



STATE INFORMATION COMMISSION, HARYANA
SCO 70-71 and 114-115, SECTOR 8-C,
Chandigarh.
Website: cicharyana.gov.in

SCN No. 656 of 2014 in Appeal Case No. 1722/2014

Appeal Case No. 2094 of 2014

Appeal Case No. 5138 of 2012

Appeal Case No. 2697 of 2012

Appeal Case No. 1250 of 2013

Appeal Case No. 3524 of 2012

Appeal Case No. 1442 of 2012

Appeal Case No. 2097 of 2014

Appeal Case No. 1117 of 2014

Appeal Case No. 1443 of 2012

Appeal Case No. 4021 of 2014

Appeal Case No. 1160 of 2006

Appeal Case No. 1450 of 2006

1. Shri Ishwar Dass, S/o Shri Chiranji Lal,
R/o Kath Mandi, Near PWD (B & R) Office,
Bigarh Road, Fatehabad.
2. Shri Manoj Yadav, Advocate,
172, Sector-13, U.E. Kurukshetra.
3. Shri Shamsheer Singh Cheema, S/o Shri Fakiria Ram,
Darya Singh, VPO Barwala,
(Near Post Office), District Panchkula.
4. Shri Balwan Singh S/o Shri Inder Singh,
Village Kanheri, Tehsil Tohana, Distt. Fatehabad.
5. Shri Naresh Chander S/o Shri Kailash Chander,
O/o Chamber No. 239, District Court 17, Sector-17,
UT, Chandigarh.
6. Shri Krishan Chander,
401, GHS-93, Sector-20 D, Panchkula.
7. Shri Nisheeth Bhatt,
Director, Shalki Aquatics Private Limited,
Lajpat Rai Bhawan, Sector-15 B, Chandigarh.
8. Shri Rajinder Kumar S/o Shri Ram Sarup,
VPO-Bhusthala, Tehsil Pahewa, Distt. Kurukshetra.

9. Shri Mohan LalBansal, S/o Shri Dasaundi Ram,
Gali Inder Jain Wali, Kalanwali.
10. Shri Nisheeth Bhatt,
Director, Shalki Aquatics Private Limited,
Lajpat Rai Bhawan, Sector-15 B, Chandigarh.
11. Shri Mohan Lal S/o Shri Dasaundi Ram,
Kalanwali (Sirsa).
12. Shri Victor Robinson,
Shop No. 1-A, STD/PCO, Phuwara Chowk, Hisar.
13. Shri Om Parkash Bishnoi,
#19246, Gurdev Nagar,
New bye pass, Kurukshetra.

.....Appellant(s)

Versus

1. The Fatehabad Central Co-operative Bank Ltd., Fatehabad.
2. The Kurukshetra Central Cooperative Bank Ltd., Kurukshetra.
3. The Panchkula Central Cooperative Bank Ltd.,Panchkula.
4. The Fatehabad District Primary Co-operative Agriculture & Rural
Development Bank Ltd., Fatehabad.
5. The Haryana State Cooperative Apex Bank Ltd.,Chandigarh.
6. The Haryana State Cooperative Apex Bank Ltd.,Chandigarh.
7. The Panchkula Central Cooperative Bank Ltd.,Panchkula.
8. The Kurukshetra Central Cooperative Bank Ltd., Kurukshetra.
9. The Haryana Cooperative Apex Bank Ltd., Chandigarh.
10. The Panchkula Central Cooperative Bank Ltd.,Panchkula.
11. The Sirsa Central Cooperative Bank Ltd., Sirsa.
12. The Haryana State Cooperative Rural Development Bank Ltd.
Panchkula.
13. The Haryana State Cooperative Apex Bank Ltd., Chandigarh.

.....Respondent(s)

1. Shri Narsi Ram Godara and Shri Subhash Ahuja, Advocate on
behalf of respondent no. 1.
2. Shri Kuldip Singh, Advocate on behalf of respondent no. 2, 8
and 11.



3. Shri Pardeep Solath, Advocate, on behalf of respondent no.3, 7, 9 and 10.
4. Shri K.S. Chauhan, Assistant Manager on behalf of Respondent 3, 7 and 10.
5. Shri Subhash Chander, Assistant Manager on behalf of Respondent 4.
6. Shri Pushgar Singh, Manager and Shri Subhash Ahuja, Advocate on behalf of respondent No. 5, 6,9 and 13.
7. Shri Nisheeth Bhat, appellent.
8. Sh. S.M. Vig, SPIO, Haryana State Cooperative Rural Development Bank Ltd. Panchkula and Sh. Arun Sharma, Advocate.
9. Shri Sudhir Ahlawat, ARCS (HQ), representative of the RCS.
10. Shri Nirmal Chand, AGM and Shri R.S. Bhagwane, ANM, representative of National Bank for Agriculture and Rural Development (NABARD).

