



RIGHT TO
INFORMATION

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

Complaint Case No. 73 of 2014
Appeal Case No. 2692 of 2013
Appeal Case No. 3938 of 2013
Appeal Case No. 3184 of 2013
Appeal Case No. 2508 of 2014
Appeal Case No. 3700 of 2013
Appeal Case No. 3936 of 2013

1. Sh. Amit Kumar, S/o Sh. Randhir Singh,
VPO Harigarh, Tehsil Saffidon,
District Jind.
2. Sh. Mahabir Sharma, S/o Late Sh. Ram Kumar Sharma,
Gali No. 2, New R.K. Puram, Opp. Nav Yug High School,
Jatal Road, Panipat.
3. B.S. Kundu,
R/o 179/26, New Kranti Nagar,
Panipat.
4. Sh. Raj Kumar, S/o Sh. Devi Singh,
Village Bhali Anandpur,
Tehsil & District Rohtak.

.....Appellant(s)

Versus

1. The Jind Cooperative Sugar Mills Limited, Jind.
2. The Panipat Cooperative Sugar Mill, Panipat, Panipat.
3. The Haryana Co-operative Sugar Mill Limited, ~~Bhali~~
Anandpur, Rohtak.

.....Respondent(s)

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 directions to the 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 Hon'ble Punjab & Haryana High Court while disposing of all the 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.*

(ii) *The interim order shall continue till the disposal of the appeals by the SIC.*

(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.*

(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 issue before the larger Bench of the Commission is whether Co-operative Sugar Mills, Jind, Panipat and Rohtak are a public authority in terms of Section 2 (h) of the RTI Act, 2005 (hereinafter called Act) and fall under the ambit of the Act. The first hearing was held on 12.5.2014. A rejoinder filed by Shri Mahabir Singh, the appellant was taken on record. A copy of the rejoinder was provided to the Learned Counsel Shri Harjot Singh Bedi who appeared on behalf of the respondent No. 2. The respondents were directed to submit documents indicating the share capital, balance sheet for the last two years and bye-laws of the Cooperative Sugar Mills. The matter was adjourned to 22.5.2014 for arguments.

The Bench heard the matter on 22.5.2014. Shri Mahabir Singh, the appellant and the learned counsel for Panipat Cooperative Sugar Mills were present during the hearing. S/Shri Amit Kumar, B. S. Kundu and Raj Kumar appellants 1, 3 & 4 did not appear before the Commission to put forth arguments in support of their complaint or appeals. However, contents and grounds of the complaint and second appeals dated 4.3.2014 13.04.2013 and 20.05.2013 respectively were taken into consideration by the Bench. Shri Amit Kumar in his complaint dated 14.03.2014



submitted that his RTI application dated 28.01.2014 was returned alongwith prescribed fee by the Jind Co-operative Sugar Mills Limited, Jind vide letter dated 03.02.2014 intimating him that in terms of the law laid down by the Apex Court, Co-operative Societies do not fall under the ambit of the Act. Shri B.S. Kundu submitted that the Panipat Co-operative Sugar Mills Limited, Panipat did not respond to his RTI application as well as first appeal. Shri Raj Kumar, the appellant submitted that in response to his RTI application dated 06.05.2013, the SPIO of the Haryana Co-operative Sugar Mills Limited, Bhali Anandpur, Rohtak intimated him vide letter dated 04.07.2013 that the matter is subjudice and pending before the Hon'ble High Court for adjudication on the issue whether the Co-operative Societies are public authorities under the Act or not. Hence he was advised to collect the RTI application back alongwith fee deposited.

