**PUNJAB STATE INFORMATION COMMISSION**

 **RED CROSS BUILDING, SECTOR-16, MADHYA MARG, CHANDIGRH**

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Sh. H.S.Hundal,

Chamber No.82, Districts Courts,

District Administrative Complex, Sector-76

S.A.S.Nagar. Appellant

Versus

Public Information Officer,

O/o Cooperative Bank, H.O. G.T, Road,

Moga.

First Appellate Authority

O/o Cooperative Bank, HO, G.T.Road,

Moga. Respondents

 **APPEAL CASE NO.3253/2016**

Date of RTI application : 27.06.2016

Date of First Appeal : 09.08.2016

Date of Order of FAA : Nil

Date of 2nd Appeal/complaint :04.10.2016

**Present:** None on behalf of the Appellant.

 1. Adv. Harbans Lal Sharma, Counsel for the Respondents.

 2. Sh. Lachhman Dass, Sr. Manager, Central Cooperative Bank, Moga – for Respondents.

**ORDER**

 The appellant is not present.

 Adv. Harbans Lal Sharma, Counsel for the respondents has made written submissions essentially maintaining that they are not a Public Authority within the meaning of
Section 2(h) of the Act as there is no direct control of the Government on it and no financial assistance from the Government or any of its Agencies is being availed by them.

 He further states that the issue as has been mentioned by the respondents earlier in their written reply is under consideration of the Hon’ble Punjab & Haryana High Court in a Civil Writ No.20904 of 2015 filed by the State Cooperative Bank against an order passed by the Commission.

 Having heard him we deem it appropriate to adjourn the matter **sine die** till the matter is decided by the Hon’ble Punjab & Haryana High Court, Chandigarh in the above writ**.**

 The Deputy Registrar of the Cooperative Societies, Moga shall supply the order of the Contd…page…2

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**APPEAL CASE NO.3253/2016**

Hon’ble Punjab & Haryana High Court as and when it is decided to the Deputy Registrar, PSIC, who will place it for hearing before this bench to finally adjudicate the appeal.

 **Sd/- Sd/- Sd/-**

**08.05.2018 (Prof. Viney Kapoor Mehra) (Pawan Kumar Singla) (Yashvir Mahajan)**

 **SIC SIC SIC**

**CC: PS to Dr. Pawan Kumar Singla, SIC for the kind information of Ld.SIC.**

**Cc: PS to Prof. Viney Kapoor Mehra,SIC for the kind information of Ld.SIC.**

**CC: The Deputy Registrar, Cooperative Societies, Moga, for n/a.**

**CC: The Deputy Registrar, PSIC, for n/a.**

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Sh. Surinder Pal Singh,

S/o Sh.Rachhpal Singh,

Village Jorki Kankar, Tehsil & Distt.Fazilka

Sh. Sukhdeep Singh,

S/o Sh. Mukhpal Singh,

Village Abhun P.O. Chak Ban Wala

Tehsil Fazilka Distt.Fazilka Appellants

Versus

Public Information Officer,

O/o General Manager,

Fazilka Coop. Sugar Mills Ltd. Bodi Wala Pitha,

P.O. Khui Khera Tehsil Fazilka Distt.Fazilka.

First Appellate Authority,

O/o Managing Director, SUGARFED, Punjab

SCO No.125-127, Sector-17-B,

Chandigarh Respondents

 **APPEAL CASE NOs.1345, 1346 and 1357 of 2017**

Date of RTI application : 20.02.2017/20.02.2017

Date of First Appeal : 28.03.2017/28.03.2017

Date of Order of FAA : Reply on 07.03.2017

Date of 2nd Appeal/complaint : 08.05.2017/09.05.2017.

**Present:** Sh. Surinder Pal Singh, Appellant in person.

 Sh. Avtar Singh, Legal Assistant, O/o SUGARFED (FAA), Punjab – for Respondents.

**ORDER**

 It shall be prudent to reproduce an order passed on 25.10.2017 by this bench so as to be succinctly apprised of the facts of the issue in hand:

 *“Since the respondents and the issue involved in the above mentioned appeals are identical it shall be expedient to dispose these appeals by a single order.*

 *The thrust of the arguments made by the appellants is that as the government has a substantive stake and effective control over the respondents, they qualify to be declared as Public Authority within the meaning of Section 2(h) of the RTI Act, 2005. They should be directed to part with the information sought for by them.*

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 *In support of their contention the appellants have referred to an order passed by the*