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This matter has arisen in pursuance of the earlier hearings held by different benches of the Commission in this case and the judgement passed by the Hon'ble Division Bench of the Punjab and Haryana High Court disposing of the pending LPAs with the direction to the State Information Commission (hereinafter called Commission) to evaluate each case individually in the light of the judgement passed by the Hon'ble Supreme Court in Thalappalam Ser. Coop Bank Limited's case. The matter whether the Fatehabad Central Co-operative Bank Ltd., Fatehabad, the Kurukshetra Central Cooperative Bank Ltd., Kurukshetra, the Panchkula Central Cooperative Bank Ltd., Panchkula, the Fatehabad District Primary Co-operative Agriculture & Rural Development Bank Ltd., Fatehabad, the Haryana State Cooperative Apex Bank Ltd., Chandigarh, the Sirsa Central Cooperative Bank Ltd., Sirsa and the Haryana State Cooperative Rural Development Bank Ltd. Panchkula are the public authorities in term of Section 2 (h) of the RTI

Act, 2005 (hereinafter called Act) and fall within the ambit of the Act was under the consideration of the Hon'ble High Court. The Hon'ble Punjab & Haryana High Court while disposing of all such Civil Writ Petitions in LPA No. 1174 of 2011 (O&M) titled Punjab Cricket Association Vs State Information Commission, Punjab and another decided the matter on 12.12.2013 by passing the following order:

8. (i) *The orders passed by the State Information Commission (SIC) and the learned Single Judge in all these appeals are set aside. The matter is remanded to the SIC to decide the same afresh.*
- W* (ii) *The interim order shall continue till the disposal of the appeals by the SIC.*
- Q* (iii) *All the pleas available to the appellants herein shall be allowed to be raised before the SIC. The SIC shall decide the matter afresh keeping in view the judgement of the Apex Court in **Thalappalam Ser. Coop Bank Limited's case** (supra) within six months from the date of receipt of a certified copy of this order.*
- 32* (iv) *Each case shall be decided separately by referring to the facts involved therein.*
- (v) *The SIC shall not be influenced by anything which has been observed herein while deciding the matter afresh.*

2. The Commission decided to constitute a larger Bench to adjudicate the matter. The larger bench of the Commission heard the matter on 17.06.2014, 22.08.2014, 22.09.2014 and 27.10.2014. The Commission during hearing recorded the averments submitted by the appellants, respondents and the representatives of the appropriate Government.



3. Shri Ishwar Dass, appellant no. 1, who had sought information from the Fatehabad Central Cooperative Bank Ltd., Fatehabad did not appear before the Bench. However, contents of his RTI application and second appeal dated 17.01.2014 were considered. Shri Narsi Ram Godara, General Manager, the Fatehabad Central Cooperative Bank Ltd. and Shri Subhash Ahuja, Advocate appeared on behalf of respondent no. 1. Learned Counsel submitted that the respondent bank is a "Society" registered under the then Punjab Cooperative Societies Act, 1961 now replaced by Haryana Cooperative Societies Act, 1984. The respondent bank has not been established/constituted by or under the Constitution of India nor by other law made by the Parliament or the State Legislature nor by any notification issued by the appropriate Government. It is also not controlled/owned or substantially financed by the Government directly or indirectly. Hence the respondent bank is not a public authority as envisaged under Section 2 (h) of the RTI Act, 2005. Learned Counsel further submitted that the State Government has power to appoint Managing Director which has now been re-designated as Chief Executive Officer in accordance with the guidelines of the Reserve Bank of India in exercise of power conferred under Section 31 of the Haryana Cooperative Societies Act, 1984. The Chief Executive Officer is required to exercise such powers as are assigned to him under the bye-laws or delegated to him by the Committee and he is bound to work under the superintendence and control of the



Committee. Ld. Counsel in his written comments has submitted that the administrative control and the influence of the Government on the Board of Directors (Committee) or on the functioning of the respondent bank is limited and regulatory in nature and is governed by clause 27 of Model Bye-Laws of the Fatehabad Central Cooperative Bank Ltd., Fatehabad. Under the amended Haryana Cooperative Societies (Amendment) Act, 2006, the share of Government has been restricted to 25% of the capital share of a "society" and number of nominated members to the Board of Director of the "society" has also been restricted to one member only. He further submitted that all decisions in the meetings of the Board of Directors are taken by majority. Hence, it is evident that the word "control" used in Section 2 (h) (d) (i) of RTI Act is not applicable to the respondent bank which denotes total control over the affairs of bank and not a regulatory control in terms of provision of Haryana Cooperative Societies Act, 1984 and the rules and the bye-laws framed thereunder. The list of Board of Directors, bye-laws and balance sheets as on 31.03.2013 submitted by the respondent bank has been taken on record.

