

SOME IMPORTANT ORDERS PASSED BY THE COMMISSION

A. Some of the important decisions under section 2(h) of the RTI Act:

KIC 910 COM C/W 911, 912,914 & 822 COM 2006

KARNATAKA INFORMATION COMMISSION

(Somashekar S.Jidagi Vs.Head Master & PIO, Basaveshwara G.H.S., Bagalkot)

ORDER

1. *The Complainant in his five requests for information addressed to the respective heads of Schools and Colleges run by the Respondent Sangha, who in turn forwarded them to the Chairman, B.V.V Sangha;*

2. *Respondent states that requests for information were addressed by the Complainant to the respective Heads of the Schools and Colleges run by the Respondent Sangh who forwarded them to the Chairman, B.V.V.Sangha, Bagalkot. Thereafter on behalf of the Chairman, Administrative Officer of the Sangha has issued an intimation to the Complainant on 17th August 2006 stating that the B.V.V.Sangha has taken a stand before the K.I.C. that RTI Act is not applicable to the Sangha and final orders in this regard have not been passed. On receipt of the final order, necessary action will be taken on the letters of the Complainant.*

3. *Advocate for Respondent states that admittedly all the five Institutions run by the Basaveshwara Vidhya Vardhaka Sangha, Bagalkote are availing grant-in-aid but the Sangha has already taken a stand that the RTI Act is not applicable to them as they are not the public authorities under section 2 (h) of the Act. Therefore, he states that the complaints maybe dropped without further inquiry.*

4. *The Commission recalled that in its order in **KIC 47 COM 2006 C/W KIC 295 COM2006 dated 15-11-2006** it has held that the Respondent Sangha is a public authority as defined under section 2 (h)of the Act. The relevant portion of the order of the Commission is reproduced below:*

- It is seen from the audited accounts of Respondent Sangha that funds received by it runs in crores and in common parlance these would appear to be substantial. Receipt of these funds by the Respondent Sangha is not disputed. The amount has come mostly as grants. If the criteria laid down in The Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 is applied, the Respondent Sangha does not fall within the criteria laid down in sub-section (1). However, since the annual grants exceed Rs. one crore it does get covered under sub-section (2). Commission noted that the explanation appended to section 14(1) makes it clear that the definition of substantial financing contained therein is meant for that sub-section only. But Commission is also of the view that once the accounts of a body or authority become liable for audit by the C. & A. G., the citizens should also have access to information from that body or authority.*
- For want of a better criterion, the Commission decides that for the purposes of section 2(h)(d)(ii), a private body would be deemed to be substantially financed by the Government if it gets covered under either of the two criteria laid down in section 14(1) or section 14(2) of The Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971. Further, in view of the quantum of grants shown to have been received by the Respondent Sangha in its Annual Reports, the Commission holds that the Respondent Sangha has received substantial financing from the Government and therefore it falls within the definition of the public authority as indicated above.*

5. *The above findings of the Commission are valid since, to the knowledge of the Commission, these have not been stayed or set aside. The Commission is also of the view that though the requests for information of the Complainant were originally addressed to the respective heads of the schools and colleges run by the Respondent Sangha, the Administrative officer of the sangha has assumed the responsibility of the P.I.O by virtue of section 5(4) and 5(5) of the RTI Act, 2005, He has also issued an intimation to the complainant stating that the sangha is not a public authority and hence access to information cannot be provided to the complainant. Therefore, the response from the Administrative officer was the response on behalf of the said institutions and in any case as mentioned earlier it was agreed that the Respondent sangha shall be treated as the common Respondent for these complaints.*

6. *The Respondent has not taken a plea that the information sought was exempt from disclosure under any of the provisions of the RTI Act, 2005. Accordingly, the Commission directs the Respondent sangha through its Administrative Officer as the deemed PIO to provide the information sought by the complainant, through RPAD, under intimation to the Commission, within fifteen days of receipt of this order. Further, the information shall be provided free of cost as same was not provided within the stipulated period of 30 days.*

KIC 47 COM 2006 c/w KIC 295 COM 2006
KARNATAKA INFORMATION COMMISSION
(T.M.Hundekar vs. A. O., Sri Basaveshwara V.V. Sangha)