*State Information Commission, Haryana, on 30.06.2014 in a case titled Sarvshri Amit Kumar, Mahabir Sharma, B.S.Kundu and Raj Kumar versus The Jind Cooperative Sugar Mills Ltd., Jind; the Panipat Cooperative Sugar Mill, Panipat and the Haryana Cooperative Sugar Mill Ltd., Rohtak. The appellants have been advised to give a copy of the above order dated 30.06.2014 to the respondents also.*

 *The respondents plead that the issue in hand is already under the consideration of the Hon’ble Punjab & Haryana High Court, Chandigarh in Civil Writ Petition No.13910 of 2014 in which the order of the State Information Commission, Punjab, declaring the respondents’ Society as a Public Authority has been stayed. They add that this stay has further been affirmed in another order of the Hon’ble Punjab & Haryana High Court, Chandigarh, passed on 23.03.2015 in Civil Writ Petition No.5085 of 2015.*

 *Before a final order is passed on the issue the appellants are advised to put forward in writing their averments with special reference to the above order. The submissions made by the respective parties in this case shall be passed on inter se under endorsement to the Commission before the next date of hearing.”*

The chronology of filing the applications – First Appeal and Second Appeal has already been mentioned in the head notes of this case.

 The case came up for final hearing on 20.03.2018.

 Vide its order dated 07.02.2018 this bench had directed the respondents to submit a copy of the balance-sheets for the last two years and their bye-laws, which have been taken on record as submitted by them.

 The respondents reiterate that they are not a Public Authority within the meaning of Section 2(h) of the RTI Act. Since the matter regarding the applicability of the RTI Act qua the Contd…page…3

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SUGARFED, Punjab, is subjudice, such an information cannot be supplied. They have also invoked the dicta finalized by the Hon’ble Supreme Court of India in Thalappalam Ser. Coop. Bank Ltd. and others versus State of Kerala and others that the Cooperative Societies are not covered under the

RTI Act and therefore the Fazilka Cooperative Sugar Mills Limited Fazilka being not a Public Authority is not obliged to supply the information. This bench agrees with the contention of the respondents to the extent that the law relevant in this case has been laid in an Order passed on 07.10.2013 by the Hon’ble Supreme Court of India in Thalappalam Ser. Coop. Bank Ltd. and others versus State of Kerala and others in Civil Appeal No.9017 of 2013.

 It has been held that the question as to whether a Co-operative Society will fall under Section 2(h) of the RTI Act is a matter of fact will depend upon the question whether it is substantially financed directly or indirectly by the funds provided by an appropriate Government. Whether it is owned or controlled by it or not has to be decided depending upon the facts and situation of each case. Accordingly we proceed to examine the issue as to whether The Fazilka Co-op Sugar Mills Ltd. measures up to the parameters decided as above.

 We have gone through balance-sheet of the Cooperative Sugar Mill valid as on 31.03.2017. A cursory glance shows that the paid up capital of the government is Rs.420.76 lacs out of the total share capital of Rs.745 lacs. Besides an insecured loan of Rs.159 crore appx. has also been extended to it by State Government and its instrumentalities. The major and significant contribution in terms of finance thus is from the State Government to run the Mill.

 It has also not been denied by the respondents that the Managing Director of the Mill is being appointed by the government who is either a PCS officer or a senior government functionary. We have seen the bye-laws which confer vital powers on him to run the show. The matters like the Contd…page…4

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creation of posts for the employees and the pay scales are also being governed by the State Government. The case of the appellants is that the respondents being substantially financed and controlled by the Government is a Public Authority under Section 2(h) of the RTI Act and as such obliged to give information as sought by them under the provisions of the Act.

 Adv. Jaspal Singh Guru, counsel for the Fazilka Cooperative Sugar Mills Ltd., on the other hand, asserts that the Society is registered under the Cooperative Societies Act, 1961. According to him the State Government does not exercise deep and pervasive control over its functioning. Even the Hon’ble Supreme Court of India has decided in Civil Appeal No. 9017 of 2013 in Thalappalam Ser. Coop. Bank Ltd. and others versus State of Kerala and others that a Cooperative Society is not covered under the Right to Information Act, 2005 and therefore the Sugar Mill is not obliged to supply any information.

 As has been mentioned earlier, the Hon’ble Supreme Court of India vide its aforesaid judgment has said that the judgment shall not apply on all the Cooperative Societies ipso facto, rather it shall be examined and determined on the basis of facts of each case.

