
**Metropolitan Cooperative Housing Society Ltd. and Another Vs The State
Information Commission and Others**

Writ Petition No. 12292 (W) of 2009

Court: Calcutta High Court

Date of Decision: May 10, 2010

Acts Referred:

Constitution of India, 1950 " Article 226, 227#Right to Information Act, 2005 " Section 19, 19(1), 19(3), 2#West Bengal Co-operative Societies Act, 1983 " Section 40#West Bengal Co-operative Societies Rules, 1987 " Rule 68, 68(1)

Hon'ble Judges: Dipankar Datta, J

Bench: Single Bench

Advocate: Debasis Kundu and Indranil Nandi, for the Appellant;Raghunath Chakraborty and Ira Ghosh for Respondents 1 and 2 and Keshab Bhattacharya, for Respondent 5, for the Respondent

Final Decision: Dismissed

Judgement

Dipankar Datta, J.

The first petitioner is a co-operative society, registered in accordance with the provisions of the Bengal Cooperative

Societies Act, 1940, since repealed and replaced by the West Bengal Cooperative Societies Act, 1983 (hereafter the Act). The second petitioner

is the secretary of the first petitioner.

2. The fifth respondent is a member of the first petitioner. By his letter dated 15.7.2008 addressed to the second petitioner, he prayed for supply

of certified copy of the minutes of the meeting of the Board of Directors of the first petitioner held in the month of June, 2008. In praying so, the

second petitioner exercised his right conferred by Section 40 of the Act read with Rule 68 of the West Bengal Cooperative Societies Rules, 1987

(hereafter the Rules). He expressed his desire to collect the certified copy on 27.9.2008 and undertook to pay the prescribed charges at the time

of collection thereof.

3. The second petitioner did not accede to such prayer of the fifth respondent. Finding no option, the fifth respondent by his letter dated 9.9.2008

requested the Registrar of Cooperative Societies, Government of West Bengal to furnish him information under the Right to Information Act, 2005

(hereafter the RTI Act) and the rules framed thereunder. In particular, he sought for certified copy of the minutes of the meeting of the Board of

Directors held in the month of June, 2008 upon payment of prescribed charges.

4. The request of the fifth respondent for information under the RTI Act was forwarded by the Deputy Registrar of Cooperative Societies, the third

respondent, to the second petitioner vide letter dated 12.9.2008. Soon thereafter the petitioner received a notice dated 21.10.2008 seeking to

convey to them that the fifth respondent had filed a first appeal under the RTI Act feeling aggrieved by non-supply of certified copy of the aforesaid

minutes and that the appeal would be heard by the Joint Registrar of Co-operative Societies being the appellate authority, the fourth respondent

herein, on 7.11.2008. The fourth respondent heard the fifth respondent and the second petitioner on 7.11.2008. Submission of the learned

advocate appearing for the petitioners before the fourth respondent to the effect that the fifth respondent had no right to seek information under the

RTI Act and that he ought to avail the provisions of the Act and the rules for solution in this regard was recorded. His further submission that the

State Public Information Officer, Co-operation Directorate has no power to direct the first petitioner to provide information was also recorded.

5. Upon hearing the parties, the fourth respondent passed the following order:

Now, therefore, on the basis of facts and circumstances as above, it is hereby ordered that the Secretary, Metropolitan Cooperative Housing

Society Ltd., shall supply the information with a certified copy of the meeting of the Board of Directorate of the society held in the month of June,

2008 within 15 days from the date of hearing to the SPIO, Cooperation Directorate and the SPIO, Cooperation Directorate in term shall

communicate the same to the appellant within 7 days from the date of receipt of the information along with the certified copy of the said board

meeting received from the above named society.

6. Feeling aggrieved by the said order, the petitioners preferred a second appeal before the State Information Commission, the first respondent

herein. At the same time, the fifth respondent also preferred a second appeal before the first respondent.

7. The second appeal filed by the petitioners was not entertained by the first respondent. The Secretary of the first respondent by his letter dated

13.1.2009 communicated to the second petitioner as follows :

Sub: An appeal u/s 19(3) of the RTI Act-case of Shri Salil Kumar Sen

Sir,

I am directed to refer to your letter dated 31.12.2008 on the subject noted above and to say that information seeker has only been allowed to

prefer an appeal before the Commission u/s 19(3) of the RTI Act against the decision taken by the appellate authority of the concerned Public

authority u/s 19(1) of the Act.