ORDER

1. *In the hearing held on 15-11-2006, it was ordered as follows: the parties in these two complaints (Complainant and Respondent) are the same. Besides, the subject matters of the two complaints are also correlated. The Commission has therefore decided to combine the two complaints and dispose them off through this common order.*
2. *On 11/11/2005, the Complainant Sri T. M. Hundekar made an application under section 6(1) of RTI Act seeking information from the Respondent regarding loans availed by it along with details of loans, details of interest, mode of payment, purpose of loan etc, as also copies of documents. The Administrative Officer of Respondent (hereinafter referred to as Respondent Sangha) vide its letter dated 24/09/2005 rejected the request for information stating that since a number of Court cases were pending between the Complainant and the Respondent Sangha, the Complainant was not entitled to seek any information from it out of Court. Respondent Sangha also stated that the said act was not applicable to it. Aggrieved by this rejection, the Complainant has filed his first complaint dated 05-02-2006 under section 18(1).*
3. *The Complainant had filed another application dated 16/12/2005 with the Respondent Sangha seeking certified extracts of the entire proceedings/resolutions of its General Body Meeting held on 29/12/2002. Respondent Sangha however did not respond to this request. Therefore Complainant has filed the second complaint dated 22/02/2006 before the Commission u/s 18(1) of the RTI Act.*
4. *In response to the summons issued by the Commission, the Respondent Sangha has filed a written statement dated 18/03/2006. Arguments of the parties were heard on 26/05/2006 and 20/06/2006. Sri Vijayakumar, Advocate for Respondent Sangha sought permission and time to file his written arguments and he was allowed a time of ten days, whereafter another week's time was allowed to the Complainant to file his rejoinder. In view of the time given to the parties, the complaint was reserved for orders.*
5. *Respondent Sangha has stated that earlier the Complainant was a member of the Sangha. He has since been removed after which he has initiated several legal proceedings against the Respondent Sangha. As regards, supply of information sought by the Complainant, the Respondent Sangha has stated that it has been registered under Societies' Registration Act and is not a Public Authority. Hence the RTI Act does not apply to the Respondent Sangha.*
6. *In support of its contention, Respondent Sangha has cited the decision of Karnataka High Court in K. T. Shivaiah v/s G. Puttaswamy Gowda, wherein the Court has held that societies are not statutory bodies and their rules/bye-laws are not statutory provisions but a contract between different persons concerned. The decision in that case was that a writ will not lie against a society, since it was not a statutory body.*
7. *According to the above referred decision, the Respondent Sangha is not a statutory body. However provisions of RTI Act apply not only to statutory bodies but also to all public authorities. While all statutory bodies are public authorities, the definition of public authorities under section 2(h)(d)(ii) also covers non-Government organizations "substantially financed, directly or indirectly by funds provided by the appropriate Government." Therefore the only issue which arises for decision by the Commission in these Complaints is whether the Respondent Sangha is a public authority under the provisions of the Right to Information Act, 2005.*

8. Complainant in his rejoinder dated 21/04/2006 has contested the claim of Respondent Sangha that it was not a public authority. He has argued that the Respondent Sangha was covered within the definition of public authority under section 2(h)(d)(ii), which definition includes a non-Government organization substantially finance directly or indirectly by funds provided by the appropriate Government. Thus even a private body like Respondent Sangha registered under Societies Registration Act, becomes a Public Authority if it is substantially financed by the appropriate Government. He has stated that the Respondent Sangha was getting financial aid from both State as well as Central Governments and has enclosed copies of audited accounts of the Respondent Sangha in support of his contention.

9. He has further argued that this fact had been concealed from the Commission and therefore penal action u/s 20 (1) of the Act should be taken against it. As regards other contentions raised in the letter of the Administrative Officer, the Complainant has stated that they were not relevant although he has dealt with them in his rejoinder

10. Commission has carefully considered all the pleadings, arguments and documents submitted by the parties. The audited accounts of Respondent Sangha filed by the Complainant clearly show that the Respondent has been receiving grants and also some loans from the Government. The income and expenditure statements show that the extent of Government grants to the Respondent Sangha was Rs. 8,18,56,652.00 for 2000-2001, Rs. 8,10,32,121.00 for 2001-2002, Rs. 9,86,19,798.00 for 2002-2003 and Rs. 9,11,73,112.00 for 2004-2005. In its written arguments, the Respondent Sangha has not denied having received financial assistance from Government. During the arguments on 26/05/2006 it was however argued that the Respondent Sangha was not substantially financed by the Government since it was receiving only grants-in-aid. Further, it was also stated that the Sangha runs several educational institutions and not all of them were receiving grants-in-aid from the Government. As such, the Sangha should not be treated as a Public Authority.

11. The argument that the Respondent Sangha is not substantially financed out of Government funds may need some examination. The RTI Act, 2005 does not define "substantial financing". However there is a reference to "bodies or authorities substantially financed from Union or State Revenues". in section 14 of The Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971. Section 14(1) of the Act reads as follows:

14. Audit of receipts and expenditure of bodies or authorities substantially financed from Union or State Revenues. - (1) Where any body or authority is substantially financed by grants or loans from the Consolidated Fund of India or of any State or of any Union Territory having a Legislative Assembly, the Comptroller and Auditor General shall, subject to the provisions of any law for the time being in force applicable to the body or authority, as the case may be, audit all receipts and expenditure of that body or authority and to report on the receipts and expenditure audited by him.

Explanation:- Where the grant or loan to a body or authority from the Consolidated Fund of India or of any State or of any Union Territory having a Legislative Assembly in a financial year is not less than Rupees twenty-five lakhs and the amount of such grant or loan is not less than seventy-five percent of the total expenditure of that body or authority, such body or authority shall be deemed, for the purpose of this sub-section, to be substantially financed by such grants or loans, as the case may be.

(2) Notwithstanding anything contained in sub-section(1), the Comptroller and Auditor-General may, with the previous approval of the President or the Governor of a

State or the Administrator of a Union Territory having a Legislative Assembly, as the case may be, audit all receipts and expenditure of any body or authority where the grant or loan to such body or authority from the Consolidated Fund of India or of any State or of any Union Territory having a Legislative Assembly, as the case may be, in a financial year is not less than rupees one crore.

(3) Where the receipts and expenditure of any body or authority are, by virtue of fulfillment of the conditions specified in sub-section (1) or sub-section (2), audited by the Comptroller and Auditor-General in a financial year, he shall continue to audit the receipts and expenditure of that body or authority for a further period of two years notwithstanding that the conditions specified in sub-section (1) or sub-section (2) are not fulfilled during any of the two subsequent year.