3. Shri Mahabir Singh, the appellant filed four appeals instituted by the Commission under Case number 2692 of 2013, 3184 of 2013, 3936 of 2013 and 3938 of 2013. He appeared before the Commission by filing a rejoinder dated 28.02.2014 submitting that his RTI application dated 28.06.2012 was initially responded to by the PIO of the Panipat Co-operative Sugar Mills Limited vide letter dated 10.09.2012. However, the information sought vide rest of the RTI applications dated 10.12.2012, 20.04.2013 and 27.04.2013



was denied in view of the order dated 12.12.2013 passed in LPA No. 1174 of 2011 by the Hon'ble Punjab & Haryana High Court. In his written arguments dated 28.02.2014, he submitted that the Co-operative Sugar Mills of Karnal, Meham, Sonapat and Gohana are furnishing information to the information seekers under the provision of the Act. He further submitted that the share of the State Government to run Co-operative Sugar Mills is substantial. In the case of the Panipat Cooperative Sugar Mills, the paid up share capital in the year 2012-2013 is more than 90% of the total share capital of the Sugar Mills. The cane growers share is 1.16 % of the total share capital. The Member Societies contribution is 0.08%. The employees have contributed 0.02%. The Government contribution in terms of share capital and loan exceeds 98.21%.

Further, the Co-operative Sugar Mills are being controlled by the Government. The Managing Director of the Mills is appointed by the Government. Normally an officer of the HCS Cadre is appointed as Managing Director. The Deputy Commissioner is the ex-officio Chairman of the Cooperative Sugar Mill in the District. The appellant in support of his arguments submitted a letter bearing No. 2/8/2013-Asstt/HBPE (FD) dated 14th November, 2013 addressed to the Managing Director(s) of the Cooperative Institutions alongwith other Managing Director/Chief Administrator/Chief Executive Officer

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of all the State Public Enterprises i.e. Boards and Corporations stating as below:

"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....."

After detailed consideration of the matter, 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 grant to its employees, prior approval of the HBPE and Finance Department must be taken."



The appellant asserted that this document is an ample evidence of the fact that the Cooperative Sugar Mills are instrumentalities of the Government and are controlled by the State Government. The matters like creation of posts as well as the pay scales of the employees, as evident from the letter bearing number SMF-2009/Estt./3340-49, dated 28.08.2009, are governed by the State Government. The appellant pleaded that the Cooperative Sugar Mills in question be declared a 'public authority' under Section 2 (h) of the Act, hence, it is liable to furnish information as sought by him under the provisions of the Act.

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4. Shri Harjot Singh Bedi, learned counsel, appearing on behalf of the Panipat Co-operative Sugar Mills, filed written submissions. He submitted that the information sought by the appellant was not furnished on the ground that the order of the learned single Judge passed by the Hon'ble High Court was stayed in LPA and the matter remained pending before the Hon'ble High Court. Now, the pending LPA stands decided by referring the Judgement passed in the case of *Thalappalam Ser. Coop. Bank Limited and Others Vs. State of Kerala and others 2013 (4) RCR (Civil) 912* by deciding the controversy as to whether the Co-operative Societies registered under the Co-operative Societies Act will be covered under the RTI Act. The learned counsel in his arguments quoted para no. 38 for

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the correct appreciation of the spirit of the judgment which is produced as under:-

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

The moot point of consideration is whether the Panipat Sugar Mills which is a Co-operative Society registered under the Haryana Co-operative Societies Act, 1984 (henceforth called Cooperative



Societies Act) is a public authority or not if put to test as per the judgement passed by the Hon'ble Supreme Court in the Thalappalam case. He argued that Section 2 (h) of the Act defines public authority. The Cooperative Society can only be brought under Section 2 (h) (d) (i) in case the body is owned, controlled or substantially financed by the appropriate Government. In the first place, the Society is not owned by the appropriate Government. Secondly, it is not controlled by the appropriate Government. The control of the management and affairs of the Panipat Cooperative Sugar Mills vests with the Board of Directors and the majority of Directors are elected. Section 31 of the Haryana Cooperative Societies Act lays down that where the share capital of the State is more than Rs. 10 lac, the Managing Director is appointed by the Government. Even though the Managing Director is the appointee of the Government, he works under the superintendence and control of the Managing Committee. The control over the management and affairs of the Society is with the Board of Directors. The Cooperative Societies Act provides that the Managing Director shall exercise such powers as assigned to him under the bye laws or delegated to him by the committee. He shall also discharge all such functions, consistent with the bye laws as are assigned to him by the Government or Registrar. The learned counsel of the respondent referred to the letter dated 2.2.1996



