

ORISSA INFORMATION COMMISSION

BHUBANESWAR

Present: Shri Tarun Kanti Mishra,

State Chief Information Commissioner

and

Shri P.K.Mohanty,

State Information Commissioner

Date: 20th May, 2011

Complaint Case No.1758/08

Nilamani Joshi,
At-Ichhapada,
PO-Balangir-767001,
Balangir district.....Complainant

-Vrs-

Public Information Officer,
Office of the Patuapali Service Co-operative Society Ltd.,
At/PO-Patuapali ,
Balangir districtOpposite Party

Decision

1. Complainant Nilamani Joshi is present. Jayadeba Behera, Advocate on behalf of PIO, Patuapali Service Co-operative Society, Balangir District is also present. Heard and perused the case record.
2. The Complainant had filed form A application dated 02/09/08 with the PIO, Patuapali Service Co-operative Society, Balangir seeking detailed information on paddy procurement by Patuapali Service Co-operative Society for the crop years 2005-06, 2006-07 and 2007-08 and other related issues. Since the complainant did not get any information on time from the PIO, he filed first appeal in form D on 23/12/08 under Section 19 (1) of the RTI Act, 2005 (Act for short) before the Assistant Registrar Co-operative Societies, Balangir Circle, Balangir. The First Appellate Authority vide his

order dated 30/01/09 instructed Radheshyam Sahu, PIO-cum-Secretary, Patuapali Service Co-operative Society to supply the information free of cost within a week.

3. It is alleged by the Complainant that despite clear directions of the First Appellate Authority, the PIO, Patuapali Service Co-operative Society, did not supply the required information. He alleged gross negligence on the part of the PIO.
4. In view of the above averments, the Commission had directed the PIO to (i) supply, free of cost, the requested information to the Complainant, and (ii) explain as to why penalty under Section 20(1) of the Act shall not be imposed for violation of Section 7(1) of the Act.
5. The representative of the PIO, Patuapali Service Co-operative Society submitted on 6.05.2010 that Co-operative Societies were not Public Authorities as defined under the RTI Act, 2005. In this regard he referred to a case law reported in AIR 2010 Bombay 61. (Shikshak Sahakari Bank Ltd., Nagpur vs. Murlidhar Pundhikrao Sahare and Another). Quoting the said decision, he stated that the State Government has no deep and pervasive control over the Society and as such information about Co-operative Societies cannot be supplied under the provisions of the RTI Act, 2005 and, therefore, the application seeking information under the Act was not maintainable and liable to be rejected.
6. The Commission after hearing the representative opined that Co-operative Societies including the present one under consideration are no doubt self governed, but are substantially funded by the State Government for carrying out transactions of paddy procurement and related activities. Therefore, the Patuapali Service Co-operative Society is a “Public

Authority” as per Section 2 (h) of the RTI Act, 2005. It was also observed from the stated Case law that the Commissioner Co-operation and Registrar of Co-operative Societies, Maharashtra State, Pune had informed that the petitioner Bank in that case viz Dr. Punjabrao Deshmukh Urban Co-operative Bank was not covered by their circular relating to Co-operative Societies. By over-ruling the submissions of the representative of the PIO, the Commission directed the PIO to furnish forthwith the requested information and file showcause as to why penalty under Section 20 (1) and (2) of the RTI Act, 2005 shall not be imposed on him.

7. The PIO, Patuapali Service Co-operative Society had also filed a second appeal before the Commission under Section 19 (3) of the RTI Act, 2005 challenging the order of the First Appellate Authority. He had also moved the Hon’ble High Court seeking a direction to quash the orders of the Commission dated 23/12/09 asking the PIO to showcause under Section 20(1) of the RTI Act,2005. The Hon’ble High Court in their order dated 05.04.2010 in W.P. (c) No.4868 of 2010 passed the following orders:-

“The Second Appellate Authority before whom the appeal is pending shall take up the appeal along with two misc. case attached to it and pass necessary orders thereon in accordance with law within a period of one month. The petitioner may submit his reply to the showcause notice directed to be issued in the impugned order dated 19/01/2010, but no final decision shall be taken in the said proceeding till the orders are passed by the Second Appellate Authority in the aforesaid Second Appeal. The continuance of the proceeding for recovery of penalty shall depend on the order passed by the Second Appellate Authority in the appeal as well as in the misc. cases.”

8. After receipt of such orders, both the present complaint case and the corresponding Second Appeal were heard analogously. During course of such hearing, the State Commission vide order dated 17/09/10 had

appointed the Collector and District Magistrate, Balangir as authorised officer under Rule 7(1) (c) of the Orissa Information Commission (Appeal Procedure) Rules, 2006 to cause a comprehensive inquiry into the totality of the request of the complainant. Even though during the enquiry, the PIO agreed to provide the information on 15/01/11, as reported by the Collector and District Magistrate the representative of the PIO came up with a petition on that day seeking further 15 days time on the ground that he had moved Hon'ble High court with a prayer to stay further proceedings in the case pending before the Commission and that he had a fair chance of getting such a stay.