12. *It is seen from the audited accounts of Respondent Sangha that funds received by it runs in crores and in common parlance these would appear to be substantial. Receipt of these funds by the Respondent Sangha is not disputed. The amount has come mostly as grants. If the criteria laid down in The Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 is applied, the Respondent Sangha does not fall within the criteria laid down in sub-section (1). However, since the annual grants exceed Rs. one crore it does get covered under sub-section (2). Commission noted that the explanation appended to section 14(1) makes it clear that the definition of substantial financing contained therein is meant for that sub-section only. But Commission is also of the view that once the accounts of a body or authority become liable for audit by the C. & A. G., the citizens should also have access to information from that body or authority.*

13. *For want of a better criterion, the Commission decides that for the purposes of section 2(h)(d)(ii), a private body would be deemed to be substantially financed by the Government if it gets covered under either of the two criteria laid down in section 14(1) or section 14(2) of The Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971. Further, in view of the quantum of grants shown to have been received by the Respondent Sangha in its Annual Reports, the Commission holds that the Respondent Sangha has received substantial financing from the Government and therefore it falls within the definition of the public authority as indicated above.*

14. *Respondent Sangha has not forwarded any arguments to the effect that information sought by the Complainant falls under any of the exemptions under RTI Act. The only objection taken was that it was not a Public Authority. Therefore, once it is held that it is a public authority, it becomes liable to provide the required information to the Complainant. Even otherwise, the Commission has come to an independent conclusion that none of the information sought by the Complainant falls under any of the exemptions under the Act.*

15. *In the result, the Commission holds that Respondent Sangha is a public authority, that the information sought does not fall under any of the exemptions under the RTI Act, 2005 and that therefore it shall provide to the Complainant the information sought by him vide his requests dated 11/11/2005 and 16/12/2005. Since the information has been denied and has not been provided within 30 days, it shall now be provided free of cost. Accordingly, the Commission directs the Respondent Sangha to provide the required information to the Complainant within 15 days of receipt of this order, free of cost, through RPAD, under intimation to the Commission.*

16. *The Commission also directs that the Respondent Sangha as a Public Authority shall also appoint PIO(s)/APIO(s) and First Appellate Authority as well as comply with other obligations of the public authorities under the act, for example sections 4(1) (a) and 4(1) (b). Till such time*

as the Respondent Sangha makes these appointments, the President and the Chief Executive of Respondent Sangha, by whatever name called, shall be deemed to be the PIO and the first appellate authority and shall also be held responsible for complying with the directions of the Commission contained in this order.

KIC 203 COM 2006
Karnataka Information Commission
(Sri Baburao Kalasadalkar, Bidar Vs. PIO& MD. DCC Bank, Bidar)

1. Complainant in his request for information dated 7-3-2006 has sought the following information;

- (a) Names of 160 persons appointed in District Central Cooperative Bank, Bidar in the year 2005-2006 and;
- (b) List of names of Borrowers whose one time settlement is made since last five years.

2. The Respondent bank refused to furnish the information.

The complainant filed a complaint under section 18(1) of the RTI Act, 2005 to the Commission on 26-4-2006.

During the course of hearing the Respondent Bank argued that;

- The Respondent has also argued that the information sought at (b) falls under the provisions of section 8 (1) (a), (d) and (j) of the Act. This objection is found to be baseless. The information sought does not fall under section 8(1) (a) which deals with sovereignty, integrity, security, economic interests etc. of the State. The information sought also does not fall under section 8(1)(d) which deals with the commercial confidence, trade secret or intellectual property, the disclosure of which would harm the competitive position of the third party. It also does not fall under 8(1) (j) since it does not relate to personal information, the disclosure of which has no relationship to any public activity or interest.
- Banks and financial institutions provide substantial concessions to borrowers in terms of lower rates of interest as well as writing off of principal amounts under one time settlement. These concessions have large financial implications for the banks and financial institutions. Since public funds are involved, the citizens have a right to know whether the discretion given to the management has been rightly exercised. Therefore it is in public interest to provide such information to the citizens.
- Although the Commission has taken a view that supplying names of beneficiaries of one time settlement does not amount to revealing third party information, even if third party information was involved it is not a per se ground for rejection. In third party cases it is the duty of the PIO to initiate action under section 11 of RTI Act and invite objections from the third parties. The Respondent has not followed this procedure also.

3. Accordingly the Commission directed the PIO to furnish the information sought by the complainant.

KIC 115 APL 2006

KARNATAKA INFORMATION COMMISSION

(Sri Murthappa Naik vs. Rajapura Saraswatha Co-op. Society, Karnataka)

ORDER

1. *Facts: Appellant Sri Murthappa Naik has made the following two requests for information separately u/s 6 of the Right To Information Act, to the General Manager of the Rajapura Saraswatha Co-operative Society, who is also the designated Public Information Officer under the Act;*

(i) request for information dated 16-11-2005 seeking a copy of the proceedings of the general body meeting of the society held on 25-9-2005.

(ii) request for information dated 16-11-2005 seeking a copy of the resolution passed by the managing committee granting loans in favour of its employees.

2. *The General Manager of the society who is the PIO under the RTI Act, 2005 did not provide the information and rejected the requests, which was intimated to the appellant on 1-12-2005.*

(i) First request; on the ground that the Appellant did not remit Rs. 30 towards the cost of providing information in spite of the intimation sent to the Appellant on 1-12-2005.

(ii) Second request; on the ground that the information sought is personal information relating to dispersal of loans which has no relationship to any public activity or interest and also would be an unwarranted invasion of privacy.