4. Shri Manoj Yadav and Shri Rajinder Kumar, the appellant no. 2 and 8 sought information vide RTI application dated 24.09.2013 and 04.10.2013 respectively from the Kurukshetra Central Cooperative Bank Ltd., Kurukshetra. On the event when the Commission remanded the matters to the first appellate authority of the bank, the respondent



bank approached the Hon'ble High Court in Civil Writ which was remanded to the Commission for reconsideration in view of the decision cited above. Shri Kuldip Singh, Advocate appeared on behalf of the respondent bank with written submission dated 22.08.2014 and 04.09.2014 that share of the Government does not play any role in the functioning/business of the respondent bank because of the share of the Government is merely Rs. 11,10,000/- whereas the business of the respondent bank in the financial year 2013-2014 as per balance sheet dated 31.03.2014 was worth Rs. 6,15,71,83,560.88. Ld. Counsel further submitted that the cash in hand with the respondent bank is more than the share of the Government in the business of the bank. Ld. Counsel of the respondent bank reiterated the submission made by the Fatehabad Central Cooperative Bank Ltd., Fatehabad. He submitted that neither the respondent bank is being financed directly or indirectly nor controlled by the Government, hence term used in Section 2 (h) (d) (i) of RTI Act is not applicable upon the respondent bank. The list of Board of Directors, bye-laws and balance sheets submitted by the respondent bank has been taken on record.

5. Shri Shamsher Singh Cheema, the appellant no. 3 and Shri Nisheeth Bhatt, appellant at serial no. 7 and 10 sought information from the Panchkula Central Cooperative Bank Ltd., Panchkula. The rejoinder dated 22.08.2014 filed by Shri Nisheeth Bhatt, the appellant has been taken on record vide which he submitted that the respondent bank is a



public authority in term of Section 2 (h) of the Act. Shri K.S. Chauhan, Assistant Manager and Shri Pardeep Solath, Advocate appeared on behalf of the respondent bank. Ld. Counsel of the respondent bank supplied copy of bye-laws, list of Board of Directors and balance sheet for the year 2012-2013 and 2013-2014. Ld. Counsel during hearing reiterated the averments which the representative of the Kurukshetra Central Cooperative Bank Ltd., Kurukshetra submitted and are recorded in para 4 above. Shri Nisheeth Bhatt, the appellant vide rejoinder dated 22.08.2014 stated that the respondent bank has already appointed State Public Information Officer and designated First Appellate Authority to respond to the information seekers exercising their right to information. He further submitted that the instant case is not hit by the ratio of the judgement of Hon'ble High Court in LPA no. 1192 of 2011 or that of the Hon'ble Supreme Court in Thalappalam case as the facts and circumstances of both his appeals are different from those of decided judgements.

6. Shri Balwan Singh filed an RTI application dated 31.01.2012 which was registered as second appeal dated 24.04.2012 in appeal no. 2697 of 2012 against the Fatehabad District Primary Cooperative Agriculture and Rural Development Bank Ltd., Fatehabad. Shri Subhash Chander, Assistant Manager appeared on behalf of respondent bank and submitted a copy of certificate of registration dated 11.08.2005, a list of Board of Directors, bye-laws and balance sheet as on 31.03.2014.



7. Shri Naresh Chander, Shri Krishan Chander and Shri Mohan Lal Bansal, appellants filed appeals on the denial of information by the Haryana State Cooperative Apex Bank Limited (HARCO Bank). Submission made by Sh. Mohan Lal by rejoinder dated 08.08.2014 that the respondent bank is a public authority in term of 2 (h) of the Act has been taken on record. Shri Pushgar Singh, Manager and Shri Subhash Ahuja, Advocate appeared on behalf of the respondent bank at serial no. 5, 6, 9 and 13. Ld. Counsel of the bank filed an additional affidavit dated 13.06.2014 submitting that the share capital of Government keeps on varying on which it earns dividends/profits as per rules. Further, Government share does not play any substantial role as the cash in hand maintained by the bank as per instructions/regulation of Reserve Bank of India, is more than the Government share. The respondent bank is not dependent on the Government share/money in any manner. So far as the administrative control on respondent bank is concerned, Ld. Counsel submitted that the State Government is having only limited regulatory control to regulate its functioning in terms of the provisions of the Haryana Cooperative Societies Act, 1984 and rules framed thereunder which is not so deep and pervasive so as to bring the respondent bank within the domain of "public authority" as envisaged under the Act. Learned Counsel emphasised that Registrar, Cooperative Societies, Haryana or appropriate Government does not make payment of salary or any other benefits to the employees of the