This is for your information and necessary action.

8. The second appeal filed by the fifth respondent, however, was taken up for consideration by the first respondent. Objection raised on behalf of

the petitioners that the first petitioner is not a public authority within the meaning of the RTI Act was overruled. Ultimately, the State Chief

Information Commissioner, the second respondent passed an order on 25.6.2009 allowing the second appeal of the fifth respondent. The

operative part of the order reads thus:

The Commission therefore orders that the Secretary, Metropolitan Co-operative Housing Society Ltd. shall within 7 days from the date of receipt

of this order furnish a certified copy of the meeting of the minutes of the BOD held in the month of June, 2008 to the SPIO of Cooperation

Directorate. Non-compliance of this order of the Commission shall be brought to the notice of the Commission forthwith by the officers of the

public authority concerned. The SPIO shall, after receiving such a certified copy, proceed in accordance with the direction contained in the order

of the Appellate Authority.

9. Challenge in this writ petition is to the orders dated 13.1.2009 and 25.6.2009 extracted supra.

10. Mr. Kundu, learned advocate representing the petitioners contended that both the orders impugned are thoroughly unsustainable in law. He

referred to Section 19 of the RTI Act to contend that a second appeal under Sub-section (3) thereof could be filed by any person aggrieved by the

order of the first appellate authority and that right to file second appeal is not confined only to the information seeker who might be aggrieved either

by the inaction or the decision of the first appellate authority. While assailing the order dated 26.8.2009 passed by the second respondent, he

contended that no second appeal is maintainable if the information sought for is directed to be given by the first appellate authority. In the present

case, the first appellate authority had granted the fifth respondent relief, as claimed, and hence the second appeal filed by him was not maintainable.

The second respondent, it was submitted, committed gross jurisdictional error in entertaining the second appeal of the fifth respondent.

11. That apart, on merits of the order dated 25.6.2009 he urged that a co-operative society like the first petitioner is not a public authority within

the meaning of Section 2(h) of the RTI Act and, therefore, the direction for supply of information given by the second respondent is absolutely

unauthorized.

12. In support of his submission that a co-operative society is not a public authority within the meaning of the RTI Act, Mr. Kundu relied on the

decision of a learned single judge of the Karnataka High Court reported in AIR 2009 Karnataka 1, Datta Prasad Cooperative Housing Society

Ltd. v. The Karnataka State Chief Information Commissioner and Anr.

13. Accordingly, order setting aside the impugned orders was claimed by him.

14. Having heard Mr. Kundu, I have not considered it necessary to call upon learned advocates representing the respondents to answer although I

find his contentions unexceptionable.

15. Mr. Kundu is justified in his contention that Section 19 of the RTI Act confers right on a party aggrieved by the decision of the first appellate

authority or the inaction of the first appellate authority to give a decision to file a second appeal before the State Information Commission. Since the

decision of the first appellate authority was adverse to the interest of the first petitioner and the petitioners considered themselves to be persons

aggrieved, I hold that the petitioners did have a right to prefer a second appeal. Consequently, their appeal ought to have considered by the State

Information Commission on merits. The impugned order dated 13.1.2009 is unsustainable in law.

16. I need not on this petition decide whether the second respondent correctly decided the issue as to whether the first petitioner is a public

authority within the meaning of the RTI Act or not, for the reason that the appeal before him was not competent. A right of appeal must be

traceable in a statutory provision is settled law. Section 19 of the RTI Act does not confer any right on an information seeker to prefer either first

appeal or second appeal if information as claimed by him is directed to be furnished by the original authority or the first appellate authority, as the

case may be. Here the first appellate authority allowed the claim of the fifth respondent. If anyone could be regarded as person aggrieved by the

decision of the first appellate authority, it were the petitioners. The fifth respondent having succeeded in his claim before the first appellate authority,

he could not have filed second appeal. The order dated 25.6.2009 is also not sustainable in law on this sole ground.

17. In normal circumstances, a writ of certiorari quashing the orders impugned would have followed as a matter of course, but having regard to the

special facts of this case not only am I disinclined to grant relief as prayed for by the petitioners but I propose to dismiss the writ petition on the

principle that writ remedy is not intended to facilitate avoidance of obligations voluntarily incurred.