3. *Aggrieved by the decision of the P.I.O., the Appellant filed two separate first appeals as appeal no 1 and 2 before the President of the society who is the First Appellate Authority as provided u/s 19(1) of the Act. The First Appellate Authority in two separate orders both dated 1-2-2006 rejected the appeals on the following grounds:*

(i) appeal no.1 was rejected on the ground that the Appellant did not remit Rs. 30 towards cost of supply of information as intimated by the Public Information Officer and with an order that if the Appellant still requires information he can obtain the same by applying a fresh along with required fee, within 90 days from the order.

(ii) appeal no.2 was rejected on the ground that the information relates to personal information, that the society being a financial institution has to maintain secrecy of the transactions of customers and employees and that information sought falls under exemption from disclosure of information as provided u/s 8(1)(j) of the Act.

4. *Aggrieved by the decision of the First Appellant Authority the Appellant filed two separate second appeals u/s 19(3) of the RTI Act, 2005 to the commission, one on 28-4-2006 and another on 3-5-2006. Since the Appellants and Respondents in both the appeals were the same, it was decided with the consent of both the parties to combine both the appeals and hear and dispose them off together. The Appellant was represented by advocate Sri B.Bharatraj and the Respondent was represented by advocates Sri K. Chandranath Ariga and K.H. Adhikari.*

5. *The commission after hearing both the parties also verified the records produced by them. It was noticed that the Respondent had issued intimation on 2-5-2006 to the Appellant asking him to remit a sum of Rs. 90/ towards cost of supply of copies of the proceeding of general body meeting @ Rs.5/ per page and produced a Xerox of the dispatch register showing particulars of dispatch. The Appellant denies receipt of such a letter. However, it was noticed that the respondent had asked the Appellant to remit Rs. 90/ as the cost of supply of information calculated @ Rs.5 per page, though the Karnataka Right To Information Rules, 2005 provides for payment @ Rs. 2 per A4 size page.. Therefore the Respondent had sought excess fee in*

violation of the Karnataka Right To Information Rules, 2005 which attracts provisions of section 18(1)(b) of the Act. Therefore action of the P.I.O. asking the Appellant to pay excess fee is in violation of the provisions of RTI Act, 2005 and the rules there under. The commission therefore directs that the Appellant shall now be supplied the desired information in the first appeal free of charge.

6. As regards to furnishing of information about disbursement of loans to the employees, the plea of Respondent that disclosure of this information would result in unwarranted invasion of privacy of the individuals may not be sustainable. However, Financial Institutions cannot be asked to reveal information about their loanes, which may harm their competitive position. The competitors may obtain this information and lure away their better customers by offers of lower rates etc. If the Appellant is entitled to this information as a member of the Co-operative Society, he may take action to enforce this right under relevant provisions of the Karnataka Cooperative Societies Act. However such information cannot be sought under provisions of Right to Information Act.

7. In view of the above, the Commission makes the following order:

- (i) the respondent society shall provide a certified copy of the proceedings of general body meeting of the society held on 25-9-2005.*
- (ii) under the provisions of the R.T.I. Act, the respondent society is not obliged to furnish information relating to grant of loans to its members.*
- (iii) the respondent society shall provide the information at (i) within 30 days, free of cost by RPAD as the P.I.O. has failed to decide on the requests of the Appellant with in stipulated period of 30 days as provided u/s 6 of the Act.*

KIC 16 APL 2006

KARNATAKA INFORMATION COMMISSION

(Sri S.R. Narayana Murthy vs. President, Poorna Prajna HBCS Ltd., Bangalore)

1. This appeal has been filed by Sri S.R. Narayana Murthy against the president of Poorna Prajna House Building Co-operative Society Limited (hereinafter referred to as the society). In fact the grievance of the Appellant is against the society, but the appeal has been filed in the name of the President as he heads the Board of Directors of the society and is also the first appellate authority under the provisions of Right to Information Act, 2005 (hereinafter referred to as the Act). Brief facts leading to the appeal are summarized in paras 2 and 3 below.

2. The Appellant has addressed two requests for information under the Act to the Manger of the society on 7-11-2005 and 16-11-2005 seeking very detailed information. In his request dated 7-11-2005, he has sought information concerning sale of corner sites. Copies of personal ledger follo of all members to whom the site deposit amount has been transferred from other members. List of persons to whom odd dimension sites has been sold, seniority list of eligible members dimension-wise as on March 1995, list of persons enrolled as members subsequently, list of site allottees, details of sites yet to be allotted etc. etc. In his second letter dated 16-11-2005, he has sought details of roads formed, their measurements, areas acquired but still vacant and unutilized, commercial plots formed etc. The applicant has also addressed a separate request to the Additional Registrar of Co-operative Societies on 16-11-2005 itself, seeking the same information from him as he has sought from the society vide his letter dated 16-11-2005. The Additional Registrar of Co-operative Societies vide his letter dated 22-10-2005 has informed him that he should obtain this information directly from the society.

3. The requests of the appellant was placed by the society before the meeting of its Board of Directors (also called committee) on 27-11-2005 and the Board of Directors declined the requests for information on two grounds:

- (a) The society is not a Public Authority as defined under Section 2(h) of the Act.
- (b) The information/documents sought for requires to be prepared by engaging many more number of staff for months together, which would disproportionately divert the resources of the society.

