

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 132 OF 2011
WITH
WRIT PETITION NO. 307 OF 2011

WRIT PETITION NO. 132 OF 2011

Reserve Bank of India,
Central Office, 21st Floor,
RBI Building,
Shahid Bhagat Singh Road
Mumbai – 400 001.
represented by its Deputy General Manager,
Shri N. Seshadri,
resident of Goregao, East, Mumbai. ... Petitioner

V e r s u s

1. Shri Rui Ferreira,
resident of H.No.E-1
Near Panaji Church,
Panaji Goa.
2. The Public Information Officer &
Deputy Registrar of Co-op. Societies
with office at the Registrar of co-op. Societies,
Government of Goa,
Sahakar Sankul, 4th and 5th Floor,
EDC Complex, Patto,
Panaji Goa.
3. The Chief Information Commissioner
The Goa State Information Commission,
Shrama Shakti Bhavan, Ground Floor,
Patto Plaza, Panaji Goa. ... Respondents

Mr. Sudesh Usgaonkar, Advocate for the petitioner.

Respondent no.1 present in person.

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WITH

WRIT PETITION NO. 307 OF 2011

Mr. D. S. Morajkar,
PIO/Dy. Registrar of Co-Operative
Societies, O/o The Registrar of
Co-Operative Societies,
Sahekar Sankul, 4th and 5th Floor,
EDC Complex Patto,
Panaji Goa. Petitioner

V e r s u s

1. Rui Ferreira,
S/o Late Dr. Joao Filip Ferreira,
H.No.E-1, Nr. Panaji Church,
Panaji Goa.
2. The Goa State Chief
Information Commissioner
Ground Floor,
Shrama Shakti Bhavan,
Patto Plaza,
Panaji Goa. Respondents

Mr. G. Shirodkar, Government Advocate for the petitioner.

Respondent no.1 present in person.

CORAM : S. A. BOBDE,J

DATE : 28th JULY, 2011.

ORAL JUDGMENT

Rule. Rule, returnable forthwith. Heard by
consent of the parties.

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2. In Writ Petition No.132 of 2011, the RBI has challenged the order dated 14.06.2010 of the Goa State Information Commission at Panaji under Section 18 of the Right to Information Act, 2005 (hereinafter referred to as "the Act") directing the disclosure of information considered by the Reserve Bank of India as confidential under Section 8(1)(a) of the Act, without hearing the Reserve Bank of India.

In Writ Petition No.307 of 2011, the Public Information Officer - Deputy Registrar of Co-operative Societies has challenged the order dated 31.01.2011 imposing a penalty of Rs.2,000/- on him and directed to be recovered from his salary for non compliance of the order dated 14.06.2010.

3. Writ Petition No. 132 of 2011 is filed by the Reserve Bank of India. Shri Usgaonkar, learned Counsel for the petitioner submitted that the order dated 14.06.2010 passed by the Goa State Information Commission under Section 18 of the Act is without any jurisdiction to entertain a proceeding under Section 18 of the Act. The State Information Commission which is a second appellate authority had no jurisdiction to receive and inquire into a complaint

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from the respondent no.1 under Section 18 of the Act which he had involved instead of filing an appeal. According to the learned Counsel, the State Information Commission, in second appeal No. 78/2009 had passed an order dated 13.11.2009 remanding the matter to the Public Information Officer of the Registrar of Co-operative Societies for deciding, whether respondent no.1 is entitled to the information, which he has sought. After the remand, PIO had decided and held that respondent no.1 is not entitled to the information which he had sought namely 16th and 17th reports of inspection of the Goa Urban Co-operative Bank carried out by the Reserve Bank of India. Therefore, respondent no.1 Mr. Rui Ferreira had no option but to file an appeal against that order before the First Appellate Authority i.e. the Registrar of Co-Operative Societies. Thus, according to the learned Counsel, the powers could not have been exercised by the Information Commission in proceedings under Section 18 of the Act, which is meant to be exercised in the circumstances referred to in sub-section(1)(a) to (f) of the Act only, which reads thus :-

“18. Powers and functions of Information Commission.- (1) Subject to the provisions of this Act, it shall be the duty of the Central Information

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Commission or State Information Commission as the case may be to receive and inquire into a complaint from any person,-

(a) who has been unable to submit a request to a Central Public Information Officer, or State Public Information Officer as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or Senior Officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;

(b) who has been refused access to any information requested under this Act;

(c) who has not been given a response to a request for information or access to information within the time limits specified under this Act;

(d) who has been required to pay an amount of fee which he or she considers unreasonable;

(e) who believes that he or she has been given incomplete, misleading or false information under this Act; and

(f) in respect of any other matter relating to requesting or obtaining access to records under this Act.”

