cuttack..... Respondents.

Decision

1. Appellant Patitapaban Das is present along with Amulya Mohan Tripathy, Advocate. Surath Pradhan, PIO-cum-Assistant Manager, Cottage Industries, Regional Industries Centre, Kalinga Nagar, Jagatpur, Cuttack is also present.

2. The appellant filed form 'A' application dated 15.09.2011 with the P.I.O., office of the General Manager, Regional Industries Centre, Kalinga Nagar, Jagatpur, Cuttack seeking information concerning Chhatia Light Engineering Panchayat Industries Co-operative Society Ltd. Since information sought for was available with Tapan Kumar Satpathy, Panchayat Industries Officer who is also the conferred Registrar of Light Engineering Panchayat Industries Cooperative Society Ltd., Chhatia, he was asked to furnish the required information vide letter No.3003 dated 01.10.2011. But he refused to furnish the information vide letter

No.93 dated 07.10.2011 on the plea that the information will be submitted after consultation with the legal experts. Thereafter, on several occasions, the Panchayat Industries Officer was asked to provide the information. After a lapse of 35 days, the P.I.O. reported the matter to the higher authority namely the General Manager, Regional Industries Centre, Jagatpur. It is pertinent to note that the General Manager who is also the First Appellate Authority of the Regional Industries Centre, Jagatpur, had on several occasions earlier also directed Tapan Kumar Satpathy, Panchayat Industries Officer to furnish the information to the appellant. But Tapan Kumar Satpathy declined to furnish the required information and a series of correspondences in this regard went on between the First Appellate Authority and the Panchayat Industries Officer who is also the conferred Registrar of Chhatia Light Engineering Panchayat Industries Coop. Society Ltd. Finally Sri Satpathy refused to furnish the information to the appellant.

3. As the order of the General Manager-cum-First Appellate Authority was not carried out and the appellant did not receive required information, he filed this Second Appeal before the Commission with a prayer for direction for supply of information and for any action deemed just and proper.

4. The Commission on hearing both the parties and on perusal of records was of the opinion that Tapan Kumar Satpathy, Panchayat Industries Officer-cum-conferred Registrar of the Light Engineering Coop. Society Ltd. of Chhatia Panchayat Samiti has willfully refused without any reasonable cause and obstructed malafidely in furnishing information to the appellant. The Commission accordingly issued notice to Tapan Kumar Satpathy directing him to show cause as to why penalty under Section 20 (1) of the Act should not be imposed on him for his lapses. The Commission further directed to provide the information sought

for, if available to the appellant. It is alleged that as yet the information sought for have not been provided to the appellant in spite of direction of the Commission.

5. The order directing Tapan Kumar Satpathy to show cause against penalty was challenged by him before the Hon'ble High Court in W.P.(C) No.25506/2012 which was dismissed on the ground that it was only a show cause notice and the Second Appeal is pending before the Commission. After the writ was dismissed, Tapan Kumar Satpathy filed his show cause memorandum. The Commission heard the appellant and the Panchayat Industries Officer. The latter submitted that he was prejudiced because of non-supply of the requested documents by the Commission. He further stated that the Chhatia Panchayat Industries, Light Engineering Cooperative Society Ltd. is not a Public Authority within the meaning of Section 2(h) of RTI Act as the society is not substantially financed by the Government. It is also urged that the society is not a 'state' within the meaning of Article 12 of Constitution of India as the society is not under the deep and pervasive control of the Government. He further submitted that the society in its General Body meeting decided that information sought for under R.T.I. Act shall not be furnished as it would harm the competitive position of the Society and that the commercial secrets cannot be disclosed.

6. The facts that the form-A application of the appellant was forwarded to the Panchayat Industries Officer by the P.I.O. with a request to supply information and the latter refused to supply the same in spite of repeated directions of his higher authority i.e. General Manager, Regional Industries Centre, who is also the First Appellate Authority, are not disputed. When the conferred Registrar of the Society in question was in possession of all the relevant documents namely the form-A application, the request of the P.I.O. for supply of information and also the repeated directions of his superior authority to

provide information, the plea that he was prejudiced for non-supply of documents, cannot be sustained as correct. He himself being in custody of all the relevant documents and also being the part of the Public Authority, if he felt the necessity of any particular document for preparing the show cause memorandum, he could have obtained the same from the office. In this connection it may also be stated that on the submission of Tapan Kumar Satpathy the Commission in order dated 07.12.2012 directed the P.I.O. Surath Pradhan to provide all available documents to Tapan Kumar Satpathy within 10 days and thereafter the case was finally heard on 05.02.2013 on which date Tapan Kumar Satpathy was also present. During hearing he never complained to have not received any documents from the P.I.O. or that he needed some more. The unfounded plea of prejudice, therefore, cannot be sustained and cannot exonerate Tapan Kumar Satpathy from the statutory responsibility and liability cast on him under Section 5(5) of RTI Act.

7. The next point urged by Tapan Kumar Satpathy is that Chhatia Panchayat Industries Light Engineering Coop. Society Ltd., Chhatia is not a Public Authority within the meaning of Section 2(h) of RTI Act for the reason that the society is not substantially financed by the Government. This plea is also untenable. The fact that the society was constituted with the initial funding of the Government and that it received grants for several years thereafter is admitted in para-4 of the show cause memorandum. Annexure-3, filed by Tapan Kumar Satpathy along with show cause memorandum is a letter issued by the Director of Industries to all the General Managers and Project Managers of District Industries Centres concerning the financial assistance to the Panchayat Samiti Industries, like the one under consideration. It is, therefore, apparent from Annexure-3 that the Cooperative Society was being financed by the Government and under administrative control of erstwhile Industries Department, now under M.S. & M.E. Department. Added to it, Tapan Kumar Satpathy, Panchayat

Industries Officer and conferred Registrar of the Society is receiving salary from the Government. Therefore, the plea that Chhatia Panchayat Industries Light Engineering Cooperative Society Ltd. is not a Public Authority because it did not receive any financial assistance from Govt. for some years has no substance and thus not acceptable.

8. The society in question admittedly has been registered under the provisions of Odisha Cooperative Societies Act, 1962. The society was started with Government funding and continued to receive grants for several years. The Registrar of the Society is a Government servant and is receiving salary from Government. The society is a Panchayat Samiti Industrial unit and established in the year 1964. It is also subjected to audit through Government agencies. Interest of the participating members, share holders are greatly concerned with the activity of the society. A Full Bench of the Hon'ble High Court of Kerala in the case of Mulur Cooperative Society Ltd. Vs. State of Kerala and others (**A.I.R. 2012 Keral-124 Full Bench**) held that Cooperative Societies registered under Kerala Cooperative Societies Act are Public Authorities within the meaning of Section 2(h) of RTI Act. Provisions of Odisha Cooperative Societies Act and Kerala Cooperative Societies Act are comparable. By applying the *ratio decidendi* of the aforesaid Full Bench decision of the Hon'ble High Court of Kerala, and on consideration of the factual aspect stated hereinbefore, the Commission holds that the Chhatia Panchayat Industries Light Engineering Cooperative Society Ltd. is a Public Authority within the meaning of Section 2(h) of RTI Act and, therefore, the provisions of RTI Act do apply to this society.

9. The next point urged is that the society is not a 'State' within the meaning of Article 12 of the Constitution of India as the same is not under the *deep and pervasive* control of Government. This submission is to be rejected *in limini* since the society is under the administrative control of the Government and

