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Diary No. 12848 Date 23/6/16
O/o The Registrar Co-operative Societies
Govt. of Delhi Parliament Street,
New Delhi

Most Immediate
Court Case

F. No.U.13028/30/2016-Delhi-I
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya
North Block, New Delhi
Dated the 31st May, 2016

Delhi Secretariat
Govt. of NCT of Delhi
01 JUN 2016
Dy. No. CAO/2016/24800

OFFICE OF THE CHIEF SECRETARY
GOVT. OF NCT OF DELHI
01 JUN 2016
Dy. No.

To

1. The Chief Secretary,
   Govt. of NCT of Delhi,
   Delhi, Secretariat,
   I.P. Estate, New Delhi.

2. Registrar of Co-operative Societies,
   Parliament Street,
   New Delhi.

Sub: **Civil Misc. Petition No.14204-05/13, 16799/14, 20303/14 and Writ Petition (C) No. 6532/2013 titled " Ms. Eliamma Sebastian Vs. Ministry of Home Affairs & Ors.**

So to CS 31/5/16 RCS

I am directed to forward a copy of order dated 17.03.16 passed in the High Court of Delhi at New Delhi in Civil Misc. Petition No.14204-05/13, 16799/14, 20303/14 and Writ Petition (C) No. 6532/2013 titled " Ms. Eliamma Sebastian Vs. Ministry of Home Affairs & Ors. for necessary action.

29/AR(I) 07/6/16

Encl: As above

Yours faithfully

(Ashok Kumar)
Under Secretary to the Govt. of India
Tel. 23092784

DR-II

Sangha Mitra CGHS Ltd

RTI case.

① PI get it circulated in Office.

② Put in the website

6.6.16.

AR/Legal

07/6/16

26/6/16
8/6/16

(17)

IN THE HIGH COURT OF DELHI AT NEW DELHI

Final Draft

No. 8140/W /DHC/WRITS/D-4/2016
DISPOSED OF Dated 31-3-16

गृह मंत्रालय
Ministry of Home Affairs
नई दिल्ली/New Delhi
01 APR 2016
के.ए.सं.
C.R. No. 136895

From,
The Registrar General
Delhi High Court
New Delhi

To
1. Ministry of Home Affairs, Union of India, New Delhi
2. Director, CIC, Central Information Commission, August Kranti Bhawan, Bikaji Cama Place, New Delhi
3. Registrar of Co-operative Societies, Parliament Street, New Delhi

CIVIL MISC. PETITION NO. 14204-05/13, 16799/14, 20303/14
AND
WRIT PETITION (C) NO. 6532/2013

Ms. Eliamma Sebastian ....Petitioner/s
Vs.
Ministry of Home Affairs & Ors. ....Respondent/s

Dir (Delhi)

Sir,

I am directed to forward herewith for information and immediate compliance/necessary action a copy of order dated **17.3.2016** passed by Hon'ble **Division Bench** of this Court io the above noted case alongwith a copy of memo of parties.

amended

VS(D)

Please acknowledge receipt.

Yours faithfully,

31/3/16

Admn. Officer Judl. (Writs)
for Registrar General

Pl go thro the order
Any action on our part?

MSR/22.3.2016

1/4

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Suit.SM

1/4/16

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246 (16)

IN THE HIGH COURT OF DELHI AT NEW DELHI.
IN GWP NO. 6532/13

IN THE MATTER OF :

Ms. ELIAMMA SEBASTIAN ***** Petiotioner.

VERSUS

MINISTERY OF HOME AFFAIRS & OTHERS. ---- Defendants.

AMENDED PRAYER.

Under the Circumstances , mentioned above, this - Hon.'ble court may graciously be pleased to -

a) Set aside / quash the Order dated 16/07/2008 passed by the central information commission in case no. CIC/ AT/A/2008/00212 & 243.

b) Allow the total claim of Rs. 12,45,76,105/- as damage aganist the respondents, and in favour of the petitioner.

c) Any other order which this Hon'ble court deem fit & proper under the continued RTI voilations with impunity practised, by the above said parties, to facilitate illegal grabing through Orgnised crime , through law courts.

d) To pass any other Order this Hon. court may - deem fit & proper in the facts & circumstances of the case.

New Delhi.
19/ 4/ 2014.

Eliamma Sebastian
(P. in person)

(4)

21/4/14

(15)

BEFORE THE HON. HIGH COURT OF DELHI AT NEW DELHI.

IN CASE NO. WPC(6532/ 13)

IN THE MATTER OF : -

Ms. Eliamma Sebastian
Flat no. B-302, sector-4,
Plot-20, Dawaraka. N.D. ---------- Petitioner.

