

Gujarat High Court
The vs Gujarat on 26 February, 2010
Author: Ks Jhaveri,&Nbsp;

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Print

SCA/16444/2007 4/ 4 JUDGMENT

IN

THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL

CIVIL APPLICATION No. 16444 of 2007

For

Approval and Signature: HONOURABLE

MR.JUSTICE KS JHAVERI

=====

1

Whether

Reporters of Local Papers may be allowed to see the judgment ?

2

To

be referred to the Reporter or not ?

3

Whether

their Lordships wish to see the fair copy of the judgment ?

4

Whether

this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5

Whether

it is to be circulated to the civil judge ?

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THE

BHARUCH DISTRICT COOPERATIVE BANK LIMITED - Petitioner(s)

Versus

GUJARAT

INFORMATION COMMISSION & 3 - Respondent(s)

=====

Appearance :

MR

MK VAKHARIA for Petitioner(s) : 1, MR NV ANJARIA for Respondent(s) : 1, MR JK SHAH AGP for Respondent(s) : 2 - 3. MR MTM HAKIM for Respondent(s) : 4,

=====

CORAM

:

HONOURABLE

MR.JUSTICE KS JHAVERI

Date : 26/02/2010

ORAL

JUDGMENT

1. By

way of this petition under Article 226 of the Constitution of India, the petitioner has prayed to quash and set aside the orders/communication dated 18.04.2007 and 23.03.2007 passed by respondent no.1-authority, whereby, it was held that the petitioner-Society is covered under the provisions of the Right to Information Act, 2005 (for short, the RTI Act).

2. The

facts in brief are that the petitioner herein is a co-operative society duly registered under the provisions of the Gujarat Co-operative Societies Act, 1961. An application was submitted before the petitioner-Society seeking certain information under the provisions of the RTI Act.

3. It

is the case of the petitioner that a co-operative society, registered under the provisions of the Gujarat Co-operative Societies Act, is not a 'public authority' within the meaning of Section 2(h) of the RTI Act and therefore, the provisions of the RTI Act would not apply to it. However, vide impugned orders, respondent no.1-authority held that the co-operative societies were covered under the provisions of the RTI Act and consequently, directed the petitioner to supply the information sought for.

4. Being

aggrieved by the same, the petitioner-society has preferred the present petition under Article 226 of the Constitution of India.

5. Heard

learned counsel for the respective parties and perused the documents on record. It is the case of the petitioner that being a co-operative society, duly registered under the provisions of the Gujarat Co-operative Societies Act, 1961, it would not fall within the definition of 'public authority', as defined u/s. 2(h) of the RTI Act. Section 2(h) of the said Act reads as under;

2(h). Public Authority means any authority or body or institution of self-government established or constituted,-

(a) by

or under the Constitution;

(b) by

any other law made by Parliament;

(c) by

any other law made by State Legislature;

(d) by

notification issued or order made by the appropriate Government, and includes any

(i) body

owned, controlled or substantially financed;

(ii) non-Government Organization substantially financed,

directly

or indirectly by funds provided by the appropriate Government;

6. Looking

to the peculiar facts and circumstances of the case and the definition as contained in Section 2(h) of the RTI Act, I am of the opinion that it would be appropriate that the competent authority decides the issue as to whether the petitioner co-operative society would fall within the definition of Section 2(h) of the RTI Act or not, after giving proper opportunity to the petitioner to defend its case.

7. Hence,

the impugned orders passed by respondent no.1-authority as also the communication dated 20.7.2007 are quashed and set aside. The matter is remanded to the competent authority of the Gujarat State Information Commission for decision on the issue as to whether the petitioner co-operative society is covered under the provisions of the RTI Act or not, in pursuance of the decision of this Court in Agricultural Produce Market Committee, Unjha's case.

8. It

is clarified that this Court has passed the aforesaid order, without entering into the merits of the case and therefore, the competent authority shall decide the issue on merits, after considering the aspect of administrative control under the relevant Bye-laws and Rules of the society.

9. With

the above observations, the petition stands disposed of. Rule is made absolute to the above extent.

[K.S.

JHAVERI, J.]

/phalguni/

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