

CENTRAL INFORMATION COMMISSION
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Decision No. CIC/SG/A/2009/001558/4374Adjunct
Appeal No. CIC/SG/A/2009/001558

Relevant Facts emerging from the Appeal:

Appellant : Mr. Mahender Kumar Jain
F-94, Jawahar Park West,
Laxmi Nagar, New Delhi 110092

Respondent : Mr. M.L.Gupta
Asst. Register (Audit) & SPIO
Register Cooperative Societies, GNCTD.
Parliament Street, New Delhi

Jain Co-operative Bank Ltd.
Through CEO
80, Darya Ganj
New Delhi 110002

RTI application filed on : 01/12/2008
PIO replied : 18/12/2008
First appeal filed on : 16/03/2009
First Appellate Authority order : 30/03/2009
Second Appeal received on : 15/06/2009
Order of the Commission passed on : 06/08/2009
Order of the Delhi High Court passed on : 11/09/2009
Notice for re-hearing sent on : 09/11/2009
Date of re-hearing : 17/12/2009

Information sought: -

The Appellant had sought information regarding certified copy of the competent audit report submitted by the Auditor along with details of individual members of non-performing Assets (NPAs) for the financial year ending 31st March 2007

Reply of PIO:

“Pages of Audit report for the year 2006-2007 (pages-731) are available. Audit report for the above said period containing pages 731 can be obtained from DRI section after depositing Rs. 540/-.”

Grounds for First Appeal:

The Appellant has not received the complete information as requested vide his application dated 01/12/2008.

Order of the First Appellate Authority:

“This explanation is not accepted and the Bank is directed to provide the information within two weeks to the Applicant with a copy to this office. The SPIO/AR(Audit) is also directed to write a letter to the Auditor asking him to provide the same to the Applicant with a copy to this office. The rates for getting this information will be charged as specified in rule 4 of RTI (Regulation of Fees and Cost) Rules, 2005.”

Grounds for Second Appeal:

“The respondent No. 2 supplied the incomplete audit report to the appellant and not supplied the copy of the Non Performing Assets of the individual members though the same has been stated to be attached with the audit report for the financial year 2006-2007 despite the repeated requests and reminders by the appellant and also despite the order dated 30/03/2009 passed by the respondent No. 1. In view of the above, it is therefore, most respectfully, prayed that the respondents may kindly be directed to supply the non performing Assets of the individual members of the Jain Cooperative Bank Ltd. Which is stated to have been annexed with the audit reports for the financial year of 2006-07 within a time framed schedule. ”

Relevant Facts emerging during Hearing on 6 August 2009:

The following were present:

Appellant: Mr. Mahender Kumar Jain

Respondent: Mr. Rajesh Kumar, APIO & Link officer

The Appellant states that there is a balance sheet for the relevant year and the audit report given to him, the annexure giving list of NPAs as required by RBI has not been given. He also points out that as per Annexure-V of the audit report at Para-H it is mentioned “Total overdue as on 31.03.2008 is Rs.1182.69 lacs, exclusive of interest of NPA accounts. As per NPA List attached.” Thus it is evident that the NPA list was submitted to RCS.

The respondent claims that he does not have the NPA list since it was not submitted by the Jain Cooperative Bank which is a registered society. Based on the statement of the auditor at Para-H as mentioned above it appears that there is a possibility that some officers in RCS removed statement of NPAs or the auditor gave a false statement.

In view of the seriousness of the implications the Commission directs the Registrar of Cooperative Societies to enquire in to this and give a report to the Appellant and the Commission before 20 August 2009. The report will enquire into the following aspects:

- 1- If the NPA list has been stolen in the RCS office the name and the designation of the officer responsible for this.
- 2- If the Registrar feels that the list was not provided with the balance sheet he will initiate action against the auditor for giving a false statement and also identify the officer responsible in RCS for not checking the paper submitted by the Auditor.

In the event the NPA list is discovered a copy will be sent to the Appellant and the Commission.

Decision dated 6 August 2009

The appeal was allowed. The PIO was directed to send the report mentioned above to the Appellant and the Commission before 20 August 2009.

Facts leading to re-hearing on 17 December 2009:

Jain Cooperative bank Ltd, through its CEO, filed Writ Petition (C) 11398/2009 in the High Court of Delhi on the grounds that as third party in the matter it should have been consulted under Section 11 of the RTI Act. Justice Sanjiv Khanna vide his order dated 11/09/2009 remanded the matter back to the Commission to decide afresh but observed that the Court was expressing any opinion on the contentions of the parties. In view of this, the Commission issued a notice of hearing on 09/11/2009 to Appellant, Respondent and the Third Party directing them to appear before the Commission on 17 December 2009.

