

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO.398 OF 2010**

Goa State Co-operative Milk  
Producers Union Ltd.  
Through its Managing Director,  
Shri Sadanand K. Kulkarni,  
Major of age,  
son of late Krishnaji L. Kulkarni,  
Having office at Curti,  
Ponda – Goa.

.... Petitioner

V/s

1. Goa State Information Commission  
at Panaji, Through its State Chief  
Information Commissioner,  
Having office at Shram Shakti  
Bhawan, Panaji-Goa.
2. Shri Kashinath Shetye,  
r/o. Bambino Building,  
Alto Fondvem, Ribandar,  
Tiswadi – Goa.
3. Public Information Officer,  
Deputy Registrar of Co-operative  
Societies, Panaji – Goa.
4. Deemed Public Information Officer,  
Asst. Registrar of Co-operative  
Societies, Dairy, Ponda-Goa.
5. First Appellate Authority,  
Registrar of Co-operative Societies,  
'Shakar Sankul', Patto Plaza,  
Panaji – Goa.

.... Respondents

Mr. A.F. Diniz with Mr. A.D. Bhohe, Advocates for the Petitioner.

Mr. R. Menezes, Advocate for Respondent No.2.

**CORAM : N.A. BRITTO, J.**

**DATE : 24<sup>th</sup> NOVEMBER, 2010**

**JUDGMENT :**

Heard. Rule. By consent heard forthwith.

2. In the Second Appeal filed by respondent no.2 under the Right to Information Act, 2005, the Goa State Information Commission at Panaji has given two directions. The first, directing the respondents nos.1 & 2 to furnish the information sought for by the applicant (respondent no.2, herein) vide his application dated 13/10/2008. The second, directing the Registrar/Assistant Registrar/respondent no.1 to appoint a Public Information Officer for the petitioner herein i.e. Goa State Co-operative Milk Producers Union Ltd., Curti, Ponda, Goa, in accordance with law.

3. At the time of hearing, Shri Diniz, learned Counsel on behalf of the petitioner, submits that the petitioner is a Co-operative Society and in terms of the Division Bench judgment of this Court reported in 2009 (4) ALL M.R. 873, the provisions of the Right to Information Act, 2005 are not applicable to a Co-operative Society' like the petitioner. Learned Counsel also submits that there is no finding given by the learned State Information Commission

whether the petitioner is a public authority within the meaning assigned to it under the said Act. It is also submitted that in case the petitioner is held to be a public authority then it is for such authority to appoint a Public Information Officer in terms of Section 5 of the Act and it is not within the province of respondent no.1 to appoint a Public Information Officer.

4. I entirely agree with the submission made by the learned Counsel on behalf of the petitioner. Without giving a finding whether the petitioner i.e. Goa State Co-operative Milk Producers Union Ltd. was public authority or not within the definition of Section 2(h) of the said Act there was no question of the learned Commission directing the appointment of a Public Information Officer much less a direction to the Registrar/Assistant Registrar to appoint one for the petitioner.

5. In my view therefore, the impugned order deserves to be set aside with the direction to the learned Commission to give a finding whether the provisions of the Act are at all applicable to a Co-operative Society like the petitioner.

6. Shri Menezes, the learned Counsel appearing on behalf of

the respondent no.2, has submitted that the first direction which requires the respondents nos.1 & 2 to furnish the information need not be disturbed and may be allowed to be retained as it is. I am not inclined to accept this submission, since it is not very clear from the array of the parties before the Commission as to by whom the said direction is to be complied with. In any event since the matter is being remanded for a finding whether the petitioner is a public authority or not within the meaning of a public authority as defined under Section 2(h) of the Act, it is desirable that the entire matter is reconsidered by the Commission afresh. The appellate authorities under the Act will do well in case they give the designation of the concerned P.I.O. or the first appellate authority so that there is no room for doubt as who has to comply with the orders/directions.

7. The respondent no.2 had filed certain documents before this Court to support their case that the petitioner is a public authority. Objection was taken on behalf of the petitioner for the production of the said documents. The learned Commission to allow both the parties to produce such documents which in its opinion would be necessary to decide the controversy in the second appeal.

8. Consequently, the Writ Petition is allowed. The impugned order is set aside. Rule made absolute in terms of first part of prayer clause (a) of the petition. The parties are hereby directed to remain present before the Commission on 9/12/2010 at 10.30 a.m.

**N.A. BRITTO, J.**

NH/-