4. It is against this order of the society that the appellant has approached the Commission.

5. It may be recalled that vide his notification No. Adm/RIAC/17/05-06, dated 22/09/2005, the Registrar of Co-operative Societies, while acknowledging that co-operative societies in the State were public authorities for the purposes of providing information to the public under the Act, had appointed Chief Executives of the Co-operative Institutions in the State as the State Public Information Officers (SPIOs) and the presidents/Chairmen of the Co-operative Institutions as the First Appellate Authorities (FAAs). Normally, therefore, the appellant should have filed his first appeal before the President of the society. However, since the decision for refusal of requests was taken by the Board of Directors presided over by the President himself, the first appeal has become futile and as such the Commission decided to entertain this appeal although it is first appeal against the rejection order of the society. The appeal came up for hearing before the Commission on 06/03/2006 when the society raised a preliminary objection regarding maintainability of the appeal on the ground that the said society was not a Public Authority under the provisions of the Act and as such the appeal was not maintainable. The

commission heard both parties on the preliminary issue. The parties were thereafter also asked to file their written arguments on the preliminary issued by 16/03/2006.

6. After considering all material facts and arguments on this issue, the Commission is of the view that co-operative societies are meant to serve some public purpose. Further even if some co-operative societies have not received direct financial assistance from the State Government, they are indirectly helped by the Government, not only by way of concessional taxes, reduced stamp duties etc, but also through several other programmes like training of their officials. The State Government also exercises a very high degree of control over their operations. As already stated, the Department of Co-operative Audit audits their accounts. Registrar of Co-operative Societies exercises substantial control over their functioning. Government also has the authority to supersede the committee of the Co-operative Society under section 30 and 31 of KCS Act.

7. By far the most clinching argument in favour of holding co-operative societies as public authorities is that through the Registrar of Co-operative Societies and the Director of Co-operative Audit, the Government exercises complete access and control over the information held by co-operative society. When the Government has access to the information, a citizen also has a right to it and such information can be denied to people only under the provisions of the Act. In this context of the definition of public authority under section 2(h) as any body controlled by appropriate Government, would decidedly include a body which is obliged to reveal all its records to Government and is therefore fully controlled by the appropriate Government at least in so far as access to information is concerned.

8. Even from practical point of view, it will be advisable to treat all the co-operative societies as public authorities because if they are not so designated, citizen can still approach the Registrar of Co-operative Societies or Director of Co-operative Audit with a request to obtain the required information relating to a co-operative society by exercising their control over such society, since they have access to any information from such societies under the provisions of KCS Act. The Commission therefore answers the first issue in affirmative and has no hesitation in holding that the stand taken by the Registrar of Co-operative Societies in his notification referred as para 4 above is correct and that all co-operative societies in the State are public authorities for the purposes of the Act.

9. As regards, the second issue, the commission does find that the appellant has sought a plethora of information. While rejecting the request of the appellant the respondent society has state that "the information sought by you requires to be prepared by engaging many more number of staffs for months together, which would disproportionately divert the resources of the society". Although the Petitioner is not required to give any reason for requesting the information under Section 6(2) of the Act, the information sought is really voluminous and the Commission is convinced that furnishing it in the required format would require lot of effort and disproportionately divert the resources of the society as described under Sec.7(9) of the Act. But the society cannot shut out access to all information to appellant through this argument.

10. The third issue deals with the new and additional arguments advanced by the Society for not providing information e.g., providing this information would impede the process of investigation, that the information includes third party information and that its disclosure would lead to incitement of an offence etc. These arguments have not been substantiated, were not raised originally while denying the information, are obviously afterthoughts and are therefore rejected. In case any third party information is involved the procedure laid down in the Act should have been followed.

11. *In conclusion, the Commission orders that within thirty days from the date of this order, the society shall make available such of the sought for information to the Appellant, which is available with the society in the desired format. In case any information involves third party rights, the procedure prescribed in the Act shall be followed and the time limits as laid down in the Act for the purpose shall apply as from the date of this order. Since the information has not been provided within thirty days, it will be provided free of cost. Within the same period of thirty days, the society shall also make available to the Appellant a list of all its records duly catalogued and indexed as required under Section 4(1)(a) of the Act. During this period, it will also carry out all duties and obligations of a public authority under the Act including the voluntary disclosure under Section 4(1) (b) of the Act. The Appellant would then be at liberty to identify and seek inspection of the records as also obtain copies of documents under the provisions of the Act. The society shall send a compliance report to the Commission within 40 days of this order and in case the Commission is satisfied with the compliance, no penal action need be initiated against the concerned under Sec.20 of the Act.*

KIC 137 COM 2006

KARNATAKA INFORMATION COMMISSION

*(Sri P.Ramachandran, Bangalore vs. Vyalikaval House Building Co-operative Society Ltd.,
Bangalore)*

ORDER

This is a complaint filed before the Commission under section 18 of RTI Act. The facts of the case leading to the complaint are as follows;

1. The complaint came up for first hearing before the Commission on 06/05/2006. On that day the Respondent society was represented by Advocate Sri K.P.Srinivas. The Advocate raised a preliminary objection that the respondent society was not a public authority. He was informed that Registrar of Co-operative Society has already issued a notification according to which all the Co-operative Societies in the State are Public Authorities. The Advocate sought an adjournment to argue the case on merits. The case was therefore posted for final hearing and disposal on 12/05/2006.

2. On 12/05/2006 arguments of both parties were heard. The Advocate for Respondents thereafter sought one more adjournment stating that the Complainant has also sought the same information through Joint Registrar of Co-operative Societies, but it was not permissible for the Complainant to simultaneously approach two Authorities for the same relief.

3. On the basis of the arguments advanced by the parties, the following three issues are framed for decision by the Commission.