issued by the Registrar, Cooperative Societies stating that all the powers under the Co-operative Societies Act, Rules or the bye laws and the staff service rules of the said society vest in the managing Committee. The letter also clarified that the Chairman, Sugar Mills has no authority to accord any kind of approval at his own level.

Thirdly, the Sugar Mill is not *substantially financed* by the appropriate Government. As per bye law 4(F) of the Sugar Mill, the Government can subscribe to the share capital of the society upto any extent which is redeemable after 10 years or any time thereafter if so desired by the State Government. He argued that the said share Capital is not used by the Sugar Mill and hence it cannot be termed as funding from the State Government. The loan taken by the Sugar Mill from the State Government is returnable with interest which also cannot be termed as substantial financing by the State Government as the amount given is not a fund given to the Sugar Mill for all times to come, rather a loan returnable with interest. The learned counsel further submitted that onus to prove that the institution is substantially financed is on the applicant whereas the Commission has directed the respondent to produce its balance sheets.

He also submitted that the applicant Sh. Mahabir Sharma is a chronic information seeker who has filed more than 65 applications seeking different information from the respondent's Sugar Mill.



Hence the act and conduct of the applicant shows that the information has no relation with the applicant and neither does it satisfy any larger public interest criteria which can justify the disclosure of such information. The learned counsel concluded that the Panipat Co-operative Sugar Mills Limited is not controlled or substantially financed by the Government, hence it is not a public authority and thus not amenable under the provisions of the Act and no information can be furnished to the applicant. The balance sheet and the bye laws of the Panipat Co-operative Sugar Mills Limited, Panipat supplied by the answering respondent have been taken on record.

5. The Jind Co-operative Sugar Mills Limited vide comments dated 15.05.2014 supplied a photocopy of Industrial License of Jind Sugar Mills, a photocopy of bye laws, details of share capital and copies of balance sheets for the period from 2010-2011 to 2012-2013. Similarly, in appeal case no. 3700 of 2013 the Haryana Co-operative Sugar Mills Limited, Rohtak vide letter dated 13.05.2014 supplied the information of share capital as on 31.03.2014, bye laws of the Sugar Mill alongwith balance sheet. Both the Mills remained unrepresented during the hearing.

Decision:-

6. The Commission has heard the arguments of the parties put forth in writing and during hearing. The Commission has also



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. The information regarding share capital, bye laws and balance sheets submitted by the respondents number 1, 2 and 3 and the documents already available on file have been perused to decide the issue whether a Cooperative body like Sugar Mills registered under the Haryana Cooperative Societies Act, 1984 are not a public authority within meaning of Section 2(h) of the RTI Act, 2005 and hence not legally obliged to furnish any information sought by a citizen under the RTI Act or there is any material to show that the Jind, Panipat and Rohtak Cooperative Sugar Mills are owned, controlled or substantially financed by the appropriate Government and hence it is a public authority within the meaning of Section 2(h) of the Act. The Cooperative Societies in Haryana 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 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. It is also a fact that the societies are registered under the Cooperative Societies Act. This, however, cannot lead to the conclusion that since the



cooperative societies are registered under the Cooperative Societies Act and are controlled by the RCS, hence, they are 'public authority' within the meaning of Section 2(h) of the Act. It is well settled that such creation and supervision would not mean that the State has a deep and pervasive control over the society. It has also been settled by the Apex court that a body, institution or an organization which is neither a state within the meaning of Article 12 of the Constitution or instrumentalities, may still answer the definition of 'public authority' under Section 2(h)(d)(i). The RTI Act deals with bodies which are owned, controlled or substantially financed directly or indirectly by funds provided by the appropriate Government. In such a situation, the body may fall within the definition of Section 2 (h) of the Act.