respondent bank. As per bye-law 40 (viii), the respondent bank frames the service rules of the staff of the bank as per the provision of the Act and the rules. It frames schemes for the welfare of the employees of the bank. The Registrar, Cooperative Societies, Haryana or appropriate Government has no power to impose punishment on the employees of the respondent bank. However, these authorities exercising their powers of appeal and revision prescribed under the Haryana Cooperative Societies Act, 1984 or rules framed thereunder including service rules can intervene only when there is violation by the respondent bank. Ld. Counsel submitted that the respondent bank is not being controlled or financed directly or indirectly, hence it does not fall within the ambit of RTI Act, 2005.

8. Shri Mohan Lal, the appellant filed RTI application to seek information from the Sirsa Central Cooperative Bank Ltd., Sirsa. Shri Kuldip Singh, Advocate appeared on behalf of the respondent bank and filed an affidavit dated 29.08.2014 wherein he submitted that share of the Government does not play any role in the functioning/business of the respondent bank because the share of the Government is merely Rs. 3,71,86,445/- whereas the business of the respondent bank in the financial year 2013-2014 as per balance sheet dated 31.03.2014 was worth Rs.5,43,29,30,106.83. Ld. Counsel further submitted that the cash in hand with the respondent bank is more than the share of the Government in the business of the bank. Ld. Counsel of the respondent



bank reiterated the submission made by the Fatehabad Central Cooperative Bank Ltd., Fatehabad and the Kurukshetra Central Cooperative Bank Limited, Kurukshetra. He submitted that neither the respondent bank is being financed directly or indirectly nor controlled by the Government, hence term used in Section 2 (h) (d) (i) of RTI Act is not applicable upon the respondent bank. The list of Board of Directors, bye-laws and balance sheets for the year 2013-2014 submitted by the respondent bank has been taken on record.

9. Shri Victor Robinson was the appellant in appeal case no. 1160 of 2006 wherein he sought information from the Haryana Cooperative Agriculture and Rural Development Bank Ltd., Panchkula. Shri S.M. Vig and Sh. Arun Sharma, Advocate appeared on behalf of the respondent bank. Ld. Counsel filed fresh written statement dated 28.08.2014 alongwith list of Board of Directors, audited balance sheet for the year 2005-2006 to 2009-2010 and bye-laws of Haryana State Co-operative Agriculture and Rural Development Bank Limited. Ld. Counsel submitted that the respondent bank is a co-operative society registered under the Haryana Co-operative Societies Act, 1984. The objects of the respondent bank which are provided in its bye-laws no. 5 are to provide facilities to its members. Under clause 6 of the said bye-laws the bank is required to take the activities of the flotation of debentures, to receive deposits and borrow money otherwise that by issue of debentures, to acquire such immovable property and construct such



buildings as it may considered necessary for the proper conduct of its business. As per clause 16 of bye-laws the funds of the bank can be raised by shares, debentures, grants, subsidies and fees, deposits, loans from the Government, Reserve Bank of India, NABARD and other financial institutions and by such other means as approved by the Registrar, Co-operative Societies. The bye-law no. 15 provides that the liability of share holder for deficit in the assets of the State Bank in the events of being wound up shall be limited to the subscribed share capital of the share holder. Ld. Counsel further submitted that the share of the Government in the respondent bank is upto the extent of 12.13% only which is far less than the extent of 25% provided in the Haryana Cooperative Societies Act, 1984. Referring to the discussion held in the judgement of Hon'ble Supreme Court titled as Thalappalam Ser. Coop Bank Limited's and others Vs. State of Kerala and others Ld. Counsel submitted that the respondent bank neither financed substantially direct or indirect nor controlled by the appropriate Government, hence it does not fall within the ambit of RTI Act, 2005.