- (1) Is the Respondent society a Public Authority?*
- (2) Can the information sought be provided under the provisions of RTI Act?*
- (3) Can the Complainant simultaneously approach the Respondent Society as well as the Department of Co-operation for obtaining the same information which is available with the respondent society?*

4. As regards the first issue the Commission has already held in appeal no. KIC 16 APL 2006 (Sri S.R.Narayana Murthy v/s Sri Poorna Prajna House Building Co-operative Society Ltd.) that all co-operative societies in the State are Public Authorities. Earlier, the Registrar of Co-operative Societies had also issued a notification to this effect, designating the Chief Executives of the Societies as the Public Information Officers and the Presidents/Chairmen of the Societies as the First Appellate Authorities for the purposes of RTI Act.

5. This decision of the Commission has been challenged by Poorna Prajna House Building Co-operative Society Ltd., before the High Court of Karnataka (W.P.No.708/2006). The decision of the Commission to treat all Co-operative Societies is therefore subject to judicial review. The High Court has so far not set aside the said order of the Commission that all co-operative societies are Public Authorities and the order will therefore apply to this complainant also, subject to the final decision of the Courts.

6. *Once the respondent society is treated as the Public Authority under RTI Act 2005, the information sought by the Complainant has to be made available to him. The Respondent society has not advanced any arguments that the information sought by the Complainant is protected under sections 8 or 9 or any other provisions of RTI Act. The Respondent society has only argued it has already allotted a site to the Complainant and that the allegations made by him are not correct. The Commission is not concerned with the dispute between the Complainant and the Respondent. The Commission is only to secure the right of information to the Complainant. Under the circumstances, the Commission decides the second issue in favour of the Complainant, in as much as once the Respondent society fell within the definition of Public Authority under RTI Act; it has to part with the information sought by the complainant in his request.*

7. *The Respondent society has pointed out that the Complainant has not only filed this application for information directly with the society, but he has also filed another application before the Joint Registrar of Co-operative Societies (JRCS), Bangalore requesting that he (JRCS) may issue a direction to the society to furnish the list of members with seniority and the entire details of the sites allotted to the members including the date of registration etc. The Respondent society has cited the decision of the Supreme Court referred about in which it has been held that a person cannot pursue two remedies at the same time to secure a relief. The Court has held that “Doctrine of Election clearly suggests that when two remedies are available for the same relief, the party to whom said remedies are available has the options to elect either of them but that doctrine would not apply to cases where the ambit and scope of the two remedies is essentially different”.*

8. *To begin with, the Commission noted that the remedy sought by the complainant from the Respondent Co-operative Society under RTI Act, was very different from the remedy sought by him from the Registrar of Co-operative Societies. Seeking the list of members and details of sites allotted was not the remedy sought by the complainant from the Registrar of Co-operative Society. He has asked the Joint Registrar of co-operative Societies to direct the Respondent society to regularize and provide basic infrastructure in respect of scheduled property, not to modify the sanctioned plan without accommodating the petitioner as well as direct the concerned authority to fix responsibility for apparent violations of principles of natural justice etc.*

9. *Thus it is seen that the ambit and scope of the remedies sought by the complainant from the Joint Registrar of Co-operative Societies Under Karnataka Co-operative Societies Act, are very different from the mere information sought through the Commission and as such, under the above cited ruling also, the Complainant would be within his rights to approach both the Commission as well as Joint Registrar of Co-operative Societies.*

10. *The Commission is also of the view that seeking information from a Public Authority is not a “remedy”. Seeking information under RTI Act 2005 is a right and there is a lot of difference between the concept of the right to information and the concept of a remedy. A citizen may seek the same information from two Public Authorities if such information is in their possession or they have access to it. For example, in this instance, the Complainant will be well within his rights to ask for the same information directly from the Respondent society as well through the Registrar of Co-operative Societies since even if it is held that the Society is not a*

Public Authority, the Registrar of Co-operative Societies would have access to this information under the provisions of Karnataka Co-operative Societies Act and he has to obtain and supply this information to the Complainant under the provisions of the Act. The third issue is therefore replied in affirmative.

11. In the result, the complaint is allowed and the Respondent society is directed to provide the information sought by the Complainant to him, within a period of thirty days, through RPAD, under intimation to the Commission. Since the Respondent society has delayed supply of information, the information shall now be supplied free of cost.

B. Decisions on cataloguing and indexing of the records and publication of suo motu declaration and maintenance and management of records, etc.:

(1) Decision on setting up of RTI Cell (BBMP)

KIC 96 APL 06

KARNATAKA INFORMATION COMMISSION
Ravindranath Guru /Vs/ PIO & E.E.,BMP B'lore)

ORDER

23-05-2006

1. Appellant is present. On behalf of the Respondent Sri Mruthyunjaya, Superintending Engineer, B.M.P. and Sri D.V.Ananda, Assistant Executive Engineer are present. The respondent says that the desired information was sent to the Appellant on 16-05-06, which was received by the Respondent on 18-05-06. The Respondent is satisfied with the information received, but he represents to the Commission that this information has been supplied to him after 5 months and he has been put to considerable inconvenience. Further, the respondent has also asked him to pay Rs.100/- as cost of information.