The definition of public authority as defined in clause (h) of Section 2 of the Act is extracted 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,"



In the first instance, the Bench took up the issue whether these Cooperative Sugar Mills were "**substantially financed**" by the appropriate Government or not. *The expression "substantially financed", appears under Section 2(h)(d) (i) but it has not been defined under the Act. In **Thalappalam Ser. Coop Bank Limited's case**, the Hon'ble Apex Court has interpreted the expression "substantially financed" as used under the Act while defining a public authority under Section 2. The Apex Court has held that 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 word "substantial" literally means solid, massive etc. Legislature has used the expression "substantially financed" in Sections 2(h)(d)(i) and (ii) indicating that the degree of financing must be actual, existing, positive and real to a substantial extent, not moderate, ordinary, tolerable etc.*

In order to examine whether the said Sugar Mills were bodies substantially financed by the appropriate Government, the Bench perused the record submitted by Sh. Mahabir Sharma, the appellant. The Bench also examined the balance sheets of the financial year 2012-2013 submitted by the respondent numbers 1, 2 and 3. The investment made by the State Government as share capital is presented in the table below:



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(Rs. in crore)

Name of the Sugar Mill	Share Capital of the State Govt.	Total Share Capital	%
The Jind Cooperative Sugar Mills Limited, Jind	2693.00	3063.00	87.9%
The Panipat Cooperative Sugar Mill, Panipat, Panipat	5302.00	5437.00	97.5%
The Haryana Co-operative Sugar Mill Limited, Bhali Anandpur, Rohtak	4448.68	4544.00	97.9%

The table above indicates that an enormous amount on account of share capital is being contributed by the appropriate Government. The Section 4 (f) of the bye laws provided by the respondents also says that *"the Government may subscribe towards the share capital of the society upto any extent. The shares purchased by Government shall be redeemable after 10 years, or at any time thereafter, if so desired by the State Government"*. The learned counsel appearing on behalf of respondent No. 2 has admitted in written arguments that the amount invested as share capital has never been returned to the appropriate Government or redeemed by the Government. The Commission also perused the balance sheet submitted by the respondents and noted that whenever any Sugar Mill face shortage of funds, the State Government has extended full support by arranging funds to these Sugar Mills so that their work may not suffer due to paucity of funds. Further, the Bench also perused a letter dated 27.2.2007 issued by the Commissioner and the Secretary to Government.



Haryana, Cooperation Department wherein the Governor of Haryana has accorded sanction for the State Government's guarantee to the tune of Rs. 21 crore in favour of HARCO Bank, Chandigarh to extend loan to the Co-operative Sugar Mills, Rohtak. Balance sheets of the Sugar Mills show that the Government has loaned heavy amounts to Sugar Mills for their smooth functioning. Rohtak Sugar Mills have been given a loan of Rs. 128 crore. Panipat Sugar Mills received a loan of approximately Rs. 49 crore. Similarly, Jind Sugar Mills also received a loan of Rs. 44.85 crore. There is no evidence to suggest that the loans have ever been returned to the appropriate Government. All these material facts indicate that the State Government is contributing substantially towards the smooth functioning of Cooperative Sugar Mills in question.

The Bench notes that although the respondent does not receive any direct financial support in the form of grants but it has surely received indirect support in the form of share capital to the extent of over 90 per cent of the total share capital from the appropriate Government for conduct of its business. The respondent has in fact heavily dependent on financial support made available in the form of equity participation. The Bench is of the considered view that these Sugar Mills are substantially financed by the State Government and the financing by the appropriate Government is substantial and withdrawal of this financial



assistance would put the Cooperative Sugar Mills in a situation where they would struggle to exist.