10. Shri Sudhir Ahlawat, Assistant Registrar, Cooperative Societies (HQ) appeared to represent the Registrar, Cooperative Societies, Haryana. He during hearing on 22.09.2014 placed a copy of rules called 'Haryana State Central Cooperative Bank Staff Service (Common Cadre) Amendment Rules, 2014, copy of letter dated 23.05.2014 regarding share capital contribution by the State Government-Assistance under



Section 27 of NABARD Act, 1981, letter dated 12.09.2014 regarding administrative approval of the Government extending relief to farmers on short-term and long-term credit and a copy of letter dated 19.11.2014 related to recovery linked incentive (OTS) Scheme-2013 for members of PACS including Haryana Agriculture & Rural Development Bank and HARCO Bank. Copies of these letters have been taken on record. He further submitted that a proposal stands submitted to the Government to strengthen the Cooperative Banks. The representative of the Registrar, Cooperative Societies, Haryana assured the Bench that a copy of the proposal would be placed for consideration of the Bench during the next date of hearing. The Bench directed the Registrar, Cooperative Societies, Haryana to depute an officer well conversant with the facts alongwith the information available on the subject with the appropriate Government. He shall also place before the Bench rules and regulations laying the procedure for the creation of posts required by the Cooperative Banks alongwith role of the Haryana Bureau of Public Enterprises (in short HBPE) in granting pay scales to the employee of these banks. The Registrar, Cooperative Societies, Haryana was directed to place on record the guarantee documents being furnished by the appropriate Government especially in the case of Haryana State Cooperative Rural Development Bank Ltd. for obtaining re-finance from NABARD etc. The Bench also directed the representative of the NABARD to place before the Bench copies of re-finance policy for

lending to State Cooperative Agriculture and Rural Development Banks alongwith sanction letters of credit limits issued during the last three years.

11. Shri Sudhir Ahlawat, Assistant Registrar, Cooperative Societies (HQ) appeared before the bench on 27.10.2014 and submitted a copy of State Interest Subvention Scheme, 2014 for timely re-payments for members of PACS introduced by the appropriate Government on 12.09.2014 for providing interest relief to the loanee members of PACS of the State. The objectives of the scheme are:

- (i) To provide relief in interest liability to the loanee members of PACS.
- (ii) To inculcate the habit of timely payment of loan in the loanee members of PACS.
- (iii) To reduce the level of overdues of the PACS.
- (iv) The scheme shall cover crop loans of borrowers of PACS advanced from 01.09.2014 to 31.08.2015 and are repaid by the loanee members on or before due date.

He submitted that as per clause 8 of the scheme, the State Government shall bear 100% financial liability. A grievance redressal mechanism has been created by constituting a committee headed by the Deputy Registrar Cooperative Societies, Assistant Registrar Cooperative Societies of the headquarter of the District as member and the Chief Executive Officer of the Central Cooperative Bank as convenor. He further submitted that a road map has been proposed by the Registrar, Cooperative Societies, Haryana to overcome the financial crises which is being faced by the Haryana State Cooperative



Agriculture Rural Development Bank Ltd., Panchkula. He placed on record a copy of the proposal submitted to the State Government. He added that all the State Public Enterprises including the Cooperative Banks are under the Haryana Bureau of Public Enterprises and bound to comply with the following directions and to give undertaking to the Bureau to the extent mentioned below:-

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- (i) All the instructions issued by the Finance Department from time to time relating to economy in expenditure, purchase of vehicles, absorption of surplus staff etc. and any other matter relevant to the State PEs will be followed in letter and spirit.
 - (ii) The proposals pertaining to creation/upgradation of posts, revision of pay scales etc. will be referred to the Standing Committee constituted by the Govt. for consideration and final approval.
 - (iii) All the instructions contained in the 'Standing Order' issued by HBPE (Finance Department) with the approval of Chief Secretary to Government Haryana, in November, 1990 will be followed in letter and spirit.

The representative of the appropriate Government submitted that the Principal Secretary to Government, Haryana, Cooperation Department is the Chairman of the Haryana State Cooperative Apex Bank Limited and the Haryana State Cooperative Rural Development Bank Limited. The Chief Executive Officer of the Bank is appointed by the appropriate Government. NABARD releases funds to the Cooperative banks especially to the Haryana State Cooperative Rural

Development Bank Ltd. subject to the confirmatory letter from the State Government ensuring Government guarantee and executing the Supplementary GRA.

12. Shri Nirmal Chand, AGM and Shri R.S. Bhagwane, ANM appeared to represent NABARD and placed on record copies of the sanction letters for funds released to the HARCO Bank and the Haryana State Cooperative Agriculture and Rural Development Bank Ltd., Panchkula, copy of Refinance policy for schematic lending, 2014-2015, copy of provision of short term Refinance by NABARD to State Cooperative Banks for financing Seasonal Agricultural Operations (SAO) Policy for the year 2014-2015. NABARD further submitted that they are releasing funds to the State Cooperative Agriculture and Rural Development Banks with the advice that before refinance ROs should obtain confirmatory letter from the State Government, ensure availability of Government Guarantee and execute the Supplementary GRA.