2. Since the information has been supplied after lapse of 30 days no amount is payable by the Appellant. Further, during the oral arguments it was clearly brought out that the Bangalore Mahanagara Palike is not fully geared up to deal with large number of applications being received by them under the R.T.I.Act and these are not being processed properly. There have been several cases of long delays and in future the Commission may have no option but levy penalties on the SPIOs of the Commission. In view of the above, the Commission in exercise of its powers vested under section 19(8)(a) of the Act, requires the Bangalore Mahanagara Palike to set up a separate computerised cell to receive and monitor all the applications under the Right to Information Act. The Cell may work under one of the PIOs and act as a Central registry for all requests to Bangalore Mahanagara Palike under R.T.I.Act. On receipt of an application the call shall take immediate necessary action to either pass on the request for information to the concerned Officer who has the information or if the information is not available at one place to collect the information from various officers by invoking the provisions of Sections 5(4) and 5(5) of R.T.I.Act, to compile them and to make them available to the applicant within the stipulated time limits.

3. The Bangalore Mahanagara Palike is also required to take immediate action to train its Senior Officers and specially the S.P.I.Os as regards the provisions of the R.T.I.Act so that they

understand their responsibilities and respond to the requests made by the applicants at the earliest but within the time limits laid down in the Act.

4. *The appellant also pleaded that he was put to lot of inconvenience and incurred expenditure during this period in traveling to B.M.P. Office while his application was pending. The B.M.P. has neither disposed off his application nor his first appeal. Under the circumstances, the applicant can give a separate application seeking compensation from B.M.P. under the provisions of Section 19(8)(b) and the Commission would consider such a request on merits.*

5. *A copy of this order shall be sent to the Commissioner, B.M.P. by name for his taking necessary action in accordance with the directions and send a compliance report to the Commission within a month..*

(2) Direction to Deputy Commissioner and Director of Municipal Administration to undertake cataloguing and indexing of the records and to file a police case

KIC 269 APL 2006

KARNATAKA INFORMATION COMMISSION

(Smt. Chandralakshmi vs. PIO & HQA to DC, Bangalore Urban District)

ORDER

10-4-2007

1. *Appellant is absent. Sri Gururaj, First Division Assistant, Office of the Deputy Commissioner, Bangalore Urban Dist represents the Respondent*

2. *In his request for information, Complainant has sought copy of the medical certificate furnished by him during the year 1991 to obtain the allowance as a physically handicapped person. Respondent states that relevant record relating to Appellant's request for information is not traceable.*

3. *Respondent further states that as directed by the Commission a decision has been taken to file a Police complaint for loss of records. He also states that a notice has been issued to the concerned official, who has now retired from service, to search and trace the relevant record. But despite his efforts, the relevant record could not be traced. Commission directs the Respondent to file a police case for loss of record; hold a departmental enquiry against the person(s) responsible for such loss; and file compliance to the Commission within 2 months.*

(3) Direction to CMC, Dasarahalli and Byatarayanapura to set up record room

KIC 263 COM 2006

KARNATAKA INFORMATION COMMISSION

(Sri S.Gopal Vs.P.I.O., and Manager, C.M.C.,T.Dasarahalli)

ORDER

1. *In the hearing held on 5-7-2006, the Respondent stated that he is unable to trace the records despite all efforts, since the records have not been kept properly and they have been bundled and dumped in a room. The Complainant states that a large number of permanent records have not been transferred from Village Panchayats to the C.M.C., after their merger.*

2. *The Commission observed that such gross negligence in maintenance and preservation of records could not be allowed to continue. The Respondent, as a public authority, is required to comply with the provisions of Sec.4 (1) (a) by maintaining all these records duly catalogue and indexed. Further the Commission has powers to direct the public authorities to make necessary changes in their practices in relation to maintenance, management and destruction of records.*

3. *Accordingly the Commission directs that the Commissioner, C.M.C., T. Dasarahalli shall take immediate steps to evolve a proper system for sorting out the records, store them in racks and classify, catalogue and index them as required under Sec.4 (1) (a) of the Act. The Respondent is not in a position to commit to a time frame, within which this task could be completed. The Commission therefore decided to provide a time of three months to the Commissioner, C.M.C., T. Dasarahalli to set up a proper record room, complete the task of cataloguing and indexing the records and report compliance to the Commission.*

4. *The Director of Municipal Administration, through a copy of the order, is directed to help the C.M.C., in setting up the record room. The Commission will also consider appointing a group of experts including N.G.O.s under the Director of Municipal Administration to inspect the record room and help and advise the C.M.C., in proper maintenance and safety of records.*

5. *The Commission was informed that the Respondent C.M.C., has a large staff consisting of about 230 people and there should be no dearth of manpower in completing the task within the three-month's time.*

6. *Simultaneously, while the work of setting up of the record room is going on, the Respondent shall continue to search for the documents required by the Petitioner and the copies of these documents shall be provided to the Petitioner as soon as they are recovered. Only after the record room is fully established and functional that the respondent C.M.C., will be in a position to conclusively say that the documents were not available and if so what efforts should be made to trace them or fix responsibility for their loss.*

7. *In the hearing held on 29-12-2006, the Respondent stated that the required information has been furnished to the Complainant.*

8. *A copy of the information has also been sent to the Commission. As regards indexing and cataloging of records and maintenance of record room, the same could not be completed, since although the building is ready, shifting has to be done. He undertakes to complete this work within next two months.*

4. *In the hearing held on 26-2-2007, the Respondent stated that the newly constructed record room has been opened and all the records have been shifted to the new premises. Further, he states that the cataloguing and indexing of the records has been completed. He files a compliance report along with the photos indicating that record room has been set up and it is being properly maintained.*

9. ***In exercise of powers conferred on the Commission under Section 19(8)(a)(iii) of RTI Act, 2005, the Respondent as well as the concerned public authority, namely Commissioner, BBMP is directed to post the list of records prepared under section 4(1)(a) on the website of BBMP for the benefit of general public.***