Versus

Ministry of Home affairs,
Union of India , New Delhi. ------- Defendants.

INDEX.

Place on record before the ... court

New Delhi
I9/ 4/ 'I4.

Eliamma Sebastian
(P. in persom)

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19 APR 2014

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8. Mr. D. N.Singh (RGS)

Through office of the RGS.
Parliment street , New Delhi.

9. Mr. Teg paul ,
Assistanct Registrar, (SW/ CPIO)
Office of the RGS. Parliment street,
New Delhi.

I0. President ,

Sangha Mitra CGHS ltd.
Sector-4, plot-20, Dawaraka.
New Delhi.

II. Secretary,

Sangha Mitra CGHS ltd.
Secter-4, plot-20, Dawaraka.
New Delhi.

I2. Treasurer & othere.

Sangha Mitra CGHS.
Sector-4, Plot-20, Dawaraka.
New Delhi. ---------- Defendants.

(Amended memo of Partis as per the Order dated
_5/11/13--- in this case.)

New Delhi
I9/ 4/ 2014.

Elizamma Sebastian
(P. in person)

TRUE COPY
EXAMINER

(13)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 02.03.2016
Pronounced on: 17.03.2016

\+ **W.P.(C) 6532/2013, C.M. NOS. 14204-14205/2013, 16799/2014 & 20303/2014**

MS. ELIAMMA SEBASTIAN .....Petitioner
Through: Sh. Ramesh Singh, *amicus curiae* with the petitioner in person.

Versus

MINISTRY OF HOME AFFAIRS AND ORS. .....Respondents
Through: Sh. Roshan Lal Goel, Advocate, for UOI/Respondent No.1.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT

%

1. The petitioner who appeared and represented herself in this writ petition is aggrieved by the order of the Chief Information Commissioner ("CIC") dated 16.07.2008 whereby the petitioner's appeal was held to be not maintainable. The CIC reasoned that Cooperative Societies are not public authorities to whom the RTI Act applies.

2. The petitioner has been a member of the Sangha Mitra CGHS ("Society") since 1995. However, during the course of her membership, a number of disputes have arisen leading to several rounds of litigation. Amongst various allegations, she accused the Society of committing fraud, embezzlement and accounts-tampering; in this regard she had filed several RTI applications seeking audit reports and various other documents pertaining to the working of the Society as well as its accounts. She claims to

(12)

have been seeking these documents by filing RTI applications since 2006, for almost 10 years. She alleges that despite several representations in this regard to the Society and the Registrar of Cooperative Societies ("RCS") no action was taken and it is her case that the Society was committing further fraud.

3. The Society, on the other hand, has alleged that the petitioner has been continuously defaulting with payment since the inception of her membership and has made numerous RTI applications as a guise to harass it. The Society claims that the petitioner has been filing RTI applications in order to create pressure on the Society so that they do not demand outstanding dues from her or take legal action against her.

4. The first issue that arose between the petitioner and the Society was on account of cost which was to be recovered from the petitioner for the flat. The petitioner disputed the cost and the matter went to arbitration. During arbitration proceedings the petitioner was dispossessed of her flat. She approached this Court through Writ Petition (C) No. 7276/2002 in which directions were issued on 20.12.2002 for expediting her claim in arbitration. It was also observed that in case the arbitrator found that the petitioner was liable to pay the disputed amount of ₹1.84 lakh, the petitioner would pay it in reasonable instalments. The arbitration proceedings resulted in an award where the petitioner was held liable to pay the disputed amount of ₹1.84 lakh. On appeal, the Delhi Cooperative Tribunal (DCT), on 17.02.2005 upheld the arbitrator's award. She thereafter filed W.P.(C) 7887/2005 challenging the order of the DCT. On 22.07.2005, the petitioner agreed to pay the said amount of ₹1,84,760 on or before 22.07.2006. Owing to her

limited financial means, the Court took a lenient view and allowed the same while giving specific instructions that it was not to be taken as precedent. Despite the extension of time granted to her, the petitioner failed to pay the amount due. Due to failure of payment of money the Society was granted liberty to take action against her. She, thereafter moved two applications, one of which were dismissed on 23.11.2006 and another application for review and stay of payment of money due by her to the Society, was dismissed on 09.01.2007. During the hearing of the applications, the petitioner submitted that she would not press for extension of time and instead claimed damages from the Society for loss caused to her by the Society in different forms. She had also submitted that the Society had misappropriated amounts, which should also be investigated into and recovered. The Court, however, refused to investigate, inquire, and order payment of damages in those proceedings. This Court, on 09.01.2007, while dismissing the applications held as follows:

> *"... Having heard the petitioner, who appears in person, we are of the considered opinion that the applications, which are filed by the petitioner before us are misconceived. We cannot investigate, inquire, and order for payment of damages in a proceeding of this nature. If she has suffered any damages, it is for her to take appropriate action in accordance with law. So far as the allegation of misappropriation is concerned this forum cannot entertain such a prayer as the same cannot be a prayer on a review application. She has to take action in accordance with law. "*

5. Subsequently an issue arose when the Society alleged that the petitioner had not been paying electricity, maintenance, water and ground rent charges since she got possession and an amount of ₹4,98,883 was outstanding against her as on 31.01.2008. A next round of litigation ensued

when the petitioner filed W.P.(C) 9007/2008 before this Court. The petition was filed for seeking to rake up the issue of electricity bills and ground rent charges. On 22.04.2010, the Petitioner, however, agreed to pay the amount outstanding towards electricity charges, water bills and ground rent. An order to that effect was passed by this Court, which also directed that once the bills had been settled, electricity and water to the petitioner's flat be restored. The petitioner paid this amount, but as far as the issue of cost of ₹ 1,84,760 was concerned, she had filed proceedings before the Supreme Court. In the meanwhile the petitioner also filed several applications befor the management of the Society and thereafter before the Registrar of Cooperative Society demanding their audit report and other documents. She claimed that account books tampered with and excess amounts of funds were missing and misappropriated.

6. The petitioner approached this Court again through W.P.(C) 4086/2011 claiming that the Society had failed to render proper accounts to her in so far as the issue of cost of construction was concerned. She also stated that there should not be any further recovery from her on various accounts whether it be electricity, water, ground rent or maintenance charges. The Court by its order-dated 03.06.2011 held that the issue regarding cost of construction could not be agitated repeatedly before this Court by filing different petitions. The Court, on the issue of other charges (water, electricity, maintenance and ground rent charges), held that they are in the nature of continuing charges. Thus, the Court passed the following order:

(9)

"As far as the other charges are concerned, they are in the nature of continuing charges. To the extent the petitioner has paid the amount, the Society is liable to adjust the same but this does not absolve the petitioner of making future payments. These are, by the very nature, charges which will have to be borne by the petitioner.

We are conscious that the petitioner is in financial difficulty on account of the fact that she is without any job and does not have anyone to support her other than her brother and sister as claimed by her. However, if she has to continue to enjoy the flat she will have to bear the continuing charges as payable by other members of the Society. In case any interest has been imposed on her by the Society, the Society may consider the waiver of interest on account of the financial difficulties of the petitioner."

7. The issue in the present writ petition stems from RTI applications that were filed by the petitioner before the SPIO. The petitioner had sought information from the SPIO regarding documents and accounts pertaining to the Society as well as minutes of the general body meeting of the Society. She had also sought information regarding charges payable to the DDA. Despite communication by the SPIO to the Society the latter gave no replies.

8. The petitioner, aggrieved by the inaction of the Society, approached the First Appellate Authority who, on 20.12.2007 directed the SPIO to procure information sought by the petitioner from the Society by 04.01.2008 and further supply it to the petitioner by 08.01.2008. It was also directed that in case of failure on the part of the Society to furnish information sought from it, suitable action would be initiated against it in terms of provisions of Section 139 of the DCS Act. Subsequently, the Society on 01.04.2008, granted liberty to the petitioner to approach its office and inspect the records; in this regard a date and time was granted to her. As for the information

sought by her regarding charges payable to the DDA, the SPIO sent a letter, dated 09.01.2008 to the Society, which it subsequently replied to. In their reply the Society stated that the information sought by the petitioner was voluminous and that the petitioner was required to be specific as to the information sought by her. It also stated that once the petitioner deposited the amount towards photocopying the documents they would be able to provide her with the information. However, in the intervening period of 20.12.2007 and 01.04.2008, the petitioner filed an appeal under Section 19 of the RTI Act, 2005, before the CIC on 15.02.2008. The appeal before the CIC pertained to the order of the First Appellate Authority dated 20.12.2007 and the letter of reference from the SPIO dated 09.01.2008. In her appeal, the petitioner had contended that the staff of the RCS was colluding with Cooperative Societies (such as the present one; Sangha Mitra CGHS) and were inflicting a great deal of harassment on innocent members of such societies. The respondents, on the other hand, argued that the appellant had filed large number of RTI applications with no particular purpose. The respondents pointed out that under Section 139 of the Delhi Cooperative Societies Act, the appellant as a member of the Cooperative Society, viz Sangha Mitra CGHS had all the right to receive information requested by her from the cooperative society including inspection of records and, in case she did not get any response from the Society she was entitled to appeal before the officers of the Registrar of Cooperative Societies.