4. The relevant facts of the case are as follows :

The RBI had carried out an inspection in the affairs of the Goa Urban Co-operative Bank Ltd., under Section 35 of the Banking Regulation Act, 1949. The RBI prepared several reports of which respondent No.1 Mr. Rui Ferreira claimed information, in his capacity as a share-holder and member of that bank and as a member of a public. The PIO appointed for the Registrar of Co-Operative Societies granted the request in respect of almost all the reports but rejected the request for giving information regarding the 16th and 17th reports. In the second appeal filed by Mr. Rui Ferreira, the Appellate Authority i.e. the State Information Commission upheld the denial of 16th and 17th reports. However, the State Commission vide order dated 13.11.2009 remanded the matter back to the PIO for reconsideration. After remand, the PIO rejected the information vide letter dated 18.11.2009.

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5. In the meanwhile, Mr. Rui Ferreira had made an application directly to RBI for some information. This was refused by the CPIO on the ground that this information is exempted under Section 8(1)(a) of the RTI Act being the disclosure of information of which would prejudicially affect the economic interests of the State.

6. The Respondent no.1 however instead of preferring an appeal before the first Appellate Authority against the order of the PIO of the Co-operative Bank refusing information or preferring an appeal against the order of the RBI refusing information on the ground that the information is protected by Section 8(1)(a) of the Act, directly approached the State Commission under Section 18 of the Act for the very same information. The State Commission proceeded to decide the matter, apparently ignoring all the important safeguards enacted in Section 11 of the Act and peculiarly, inspite of coming to the conclusion that normally a complaint of such type made by Mr. Rui Ferreira is not maintainable, proceeded to grant the relief because the complainant had earlier followed the prescribed procedure and the matter had been remanded by the Commission. Peculiarly, the Commission proceeded to grant relief even though the

complaint was not found by it to be under any provisions of law because the Act is people friendly and user friendly Act and the denial of information by the Court is not in the true spirit of Act. The Commission also made an order that its order would not be treated as a precedent in future.

7. Ex-facie the impugned order of the Commission dated 14.06.2010 is liable to be set aside on the ground of perversity. Indeed, the Commission has no power to direct the disclosure of information in the proceedings which are considered to be not maintainable. Since the Commission has done precisely that the order is vitiated and is required to be set aside.

8. Further, the question that arises is whether the Commission would have entertained a complaint from respondent no.1 directly under Section 18 when respondent no.1 had failed to file an appeal against the order of the PIO of the Co-operative Bank rejecting the request and against the order of the Reserve Bank of India, refusing the request on the ground that the information is protected by Section 8(1)(a) of the Act. Section 18 confers power on the State Information Commission to receive and inquire into a

complaint from any person in the nature of supervisory in the circumstances referred to in that Section. Thus the State Information Commission may entertain a complaint from any person who has been unable to submit a request to the PIO because no such officer has been appointed or if the PIO has refused to accept his application for information or an appeal under the Act; or whether the person has been refused access to any information requested under the Act or whose request has not been responded within the time specified under the Act etc. The case of respondent no.1 does not fit into either of the circumstances referred to under Section 18(1)(a) to (f). The PIO of the Co-operative Bank and the RBI have rejected the request for information after considering the request in accordance with law. The Act provides for appeals against such orders vide Section 19. Section 18 commences with the words :-

“(1) subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission as the case may be to receive and inquire into a complaint from any person,-

(a) who has been unable to submit a

request to a Central Public Information Officer, or State Public Information Officer as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or Senior Officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;

(b) who has been refused access to any information requested under this Act;

(c) who has not been given a response to a request for information or access to information within the time limits specified under this Act;

(d) who has been required to pay an amount of fee which he or she considers unreasonable;

(e) who believes that he or she has been given incomplete, misleading or false information under this Act; and

(f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The Central Information Commission or State Information Commission, as the case may be shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the

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documents or things;

(b) requiring the discovery and inspection of documents;

(c) receiving evidence on affidavit;

(d) requisitioning any public record or copies thereof from any court or office;

(e) issuing summons for examination of witnesses or documents; and

(f) any other matter which may be prescribed.

(4) Notwithstanding anything inconsistent contained in any other Act of Parliament, or the State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds."

This suggests that it is not intention of the parliament to permit parties who seek information to by-pass the appeals provided by the Act where the request has been made after inquiry, as in the present case. Further, the opening words of the Section clearly have the effect of requiring a party seeking of information to make the request in accordance with Section 6; the disposal of the request in accordance with Section 7 and filing of an appeal in accordance with Section 19 where a person is aggrieved by a decision of the Central Public Information Officer or the State Public Information Officer. In the present case, respondent no.1 must be considered to be a person aggrieved by the decision of the PIO within the meaning of Section 19 of the Act. It was therefore, not permissible for the State Information Commission to entertain the complaint made by respondent no.1 under Section 18 of the Act.

9. Mr. Usgaonkar, learned Counsel for the petitioner – RBI submitted that the order of the Commission is direct disclosure of information is void being in violation of Section 11 of the Act, which requires the Commission to issue a notice in writing to the third party which has supplied the information and pass an order directing the disclosure of

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information only after having invited the third party to submit in writing or orally whether any information should be disclosed. The learned Counsel also submitted that even if the Commission had been hearing the appeal, it was bound to follow this course in respect of whether the matter related to information to the third party.