The discussion so far clearly indicates that the Cooperative Sugar Mills are public bodies under Section 2(h)(d)(i) on the basis of substantial financing, however, the issue whether the Sugar Mills are the bodies controlled by the appropriate Government or not, was also 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 devilling on the expression "controlled", the Apex court held:

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"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"

There is a clear distinction between mere 'supervision' or 'regulation' and 'control'. Powers exercised by the Registrar Cooperative Societies and others under the Cooperative Societies Act are only regulatory or supervisory in nature which would not amount to controlling the management. 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 not mean that the Society is controlled by the appropriate Government. In the instant case, the bye-laws adopted by the Cooperative Sugar Mills in

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question were perused to examine whether these Societies were controlled by the appropriate Government. The Bench observed that the three Sugar Mills in question have notified their own bye-laws but the content and provisions are, by and large, similar. It is important to know how the Board of Directors is constituted. The bye-laws of the Panipat Cooperative Sugar Mills provide that Board of Directors shall consist of 15 Directors out of which 5 shall be the Government nominees. In case of Cooperative Sugar Mills, Jind and Rohtak, the bye-laws provide for nomination of three Government nominees on the Board comprising 12 Directors.

Section 30 of the Haryana Cooperative Societies Act, 1984 provides that "where the Government have subscribed to the share capital of an apex Co-operative Society or Co-operative Sugar Mill to the extent of ten lakh rupees or more the Government may, notwithstanding anything contained in the bye-laws of the society, appoint one of the members nominated under Section 29 as Chairman of the committee of such society. The three Sugar Mills in question have Deputy Commissioner of the District as Chairman of the Sugar Mills and he is an appointee of the State Government.

Further, the bye laws of the Cooperative Sugar Mills in question provide that the general management of the Sugar Mills and its administration shall vest in the Managing Director appointed by the appropriate Government. The Jind Co-operative Sugar Mills bye-laws provide that "all functions delegated by the Board of



Directors and or Executive Committee to the Managing Director shall be performed by him. He shall also perform all other functions assigned to him by the Government/Registrar Cooperative Societies, Haryana within the provisions of law". Further, The Clause 10 (12) of Bye Laws of the Panipat Cooperative Sugar Mills Limited, Panipat provides that for purchase of any equipment, store and sale of immovable property more than Rs. 5000/- can only be made subject to the approval of the State Government.

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 Sugar Mills are granted Government pay scales and allowances as sanctioned by the Haryana State Federation of Co-operative Sugar Mills, Panchkula with the consent of the Haryana Bureau of Public Enterprises, a body functioning under the control of State Government.

W The Bench found another instance in Section 29 (3) of Haryana Cooperative Societies Act, 1984 wherein it has been provided that "where a difference of opinion in respect of any matter arises between any member nominated by the Government or the Managing Director appoint 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".

In view of the above discussion, there is ample evidence to show that the Sugar Mills are not only substantially financed but also controlled by the appropriate Government. In view of the above finding, the Bench is of the considered view that the Cooperative



Sugar Mills in question measure upto the yardstick laid down by the Hon'ble Supreme Court in Thalappalam case on both the counts; substantially funded as well as controlled by the appropriate Government. This would make the respondent Sugar Mills i.e Jind, Panipat and Rohtak fall within the ambit of the Section 2 (h) of the Act and are liable to furnish information to the complainant or the appellant in the cases mentioned above. The Commission directs the above Public Authorities to designate officers as State Public Information Officer and the Appellate Authority in their organizations without any further delay and comply with the provisions of the Act.

7. The Commission's Secretariat shall supply a copy of the order to the Principal Secretary to Government, Haryana, Cooperation Department and the Managing Director, Haryana State Federation of Cooperative Sugar Mills Limited, Panchkula for further action.

Order reserved and pronounced on the 30th day of June, 2014.

Place: Chandigarh

Date: 30.06.2014


(Hemant Atri)

State Information Commissioner


(Sajjan Singh)

State Information Commissioner.


(Naresh Gulati)

State Chief Information Commissioner