Decision

13. The Commission heard the arguments of the parties brought forward in writing as well as orally during hearing. The Commission has perused the judgement of the Apex Court dated 07.10.2013 passed in Thalappalam Ser. Coop. Bank Limited and others Vs. State of Kerala and others. While adjudicating on the issue whether Cooperative Banks are a 'public authority' under Section 2 (h) of the RTI Act, 2005 it would be appropriate to understand the rural credit structure in the country.



The rural credit structure has three tiers. The first tier is the institution of NABARD which is a development bank for providing and regulating credit and other facilities for the promotion and development of agriculture small-scale industries, cottage and village industries, handicrafts and other rural crafts and other allied economic activities in rural areas with a view to promoting integrated rural development and securing prosperity of rural areas. Second tier is the State Cooperative Bank which in Haryana is known as HARCO Bank. The third tier is of District Cooperative Banks and Primary Agriculture and Credit Societies.

HARCO is Haryana's Apex Cooperative Bank which borrows from NABARD, State Government and advances loans for various purposes like agriculture, manufacturing, marketing and processing, transport, housing, distribution and stocking etc. Interest subventions scheme issued by the Ministry of Finance and State Government from time to time cater to the requirement of credit of the Agricultural allied sectors, keeping in view the overall pricing of Agriculture crops and allied activities as agricultural sector is largely dependent upon many natural factors. Many times due to inclement conditions, the Agricultural allied sector comes under great stress. Being alive to the suffering and credit burden of farmers, interest subventions schemes are introduced by the Government of the Central and State to lessen the finance burden of the farmers. Without this help rural credit structure would fall and will in turn put great strain on the financial health of these Cooperative Banks.



It is a fact that NABARD is substantially financed by Central Government and is a public authority under Section 2(h) of the RTI Act but assistance from NABARD to the Cooperative Banks or societies cannot lead us to believe that the Cooperative banks or societies are being substantially financed by the appropriate Government and, hence, the respondent banks fall within the purview of the RTI Act on this ground. It has been held by the Hon'ble Apex Court in **Thalappalam Ser. Coop Bank Limited's case** that:

"38 Merely providing subsidies, grants, exemptions, privileges etc., as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist. The state may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD etc., but those facilities or assistance cannot be termed as "substantially financed" by the State Govt. to bring the body within the fold of "public authority" under section 2(h) (d) (i) of the Act. But, there are instances, where private educational institutions getting ninety five percent grants in aid from



the appropriate government may answer the definition of public authority under Section 2(h) (d) (i)."

The Bench finds that the Cooperative Banks in question are governed by the Haryana Cooperative Societies Act, 1984 as amended from time to time. The preamble to the Cooperative Societies Act states that the Act has been enacted with a view to facilitate the voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies in the State. The Cooperative Societies work under the overall control and supervision of the Registrar, Cooperative Societies.

The information relating to the constitution of the Board of Directors and its functioning, bye laws and balance sheets submitted by the respondent banks and other documents already available on the case files were perused with a view to decide the issue whether Cooperative Banks in question registered under the Haryana Cooperative Societies Act, 1984 are a public authority within the meaning of Section 2 (h) of the RTI Act, 2005 and hence obliged to furnish any information sought by a citizen under the RTI Act.

It would be pertinent to extract the definition of public authority as defined in clause (h) of Section 2 of the Act as below:-

(h) "public authority" means any authority or body or institution of self-government established or constituted—

(a) by or under the Constitution;



(b) by 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,"

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The Haryana Cooperative Societies Act, 1984 as amended from time to time defines "co-operative society" or "society" as a society registered or deemed to be registered under this Act, "Primary society" means a cooperative society, object of which is to promote the common interests of its members and whose membership consists exclusively of individuals and Cooperative Bank means "co-operative bank" means a co-operative society which undertakes banking business. The word 'Bank' shall be used by the 'Society' in terms of Section 22 of the Banking Regulation Act, 1949 (AACS). The State Cooperative Act provides for the registration of cooperative societies under the Act. Matters pertaining to the formation or registration of a cooperative society shall be decided by the Registrar and his decision shall be final. The Registrar, Cooperative Societies is a Government functionary appointed by the Government. The Registrar cooperative societies enjoys the power of suspending the resolution of a managing committee or of a sub-committee of a co-operative society for six months if in his opinion the resolution is in excess of the powers conferred by this Act,

rules or bye-laws or the execution of the resolution will be contrary to the interest of the society or the interest of the members thereof or is likely to cause waste or damage of the funds of the society. The Registrar may on his own motion or on the application of a specified number of members, hold an inquiry or appoint an enquiry officer to hold an inquiry into the constitution, working and financial condition of a society.