Relevant Facts emerging during Hearing on 17 December 2009:

The following were present:

Appellant: Mr. Mahender Kumar Jain; Mr. Anil Kumar, Advocate;

Respondent: Mr. M.L.Gupta, Asst. Register (Audit) & SPIO;

Mr. Amit Gupta, Advocate on behalf of Jain Cooperative Bank Ltd the third party;

The list attached with the audit report gives the summary of the accounts position but does not appear to give the detailed listing of the non-performing accounts. The Appellant is desirous of getting the lists of NPAs of the individual members. The Respondent claims that the lists of individual members are not attached with the audit report and that it is not a statutory requirement. The Appellant claims that it is a statutory requirement and he believes the list was attached with the report. Mr. M.L. Gupta from RCS contends that the list giving the names of NPAs has to be attached with the audit report.

The order was reserved.

Decision announced on 3 February 2010:

The Commission has perused the submissions made by the parties during the hearing and the written submission made by Mr. Amit Gupta, advocate on behalf of Jain Cooperative Bank. Section 2(f) of the RTI Act defines 'information' as

2(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; (emphasis supplied)

In the present matter, the custodian of the information sought is Jain Cooperative Bank Ltd. which is not a public authority- a fact which is not disputed by any party. Therefore, if this information has to be provided under the RTI Act, there has to be a provision in law which requires a public authority to access this information from the Bank.

The Respondent Bank has submitted through its written submissions that the Delhi Cooperative Societies Act 2003 (DCS Act) does not require the Bank to submit the Net Performing Assets of the individual members.

Section 60 (1) of the DCS Act requires accounts of a society to be audited annually. Section 60(2) provides-

Section 60 (2) The audit under sub-section (1) shall include an examination of overdue debts, if any, the verification of the cash balance, securities and a valuation of the assets and liabilities of the co-operative society

Therefore, the audit under the DCS Act does not require assets of the individual members of the co-operative society to be submitted; details of the non-performing assets of the co-operative society itself have to be submitted. For this reason, the respondent Bank has not submitted the non-performing assets of the individual members to the Registrar of Cooperative Societies.

The Link Officer/AR (Audit) has submitted copies of statements received from the two auditors who audited the accounts of the Respondent Bank. M/s Shiromani Tyagi & Co. audited the accounts of the Respondent Bank for the period 2006-2007. In its statement dated 18/08/2009 it has been stated that the non-performing assets have been worked out as per RBI instructions. The position of Net Advances/Net NPAs submitted by the Respondent Bank to the auditors has been attached with the statement. It appears from this document that non-performing assets of individual members were not submitted to the auditors. The Gross NPAs have been submitted. M/s ML Puri & Co. audited the accounts of the Respondent Bank for the period 2007-2008. In its statement dated 11/08/2009 it has undertaken that it has not made any false statement in the audit report and has enclosed the Position of Net Advances and Net NPAs as on 31 March 2008. This is the document that had been referred to by the auditor in Annexure V (Long Form Audit Report) at Para H. In this document the Gross NPAs of the Respondent Bank have been reported but there is no reference to the NPAs of individual members. The figure of 1182.69 lacs that has been quoted by the Appellant during the hearing held by the Commission on 06 August 2009 also appears in this document in the column for Gross NPAs (amount outstanding).

In the light of the provisions of law and the statements made by the auditors, it appears that there is no obligation for the Respondent Bank to submit this information to the Registrar of Cooperative Societies and that the Respondent Bank had not submitted such information to the RCS. The DCS Act requires the Cooperative Society to submit the NPAs of the Cooperative Society for audit and not of individual members. Therefore, the RCS cannot access this information from the Respondent Bank. The Appellant has not explained which law in force requires the RCS to access this information from the private authority i.e. the Respondent Bank and has not submitted any documents in this regard.

On reconsideration of the facts, the Commission disposes off the Appeal and withdraws its direction given to the PIO on 06 August 2009.

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this order will be provided free cost as per Section 7(6) of RTI Ac.

Shailesh Gandhi
Information Commissioner
03 February 2010

(In any correspondence on this decision, mentioned the complete decision number.)_{k,j}