18. Section 40 of the Act and Rule 68 of the Rules provide as under:

40. Books and documents to be open to inspection by members.- Every co-operative society shall keep open to inspection by its members, free

of charge, during office hours, at its address, such books and other documents as may be prescribed and certified copies thereof shall be supplied

by it to its members on payment of the prescribed fee.

68. Books and documents to be kept open for inspection by members.- (1) u/s 40, every co-operative society shall keep open for inspection by

its members the following books and documents, namely-

(xiv) minute books in respect of general meeting and board meetings;

(2) Certified copies of the books and documents mentioned in Sub-rule (1) shall be supplied to members on payment of fee at the rate of two

rupees for each foolscap page typed in double spaces.

19. A member of a cooperative society registered in accordance with the Act has the absolute right to seek copies of minutes of meetings of the

Board of Directors subject to compliance with other formalities. The fifth respondent applied for certified copy and also undertook to bear the

charges therefore. The certified copy of the minutes of the meeting held in June, 2008, admittedly has not been furnished to him. No reason has

been specified in the petition as to why the same has not been furnished. It is not the case of the petitioners that the fifth respondent is not a

member of the first petitioner and, therefore, is not entitled to certified copy. The statutory obligation of furnishing certified copy, therefore, has not

been discharged by the first petitioner without any reason whatsoever. Even though the impugned orders are illegal, writ remedy being

discretionary this Court finds no reason to interfere for the petitioners themselves have to blame for the situation they find themselves in.

20. In declining relief to the petitioners, I have drawn inspiration from the decisions of the Supreme Court in Roshan Deen Vs. Preeti Lal, and

Mohammad Swalleh and Others Vs. Third Addl. District Judge, Meerut and Another, .

21. A passage from Roshan Deen (supra) reads:

12. We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned Single Judge in a case where judicial

mind would be tempted to utilize all possible legal measures to impart justice to a man mutilated so outrageously by his cruel destiny. The High

Court non-suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again

this Court has reminded that the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not

to thwart it vide State of U.P. Vs. District Judge, Unnao and Others, . The very purpose of such constitutional powers being conferred on the High

Courts is that no man should be subjected to injustice by violating the law. The lookout of the High Court is, therefore, not merely to pick out any

error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice

became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law.

22. In Mohammad Swalleh (supra), an order of the District Judge passed on an appeal against an order of the prescribed authority, which was

palpably without jurisdiction (since no appeal lay before him), was not interdicted by the Supreme Court by holding as follows:

7. It was contended before the High Court that no appeal lay from the decision of the prescribed authority to the District Judge. The High Court

accepted this contention. The High Court finally held that though the appeal laid (sic no appeal lay) before the District Judge, the order of the

prescribed authority was invalid and was rightly set aside by the District Judge. On that ground the High Court declined to interfere with the order

of the learned District Judge. It is true that there has been some technical breach because if there is no appeal maintainable before the learned

District Judge, in the appeal before the learned District Judge, the same could not be set aside. But the High Court was exercising its jurisdiction

under Article 226 of the Constitution. The High Court had come to the conclusion that the order of the prescribed authority was invalid and

improper. The High Court itself could have set it aside. Therefore in the facts and circumstances of the case justice has been done though, as

mentioned hereinbefore, technically the appellant had a point that the order of the District Judge was illegal and improper. If we reiterate the order

of the High Court as it is setting aside the order of the prescribed authority in exercise of the jurisdiction under Article 226 of the Constitution then

no exception can be taken. As mentioned hereinbefore, justice has been done and as the improper order of the prescribed authority has been set

aside, no objection can be taken.

23. The effect of the impugned orders is that of sending a reminder to the petitioners to discharge their statutory obligations and not to violate the

law. It is immaterial that legally speaking, the same are not valid orders. The petitioners ought to realize that being insensitive to the citizen's need

by violating the statute does not pay in the long run. Writ remedy cannot be claimed as of right only on making out a legal point. The object of the

statute, which the petitioners are bound to follow, as well as public interest, must be foremost in the mind of the Writ Court before it proceeds to

grant relief. So long plausible reason for not supplying the certified copies exists, I consider it to be improper on my part to encourage writ petitions

of this nature which are filed to subvert both law and justice.

24. No case for exercise of writ powers has been made out. The writ petition, consequently, stands dismissed.

25. There shall be no order as to costs.

26. Urgent photostat certified copy of the judgment and order shall be given to the applicants, if applied for, as early as possible.