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**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 13457 of 2007**

To

SPECIAL CIVIL APPLICATION No. 13459 of 2007

With

SPECIAL CIVIL APPLICATION No. 17968 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

-
- 1 Whether Reporters of Local Papers may be allowed to see the judgment?
 - 2 To be referred to the Reporter or not?
 - 3 Whether their Lordships wish to see the fair copy of the judgment?
Whether this case involves a substantial question of law as to the
 - 4 interpretation of the constitution of India, 1950 or any order made thereunder?
 - 5 Whether it is to be circulated to the civil judge?

**GUJARAT URBAN CO-OPERATIVE BANK FEDERATION & 1 -
Petitioner(s)**

Versus

**GUJARAT INFORMATION COMMISSION BUREAU OF ECONOMICS &
STATISTICS & 2 - Respondent(s)**

Appearance:

MR TUSHAR MEHTA for Petitioner(s): 1 - 2.
MR NV ANJARIA for Respondent(s): 1,
GOVERNMENT PLEADER for Respondent(s) : 2,
DS AFF.NOT FILED (R) for Respondent(s) : 2 - 3.

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 10/11/2009

ORAL JUDGMENT

As these petitions involve common question of law, they are disposed of by this common judgment.

1. By way of these petitions under Article 226 of the Constitution of India, the petitioners have prayed to quash and set aside the Government Circular dated

23.03.2007 published by the respondent-Registrar of Co-operative Societies directing to appoint Information Officers, as provided under the Right to Information Act, 2005 (for short, "the RTI Act") and also the common order dated 15.05.2007 passed by the respondent-Gujarat Information Commission holding that the petitioners are amenable to the provisions of the RTI Act and thereby, shall provide the information, as sought for by the original applicants.

2.0 The petitioners herein are co-operative societies duly registered under the provisions of the Gujarat Co-operative Societies Act, 1961. It is the case of the petitioner that a co-operative society, registered under the provisions of the Gujarat Co-operative Societies Act, is not a 'public authority' within the meaning of Section 2(h) of the RTI Act and therefore, is not amenable to the provisions of the RTI Act. However, vide impugned order dated 15.05.2007, the respondent-authority held that the petitioners were covered under the provisions of the RTI Act.

2.1 Being aggrieved by the same and also the Government Circular dated 23.03.2007 directing the petitioners to appoint Information Officers, as provided under the RTI Act, the petitioners have preferred the present petition under Article 226 of the Constitution of India.

3. Heard learned counsel for the respective parties and perused the documents on record. It is the case of the petitioners that being a "co-operative society" registered under the provisions of the Gujarat Co-operative Societies Act, 1961, the provisions of the RTI Act are not applicable to it inasmuch as a "co-operative society" would not fall within the definition of 'public authority', as defined u/s. 2(h) of the RTI Act.

4. Looking to the facts of the case, reference to Section 2(h) of the RTI Act is apposite;

2(h). Public Authority means any authority or body or institution of self-government established or constituted,-

(a) by or under the Constitution;

(b) by any 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 Organisation substantially financed,

directly or indirectly by funds provided by the appropriate Government;

5. Having gone through the impugned order dated 15.05.2007; I find that the respondent-Commission has decided the issue with regard to applicability of Section 2(h) of the RTI Act without considering the Constitution and the relevant Bye-laws of each of the petitioner-Society. Hence, I am of the opinion that it would be appropriate that the respondent-Commission decides the issue as to whether the petitioner-Society would fall within the definition of Section 2(h) of the RTI Act or not, individually, after considering the Constitution / Bye-laws of each of the petitioner-Society and after ascertaining as to in what manner each of the petitioner-Society was owned or controlled or substantially financed.

6. Consequently, the impugned Government Circular dated 23.03.2007 published by respondent-Registrar of Co-operative Societies and the impugned order dated 15.05.2007 passed by respondent-Gujarat Information Commission is quashed and set aside. The matter is remanded to respondent-Gujarat Information Commission for decision on the issue as to whether the petitioner-Societies are amenable to the provisions of the RTI Act or not, after considering the Constitution / Bye-laws of each of the petitioner-Society and also after ascertaining as to in what manner each of the petitioner-Society was owned or controlled or substantially financed.

7. It is clarified that this Court has passed the aforesaid order, without entering into the merits of the case and therefore, the respondent-Gujarat Information Commission shall decide the issue on merits, after considering the aspects stated in the earlier paragraphs.

8. With the above observations, the petitions stand disposed of. Rule is made absolute to the above extent in each of the petitions.

[K.S.JHAVERI, J.]