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However, the fact that the Registrar, Cooperative Societies has powers to supervise and control the working of Cooperative banks and societies by itself does not mean that the respondent banks and societies are 'public authority' within the meaning of Section 2(h) of the Act. There is a clear distinction between mere 'supervision' or 'regulation' and 'control'. The regulatory or supervisory powers exercised by the Registrar, Cooperative Societies under the Cooperative Societies Act would not by itself amount to controlling the management of a cooperative society. The very fact that a Society has been registered under the State Cooperative Societies Act and is regulated and supervised by the Registrar, Cooperative Societies under the provisions of the Act would also not mean that the Society is controlled by the appropriate Government. It is well settled that such supervision would not imply that the State has a deep and pervasive control over the Banks.

The issue whether the respondent Banks are bodies controlled by the appropriate Government or not, was examined in terms of the Apex court's interpretation of the expression 'controlled' in the context of RTI Act in **Thalappalam Ser. Coop Bank Limited's case**. While dwelling on the expression 'controlled', the Apex court held:

"The word "controlled" used in Section 2(h)(d)(i) of the Act has to be understood in the context it has been used vis-à-vis a body owned or substantially financed by the appropriate Government, that is the control of the body is of such a degree which amounts to substantial control over the management and affairs of the body"

In the instant case, the Cooperative Law, the bye-laws of the banks and the related instructions issued by the appropriate Government from time to time adopted by the respondent Banks in question were perused to examine whether these Banks were controlled by the appropriate Government. The Bench observed that the Banks in question have notified their own bye-laws but the contents and provisions are, by and large, similar. It is important to know how the Board of Directors is constituted. The provision made in this regard is as under:

- (1) M.D. of the Bank
- (2) Chief General Manager, Regional Office NABARD Chandigarh.
- (3) One representative of each of the affiliated central cooperative banks, provided the representative is a member of the managing committee of the Central Cooperative Bank and represents a society thereon; and
- (4) R.C.S. or his nominee;
- (5) Not more than three nominees of the Govt. of Haryana.

Section 31 of the Haryana Cooperative Societies Act, 1984 provides that "(1) where the Government have subscribed to the share capital of a Co-operative Society to the extent of ten lakh rupees or more the Government may, notwithstanding anything contained in the bye-laws of the society, nominate another member in addition to those nominated under Section 29 and appoint him as Managing Director: Provided that no person shall be appointed as Managing Director of a Co-operative Society unless he is a member of the Indian Administrative Service or Haryana Civil Service (Executive Branch) or Class-I or II Officer of the Cooperative Department, Haryana or any other professional having qualifications and experience as may be prescribed, except in the case of the Haryana State Co-operative Labour and Construction Federation Limited, the Haryana Housing Apex Finance Society Limited and the Haryana Co-operative Dairy Development Federation Limited where technical persons may be appointed as Managing Directors:

Provided further that in case of Cooperative Banks, the appointment of Managing Director shall be made in accordance with the guidelines of the Reserve Bank and such Managing Directors who does not fulfil the criteria stipulated by the Reserve Bank shall be removed.

(2) The Managing Director appointed under sub Section (1) shall exercise such powers as assigned to him under the bye-laws or delegated to him by the committee.

(3) The Managing Director of a Co-operative Society shall be its Principal Executive Officer. All employees of the Society shall function and perform their duties under his superintendence and control."

According to the information provided by the respondent banks, it is revealed that Board of Directors constituted by these banks have following nominees of the Government:

Name of the Bank	Total members of the BODs	Government nominee
<i>W</i> The Fatehabad Central Co-operative Bank Ltd., Fatehabad.	13	3
<i>Q</i> The Kurukshetra Central Co-operative Bank Ltd., Kurukshetra.	13	3
<i>3</i> The Panchkula Central Co-operative Bank Ltd.	15	3
The Fatehabad District Primary Co-operative Agriculture & Rural Development Bank Ltd., Fatehabad	9	2
The Haryana State Cooperative Apex Bank Ltd., Chandigarh	16	5
The Sirsa District Primary Co-operative Agriculture & Rural Development Bank Ltd., Sirsa.	13	2
The Haryana State Cooperative Rural Development Bank Ltd. Panchkula	14	5

The Bench particularly noted that the Section 29 of the State Cooperative Act was amended in May, 2013 to incorporate that in case

of a Cooperative Bank, two professional Directors having experience as specified by the Reserve Bank of India shall be co-opted in the Committee, if not already elected. However, the composition of the Managing Committees of the Cooperative Banks in the post amendment period does not present a different picture. It was noted that though the appropriate Government has amended the Act and provided that in the Haryana Co-operative Societies (Amendment), Act, 2013 the respondent banks have the right to appoint two professional Directors having experience as specified by the Reserve Bank of India in addition to the Government Officer appointed as Managing Director but on perusal of the above table derived from the list of Board of Directors provided by the respondent banks, it is evident that the banks have not implemented the amendment in spirit. At present there are 2 to 5 Government Officers against the provision for appointment of professionals on the Board of Directors of the respondent banks in question.