 The moot point before the Commission is as to whether the Fazilka Cooperative Sugar Mills Ltd. a registered Society is a Public Authority or not as defined in the Act. Needless to say, it has to be considered only under Section 2(h)(d)(i) as a body which is owned, controlled or substantially financed by an appropriate Government. The rest of the clauses of the Section overtly are not attracted as the Society has neither been created under constitution nor is a product of a statute, or notification of the Government. Hon’ble Supreme Court has elucidated the term **substantially financed** as follows:

 *“The words “substantially financed” have been used in Sections 2(h)(d)(i) & (ii), while*

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 *defining the expression “appropriate Government”. A body can be substantially financed, directly or indirectly by funds provided by the the appropriate Government. The expression “substantially financed”, as such, has not been defined under the Act. “Substantial” means “in a substantial manner so as to be substantial”. In* ***Palser v. Grimling (1948) 1 ALL ER 1, 11 (HL),*** *while interpreting the provisions of Section 10(1) of the Rent and Mortgage Interest Restrictions Act, 1923, the House of Lords held that “substantial” is not the same as “not unsubstantial” i.e. just enough to avoid the de minimis principle. 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.*

 *We often use the expressions “question of law” and “substantial questions of law” and explain that any question of law affecting the right of parties would not by itself be a substantial question of law. In* ***Black’s Law Dictionary (6th Edn.),*** *the word ‘substantial’ is defined as ‘ of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real; not seeming or imaginary; not illusive; solid; true; veritable. Something worthwhile as distinguished from something without value or merely nominal. Synonymous with material.’ The word ‘substantially’ has been defined to mean ‘essentially; without material qualification; in the main; in substance; materially.’ In the Shorter Oxford English Dictionary (5th Edn.), the word ‘substantial’ means ‘of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; sold; weighty; important, worthwhile; of an act, measure etc. having force or effect, effective, thorough.’ The word ‘substantially’ has been defined to mean ‘in substance; as a Contd..page…6*

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*substantial thing or being; essentially, intrinsically.’ Therefore the word ‘substantial is not synonymous with ‘dominant’ or ‘majority’. It is closer to ‘material’ or ‘important’ or ‘of considerable value.’ ‘Substantially’ is closer to ‘essentially’. Both words can signify varying degrees depending on the context.*

 *Merely providing subsidiaries, 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 Government 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 per cent grant-in-aid from the appropriate government, may answer the definition of public authority under Section 2(h) (d) (i).”*

As has been noted above that the paid up capital of the government is to an extent of Rs.420 lacs out of total share capital of Rs.745 lacs which tantamount to 56% of the total capital. It shall be also seen that the government is extending continuous support by arranging funds to the Fazilka Cooperative Sugar Mills Ltd. and the loan has accumulated to the extent of about Rs.150 crores. There is no evidence to suggest that the loans have ever been returned back to the appropriate government. It clearly indicates that the State Government is financing substantially towards the functioning of the Fazilka Coop Sugar Mills in question. Withdrawal of such financial assistance would put the Cooperative Sugar Mills in a situation where it would struggle to exist.

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 The other facet to determine is as to whether the Fazilka Cooperative Sugar Mills is a body controlled by the appropriate government or not. The impression controlled has also been examined in the Apex Courts’ interpretation in the context of the RTI in the Thalappalam Ser. Coop. Bank Ltd. and others versus State of Kerala and others case.

 It has been observed:

 *“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.”*

 The bye-laws of the Cooperative Sugar Mills provide that the general management shall vest in the Managing Director appointed by the State Government. He also performs all the functions assigned by the Government/Registrar Cooperative Societies, Punjab, within the provision of law. The number of Directors nominated by the Government and the ones acting in ex. officio capacity are in such permutation that no substantive decisions without the Will of the Government is possible. We understand that the government issues circulars from time to time to exercise control over the functioning of its Mills. The decision of Government in case of any dispute is also final. Thus Contd…page…8

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there is ample evidence on record to suggest that the Sugar Mill is not only substantially financed but also effectively controlled by the State Government. The control is not superficial but rather deep and pervasive.

 In view of above this bench is of the considered view that the Fazilka Cooperative Sugar Mills measures up to yard sticks laid down by the Hon’ble Supreme Court of India in Thalappalam Ser. Coop. Bank Ltd. on both counts i.e. the substantially financed as well as controlled by the appropriate government. We hold it as a Public Authority within the meaning of Section 2(h) of the RTI Act which is liable to furnish the information to the appellants in this case. The Commission directs it to designate its State Public Information Officer and the First Appellate Authority in the

organization and supply them the information within thirty days of the receipt of the order positively.

 **Disposed.**

 **Sd/- Sd/- Sd/-**

**08.05.2018 (Avtar Singh Kaler) (Pawan Kumar Singla) (Yashvir Mahajan)**

 **SIC SIC SIC**

**CC: PS to Dr. Pawan Kumar Singla, SIC for the kind information of Ld.SIC.**

**CC: PS to Sh. Avtar Singh Kaler, SIC for the kind information of Ld.SIC.**