10. As a matter of fact, it is undisputed that the information in question relates to a third party namely the RBI. The information in question sought by Mr. Rui Ferreira is in respect of 16th and 17th reports prepared by the RBI of an inspection made by it of the Goa Urban Co-operative Bank Ltd., under the provisions of the Banking Regulation Act. These reports have been placed by the RBI in the custody of Registrar of Co-operative Societies of Goa under Section 35 of the Banking Regulation Act. The 16th and 17th reports are thus held by the Registrar of the Co-operative Societies on behalf of the third party i.e. RBI. The RBI specifically claims that there is no obligation to supply this information on the ground that such disclosure would adversely affect the economic interests of the State under Section 8(1)(a) of the Act which reads as under :

“8(1)(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence”

11. The Commission was thus bound to direct the disclosure only in accordance with law and after compliance with the procedure for disclosing third party information provided by Section 11 of the Act which reads as follows :

“11. Third party information.- (1)

Where a Central Public Information Officer or the State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and

invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make

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representation under sub-section(2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision”.

12. In fact, the Public Information Officer of the Registrar of Co-operative Societies appears to have specifically brought to the notice of the Commission that the information in question cannot be furnished since the PIO has been advised by the RBI that the inspection report of the bank is exempted from disclosure under Section 8(1)(a) and 8(1)(e) of the Act. The PIO has not shown satisfactory reason as to why such release of information is covered by Section 8(1)(a). Shri Usgaonkar, learned Counsel has rightly pointed out the importance of such information, in another instance. The deputy Governor of RBI has given the following reasons for withholding such information in similar circumstances as follows :

“(i) Among the various responsibilities vested with RBI as the country's Central Bank, one of the major responsibilities relate to maintenance of financial stability. While disclosure of information generally would reinforce public trust in institutions, the disclosure of certain information can adversely affect the public interest and compromise financial sector stability.

(ii) The inspection carried out by RBI often bring out weaknesses in the financial institutions, systems and management of the inspected entities. Therefore, disclosure can erode public confidence not only in the inspected entity but in the banking sector as well. This could trigger a ripple effect on the deposits of not only one bank to which the information pertains but others as well due to contagion effect.

(iii) While the RBI had been conceding request for information on actions taken by it on complaints made by members of the public against the functioning of the banks and financial institutions and that they do not have any objective in giving information in respect of such action taken or in giving the substantive information pertaining to such complaints

provided such information is innocuous in nature and not likely to adversely impact the system.

(iv) However, disclosure of inspection reports as ordered by the Commission in their decision dated September 6, 2006 would not be in the economic interest of the country and such disclosures would have adverse impact on the financial stability.

(v) It would not be possible to apply section 10(1) of the Act in respect of the Act in respect of the inspection report as portion of such reports when read out of context result in conveying even more misleading messages.....”

13. It is true that the aforesaid reasons were not before the Commission before the impugned order was passed by it but that was only because the Commission failed in its statutory duty to issue notice to the RBI as required by Section 11 of the Act. The impugned order of the Commission is thus wholly illegal, arbitrary and unsustainable, passed in ignorance of the relevant statutory provisions.

14. Thereafter, it seems that the Commission has proceeded to impose penalty on the PIO, who is petitioner in

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Writ Petition No. 307 of 2011, for not complying with its order under Section 18 by imposing a penalty under Section 20. Since the order under Section 18 dated 14.06.2010 itself found to be without jurisdiction and liable to be set aside, the order of the Commission cannot be upheld and the order of the Commission under Section 20, imposing penalty for non compliance of such an illegal order must also be set aside and is accordingly set aside.

15. In the result, both the Writ Petitions are allowed. The impugned orders dated 14.06.2010 and 31.01.2011 are set aside. Respondent No.1 Mr. Rui Ferreira shall be at liberty to pursue the appellate remedy under the Act in respect of the order dated 30.11.2009 passed by the CPIO of RBI refusing him information and the order dated 18.11.2009 passed by the PIO of the Registrar of Co-operative Societies after remand by the State Information Commission in accordance with law. Having regard to the interest of justice, the appeal may be entertained after condoning the delay.

16. Rule made absolute in above terms. No order as to costs.

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17. At this juncture, respondent no.1 Mr. Rui Ferreira, who argued the matter in person states that he has already received 16th and 17th reports, which are said to be exempted from the disclosure and that he has already given it to publish them. In the circumstances, the said respondent is directed not to make any further use of the said reports. The said respondent further states that he does not have the copies of those reports and he has distributed them to the press. In the circumstances, respondent no.1 is directed not to make any further use of the said reports and is further directed not to refer to the said reports from any custody subject to the result of the appeal. Having regard to the importance of the matter, the appeal shall not be disposed of as infructuous merely because respondent No.1 Mr. Rui Ferreira claims that he has already received the said reports. The Appellate authority is directed to decide the appeal, if filed, within a period of six months from the date it is filed.

S. A. BOBDE,J

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