9. A subsequent report from the Collector and Authorised Officer sent vide letter No.498, dated 11/03/11 further indicated that even though the PIO agreed to furnish the information by 15/01/2011, he did not furnish the same to the complainant on that date and on subsequent two dates, taking the same plea that he had filed a writ before the Hon'ble High Court of Orissa and that there was fair chance of getting a stay in the said writ. The Collector felt that this was a deliberate attempt on the part of the PIO to avoid furnishing information to the complainant without any valid ground. Therefore the Collector has left the decision to the Commission in this context.
10. As regards pending case in the Hon'ble High Court as indicated above, it is a fact that W.P. (c) 707 of 2011 was pending before the Hon'ble High Court. But the Hon'ble Court vide orders dated 15.03.11 had disposed of the writ petition with a direction to dispose of the Second Appeal pending before the Commission. The same was disposed of on 15.04.2011 with a direction to the PIO to provide the information to Nilamani Joshi Complainant, free of cost, within 30 days.

11. The Complainant who is present today has stated that he has not yet received the information inspite of orders of the Commission.
12. The representative of the PIO on the other hand reiterated that they are not coming within the definition of Public Authority as defined under Section 2(h) of the RTI Act,2005 as per decisions of Hon'ble High Courts of Bombay and Karnatak as the State does not have "deep and pervasive" control over the cooperative societies. The Commission clarified to him that the service co-operative societies in the State of Orissa are Public Authorities and this issue has already been heard and decided by the Commission on 6.05.2010. The Commission also considers it appropriate to make a mention of the judgement of Hon'ble High Court of Delhi in W.P (c) No.8219 of 2009 (Indian Railway Welfare Organisation vrs. D.M. Gautam and another) which vindicates the above stand of the Commission. The relevant portion of the judgement dated 03/05/2010 at para-15 reads as follows:

"At this juncture it must be observed that the submission that the control has to be 'deep and pervasive' is based on the decisions rendered by the courts in the context of Article 12 of the Constitution. In the first place, the question whether IRWO is "state" is not relevant of answering the question whether it is a public authority for the purpose of the RTI Act. The definition of 'public authority' under Section 2(1)(h) of RTI Act does not talk of 'deep and pervasive' control. It is enough if it is shown that the authority is 'controlled' by the central government"

13. Despite clear directions from the Commission, the PIO did not furnish the information to the complainant. The report of authorised officer i.e. Collector Balangir shows that the PIO, during inquiry, agreed to provide the information on 15.01.11. But he evaded the same on the plea of pendency of a writ in Hon'ble High Court. After disposal of the writ and

subsequently, the Second Appeal, even though the PIO was categorically directed to provide the information within 30 days, the same has not been complied. Rather the representative of the PIO has reiterated his earlier stand which was disposed of on 6.05.10.

14. The Commission after careful consideration of the matter is of the opinion that the PIO, by not complying the orders of 1st Appellate Authority and then the orders of the Commission has consequently obstructed in furnishing the information. Hence the Commission directs the Collector and District Magistrate, Balangir to ensure supply of complete information by the PIO to the complainant, Nilamani Joshi within 30 days from the date of receipt of these orders.
15. Further, the Commission considered it appropriate to impose a penalty of Rs 25,000/-(Rupees Twenty five thousand) on Radheshyam Sahu, PIO, Patuapali Service Co-operative Society, Balangir for the intentional delay in furnishing the information. He is directed to deposit the penalty amount in Government Treasury under, the Head “0070-Other Administrative Services-60-Other Services-118-Receipt under Right to Information Act, 2005-0014- Collection of Fees and Fines-02178-Fees and Fines under Right to Information Act,2005” within 30 days of receipt of this order, failing which the penalty amount shall be recovered from him in 10(ten) equal, monthly and consecutive instalments from his salary of August 2011 Payable in September 2011. If the same cannot still be so recovered, the Head of the Public Authority shall initiate necessary action under Rule 13 of Orissa RTI Rules,2005. The facts of full recovery of payment shall be reported by the Head of the Public Authority to the Secretary, Orissa Information Commission for record.
16. The complainant had filed petition seeking compensation of Rs.3,40,000/- on the ground that due to non-furnishing of information, he had incurred a lot of financial loss in form of notional loss of salary to the tune of

1,85,000/-, DTP and Xerox charges of Rs.25,000/- and expenditure of Rs.30,000/- in order to attend the hearings of the Commission.

17. After perusal of the claims mentioned by the complainant as above, the Commission did not consider such claims as admissible in order to attract the provisions under Section 19(8)(b) of the RTI Act,2005 since these appear to be highly exaggerated and completely notional. Moreover, since Orissa Information Commission (Appeal Procedure) Rules,2006 has made the presence of the complainant optional as per Rule 9(2) of the said Rules, award of compensation towards expenditure for appearance before the Commission is not considered appropriate. Therefore, his prayer for compensation is not accepted.
18. With the above directions, the case is closed. The complainant may however approach the Commission in case the orders at paragraph 14 are not complied by the PIO within the prescribed time limit.

Pronounced in open proceedings

Given under the hand and seal of the State Commission, this the 20th day of May, 2011.

**State Chief Information Commissioner
20/05/2011**

**State Information Commissioner
20/05/2011**