9. It was the respondent's submission that in view of Section 139 of the DCS Act, the appellant could not access information under Section 2(f) of the RTI Act. They further argued that the DCS Act, being a special Act

prevailed over the provisions of the RTI Act which is a general act; especially when the special act itself provided to a bona fide member of a cooperative society identical relief as provided under the RTI Act.

10. The CIC observed that the Cooperative Society had given patient and direct replies to the appellant/ petitioner through the respondent. The Society had also given the petitioner the liberty to inspect its records as per a date and time mutually convenient to both the appellant and the Society. After analysing the facts and averments made before it through the course of the hearing, the CIC was of the opinion that the appeal was not maintainable due to the provisions of DCS Act and that Cooperative Societies are not public authorities to whom the RTI directly applies. It was observed by the CIC that information held by societies was to be retrieved indirectly from the Registrar who was public authority and who under the provisions of the DCS Act was competent to supply information. In its order the CIC held as follows

> *"6. In view of the above and in view of the fact that the appeals herein are covered by the ration of the Commission's decision in Rejender Goel & Ors. vs. Registrar of Cooperative Societies; Appeal Nos. CIC/AT/A/2007/01525, 1526, CIC/AT/A/2008/00040, 41, 42, 99; 100 & 101; Date of Decision: 30.06.2008, it is no more possible to pursue these appeals in the Commission. These appeals are clearly not maintainable because the Cooperative Societies are not public authorities to whom the RTI Act directly applies. The information held by such Societies is to be indirectly accessed under Section 2(f) of the RTI Act through a public authority, i.e. the Registrar of Cooperative Societies, who under the Delhi Cooperative Societies Act is competent to access information held by the Cooperative Societies. The ratio of the above-mentioned decision is that in the face of the presence of a self-contained disclosure-of-information*

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Section 139 of the Delhi Cooperative Societies Act, a petitioner will have to access information held by the Cooperative Societies under the Delhi Cooperative Societies Act and not the RTI Act."

11. The question that arises before this Court in this case is whether the petitioner could directly seek information from the Society and whether the Commission was correct in dismissing her appeal. The petitioner approached the CIC under Section 19 of the RTI Act, 2005 against the order of the First Appellate Authority and the SPIO - both of whom are officials of the Registrar of Cooperative Societies. However, the CIC refused to grant relief on the ground that in the case of Cooperative Societies, RTI Act applies indirectly, and all the information pertaining to the Society, which is held by the RCS would be available to her. In other words, the correct way to access information would be to approach the RCS under Section 139 of the DCS Act.

12. On comparison of Section 2(f) of the RTI Act and Section 139 of the DCS Act, it is clear that the object of both is to provide information to an applicant. Some information can also be sought from a public authority under the RTI Act. The Society in question is a private body and not a public authority as defined under the RTI Act and is not obliged to furnish information. In this case it is the RCS who is a public authority as per Section 2(h) of the RTI Act as well as for the purpose of Section 2(f) would be the public authority from whom information could be accessed with respect to Cooperative Societies.

13. As a public authority the RCS has been conferred with considerable statutory powers under the respective Acts under which he is functioning. Having said so, he is also duty bound to comply with the provisions of the

(5)

RTI Act and is required to provide information as provided for under Section 2(f) of the Act subject to the limitations enumerated under Section 8 of the RTI Act. Section 2(f) of the RTI Act reads as follows:

> *(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;*

14. Reliance is placed by the learned counsel for the respondent on the judgment of the Supreme Court in *Thalappalam Service Cooperative Bank Ltd. & Ors. v. State of Kerala and Ors* (2013) 16 SCC 82. In that case, an RTI application sought information from the appellant Cooperative Society. The Society refused to grant information on the ground that it was not involved in public activity and the information being sought was confidential in nature. The State Information Commission on being approached held that information had to be given. The High Court imposed a penalty. Both the Single Judge as well as the Division Bench held the Society to be a public authority under the administrative control of the Registrar. The Supreme Court through a detailed judgement discussed what classes of institutions and offices are public authority as well as the nature of information that could be divulged by such authority. It was held that a cooperative society was a public authority only if it satisfied the conditions enumerated in the Court's decision. However, the Court held the RCS to be a public authority. The Court then went on to discuss what information could be accessed from the Registrar. It was held as follows:

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"52. ... Information which he is expected to provide is the information enumerated in Section 2(f) of the RTI Act subject to the limitations provided under Section 8 of the Act. Registrar can also, to the extent law permits, gather information from a Society, on which he has supervisory or administrative control under the Cooperative Societies Act. Consequently, apart from the information as is available to him, under Section 2(f), he can also gather those information from the Society, to the extent permitted by law. Registrar is also not obliged to disclose those information if those information fall under Section 8(1)(j) of the Act. No provision has been brought to our knowledge indicating that, under the Cooperative Societies Act, a Registrar can call for the details of the bank accounts maintained by the citizens or members in a cooperative bank. Only those information which a Registrar of Cooperative Societies can have access under the Cooperative Societies Act from a Society could be said to be the information which is "held" or "under the control of public authority". Even those information, Registrar, as already indicated, is not legally obliged to provide if those information falls under the exempted category mentioned in Section 8(j) of the Act."

15. Thus, it is apparent that the information which is sought with respect to the affairs of the Society is that which is contemplated under the DCS Act under Section 139, which is as follows:

"Right to information.

139. *Any member or creditor having interest in the affairs of the co-operative society may seek information relating to any transaction of the co-operative society and for that purpose may be provided a certified copy of any document within thirty days from the date of receipt of application relating to such transaction on payment of such fee as may be specified.*

(2) Where a member or creditor having interest in affairs of a society seeking information prefers an appeal to the Registrar stating that the officer of the society without any reasonable

cause, has refused to receive his application for providing information or has not furnished information within the time specified under sub-section (1) or has refused the request for information or knowingly given incorrect information or obstructed in any manner in furnishing the information, the Registrar, after affording a reasonable opportunity of being heard to the officer of the society and the appellant, may either reject the appeal; or direct the officer of the society to furnish information within the period specified in the order or such extended period as may be allowed, and in case of default the Registrar may impose a penalty of two hundred and fifty rupees each day till the information is furnished, so however, the total amount of such penalty shall not exceed ten thousand rupees which shall be recoverable as arrears of land revenue in case of default in payment."

On a reading of Section 139 it may be noticed there is no bar on seeking information directly from the Society. It states that any member who requires information relating to any transaction of the Society can move an application to the Society directly. This is also reaffirmed in Clause 2 of Section 139, which provides for appeal before the RCS as well as penalty in case of default.

16. The next question that arises for consideration is the scope of Section 22 of the RTI Act and its applicability to the provisions of Section 139 of the DCS, Act. Section 22 states as follows:

"22. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

Section 22 declares all laws, bye-laws, rules etc. which are inconsistent with the provisions of the RTI Act shall be overridden by its provisions. To gather

what is inconsistent with the provisions of the Act, it is essential to see what is the purpose and intent behind passing of this Act. In *People's Union for Civil Liberties v. Union of India* (2004) 2 SCC 476, the Supreme Court held that right of information is a facet of the freedom of "speech and expression" as contained in Article 19(1)(a) of the Constitution of India and such a right is subject to any reasonable restriction in the interest of the security of the state and subject to exemptions and exceptions. *In State of Uttar Pradesh v. Raj Narain* - (1975) 4 SCC 428, the Supreme Court observed that *"the right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security."*

17. The RTI Act is aimed at bringing within its ambit the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto. This, however, in the Court's opinion does not necessarily mean that any other legislature, which aims to ensure access to information with respect to a private body (as per the RTI Act), is overridden by Section 22. The answer will have to be in the negative. The RTI is with respect to Public Authorities. Section 139 makes a separate distinct provision with respect to transactions of a cooperative society. The applicability of the RTI Act does not exclude the operation of the DCS Act, insofar as it enables access to information that is possessed by

a cooperative Society. The latter can clearly be sourced by the person concerned from the Society, in view of Section 139.

18. In view of the above discussion this Court is of opinion that the information which is in the possession of the Cooperative Society is accessible to its members and those interested, in Section 139 of the DCS Act. The absolute nature of this obligation to furnish information to those entitled to apply and receive is reinforced by the consequences which are spelt out in Section 139 (2). However, information which the Society may not possess, but pertaining to it, in the form of records with the Registrar of Cooperative Societies, have to be provided by the latter, under the RTI Act, as there is no doubt that such official - who discharges statutory functions- is a "public authority". However, the grounds of exemption spelt out under the RTI Act too would be attracted, wherever applicable.

19. In the light of the above findings, the applications of the Petitioner shall be considered by the RCS, to the extent the information is available with his office. In regard to the information not available, the RCS shall indicate clearly what material does not exist, in an order. It is then open to the Petitioner to seek such information under Section 139 of the DCS Act. The writ petition is partly allowed in the above terms.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

MARCH 17, 2016