Further, the Bench noted that Section 29 (3) of Haryana Cooperative Societies Act, 1984 provides that "*where a difference of opinion in respect of any matter arises between any member nominated by the Government or the Managing Director appointed under Section 31 and other members thereof, the matter shall be referred by the society to the government whose decision thereon shall be final and deemed to be decision taken by the committee*". The above provision in

the Haryana Cooperative Societies Act, 1984 clearly indicates that the in case of difference of opinion between the nominated and the elected members, the appropriate Government has the right to settle the issue and respondent banks or the Board of Directors have no right to take and implement decision at its own in such a situation. It is a fact on record that the Principal Secretary to Government, Haryana, Cooperation is the Chairman of the Haryana State Cooperative Apex Bank Limited and the Haryana State Co-operative Rural Development Bank Limited.

The Bench also perused a circular of the Government produced by the appellant bearing No. 2/8/2013-Asstt/HBPE (FD) dated 14th November, 2013 addressed to all the Managing Director/Chief Administrator/Chief Executive Officer of all the State Public Enterprises i.e. Board, Corporations and Cooperative Institutions wherein appropriate Government has taken a decision that *State Public Enterprises (SPEs) are created as companies under the Indian Companies Act or as societies under the Societies Registration Act or by way of a special legislation. Whatever may be the mode of creation, all SPEs are "State" as defined under article 12 of the Constitution of India. Consequently, legal and constitutional principles as are applicable to the State Government are as much applicable to the SPEs. These enterprises are created by the State from time to time as a matter of convenience for facilitating smooth discharge of its administrative*



responsibilities. It further stipulates that "it has been decided that pay and allowances over and above those approved by the State Government shall not be granted to the employees of any of the SPEs. If any SPE for any special reason desires to grant any additional allowance to its employees, prior approval of the HBPE and Finance Department must be taken."

It is evident that the staff appointed in the respondent Banks is granted Government pay scales and allowances as sanctioned with the approval of the Haryana Bureau of Public Enterprises, a body functioning under the control of State Government. The Commission further noted that the funds of the bank are raised by way of floatation of ordinary and special debentures. NABARD is the main source of providing funds and its share in the total borrowings of the banks come to 90% approximately. All the debentures floated by the bank are guaranteed by the State Government for payment of interest and repayment of its due payment of principal on its due dates. The Bench noted that the major source of funding of the bank is through debentures and these are guaranteed by the appropriate Government. Funds cannot be released especially in the case of Haryana State Cooperative Rural Development Bank Limited without the guarantee of the State Government.

A perusal of the Co-operative law, bye-laws of the Cooperative Banks, Haryana Co-operative Societies Act, 1984 including



amendments, instructions issued by the Haryana Bureau of Public Enterprises and instructions of the appropriate Government as discussed above in detail, makes it evident that the control of the appropriate Government through Registrar, Cooperative Societies on the working of the respondent banks and the Primary Cooperative Societies is not merely regulatory or supervisory but of a substantial nature. The management and control are statutorily conferred on the Managing Committee or the Board of Directors of the Society/Bank under the Haryana Cooperative Societies Act, 1984 but a closer examination makes it evident that on lifting of the veil, it is the appropriate Government which exercises control over the Societies/Banks. The control is deep and pervasive. The control of the Registrar and the appropriate Government is of substantial nature and is of such a degree that it measures up to the yardstick of 'control' laid by the Hon'ble Apex Court in **Thalappalam Ser. Coop Bank Limited's case**. This would bring the respondent Banks under the ambit of the Section 2 (h) of the Act and render them liable to furnish information to the appellant in the cases mentioned above subject to the provision of the RTI Act, 2005. The Commission directs the above Public Authorities to ensure that the State Public Information Officer and the Appellate Authority are in position in their organizations without any further delay and comply with the provisions of the Act.



14. The Commission's Secretariat shall supply a copy of the order to the Principal Secretary to Government, Haryana, Cooperation Department and the Registrar, Cooperative Societies, Haryana for information and further action.

Order reserved and pronounced on the 14th day of January, 2015.

Place: Chandigarh

Date: 14.1.2015


(Shiv Raman Gaur)

State Information Commissioner


(Hemant Atri)

State Information Commissioner.


(Naresh Gulati)

State Chief Information Commissioner