“KIC 91 APL 2006

KARNATAKA INFORMATION COMMISSION

(Sri Ekanath Mahadev Machakanoor vs. PIO, TMC, Raibagh, Belgaum District)

ORDER

1. *In the hearing held on 26-9-2006, the Appellant has sought information in respect of various schemes undertaken by the Town Panchayat from the year 2001 to 2005, out of which information for the years 2001, 2002 and 2003 has been furnished to him and he has also given an acknowledgement for having received the required information on 23-06-06. The Deputy Commissioner in her letter dtd.12-07-06 has also stated that the information sought by the Appellant has been made available to him by the Chief Officer, Town Panchayat. However information in respect of remaining three years could not be furnished as the relevant records are with the police in connection with a criminal case lodged against the former Chief Officer.*
2. *The Respondent also states that the Town Panchayat has an allocation of Rs.500/- per year for contingencies and the Appellant has sought information which runs into more than 1000 pages of which the information for two years totally 360 pages has already been given. The Respondent states that the Appellant being BPL card holder is entitled to this information free of cost. However providing this information would disproportionately divert the resources of the public authority as laid down under Sec.7 (9) of the RTI Act.*
3. *The Commission noted the Appellant has sought voluminous information and the Town Panchayat has provided the information held by it. However the Respondent should have taken action to transfer the remaining request for information to the PIO and Superintendent of Police, Belgaum, who currently holds the intimation.*
4. *Accordingly the Commission directs that the Respondent shall transfer the relevant portion of the request for information to the PIO and Superintendent of Police, Belgaum under intimation to the Commission.*
5. *The Commission accepts the submission that providing thousands of pages of information free of cost to BPL cardholders would disproportionately divert the resources of the Town Panchayat and directs that the remaining information could either be provided by the police department or if they are unable to provide it and return the records to the Town Panchayat, then the town panchayat may only allow inspection of the required documents and copies could be provided to this Appellant , wherever necessary, only if he pays for them.*
6. *It is learnt that to deal with such situations, some State Governments have made rules to provide that BPL citizens could secure free of cost information limited to a prescribed number of pages. In exercise of the powers vested under Section 19 (8) (a) of the Act, the Commission hereby advises the State Government in Department of Personnel and Administrative Reforms (Administrative Reforms) to consider framing similar rules to meet such situations.*

(Decision was delivered on 26-9-2006)

KIC 440 COM 2006
KARNATAKA INFORMATION COMMISSION
(Sri C.N. Kumar vs. Under Secretary &Public Information Officer, DPAR(Janaspandana Cell)
Bangalore)

1. *Petitioner in his request for information dated 25-5-06 has sought the following information:*

- A. Budgetary allocation for this purpose by various departments and ministries.*
- B. Whether the Education Department has initiated any steps to include this important subject as part of the syllabus for school and college students.*
- C. Whether the Rural and Panchayat Raj Department has initiated any steps to Educate citizens.*

2. *The request which was addressed to the Secretary DPAR was transferred to the Education Department and Rural Development Department on 22-6-2006 after providing the information on item No. A, which relates to the capacity building undertaken with the assistance of the Government of India and UNDP. When there was no response from the Respondent, the Petitioner filed a complaint to the Commission on 4-7-2006 against the PIOs of Education and RDPR Departments.*

3. *On issue of summons, the RDPR Department had provided the information in respect of the voluntary disclosure and also the training programme undertaken by them, through Nazir Sab Rural Development Training Mysore.*

4. *When the compliant was heard on 8-9-2006, the Under Secretary, Education Department, has made the following submission:*

Sri Japali states that the Commissioner Public Instruction, the Commissioner, Pre-University Board, the Vice Chancellors of Universities, and other Directors of Education Department have been instructed to take necessary action to include the RTI, Act in the syllabus of the schools and colleges vide their letter dated 24-08-06. Further, he states that this will be again taken up for discussion during the meeting on framing of the curriculum for the schools and colleges for the year 2007- 2008. Further, he also undertakes that the issue of syllabus of incorporating the RTI Act will also be put on the web site for the benefit of the user departments. As regards to RDPR Department, Sri Ilakal states that the information has been furnished to the Complainant. Further he undertakes that suitable steps will be taken for propagation of the RTI Act through Panchayat Raj Institutions in the State.

(Decision was delivered on 8-9-2006)

KIC 1135 COM 2006

KARNATAKA INFORMATION COMMISSION

(Sri S. Gopal vs. PIO and EE, Project Division (Central), BMP, Bangalore)

ORDER

1. In the hearing held on 11-1-2007, the Respondent states that on receipt of the request for information on 4-9-2006, an intimation was issued to the Complainant on 18-9-2006 asking him to remit an additional fee of Rs. 510-00 towards cost of supply of information as well as towards inspection of documents mentioned in the request.
2. Complainant acknowledges receipt of the intimation. However he states that when he went to remit the additional fee, the Respondent insisted that the additional fee should be remitted through a DD only drawn in favour of the Commissioner, BMP. When he approached the Respondent second time, he said that the amount should be remitted to the Corporation's account maintained in Canara Bank Extension Counter, BMP, through a challan.
3. Complainant states that the suggested procedures were very cumbersome. The challan has to be countersigned by the concerned officer as well as the Accounts Officer of the BMP. Otherwise Bank Officials refuse to accept the remittance. Further the Bank generally does not accept small remittances. Working hours of the Bank are from 10.30 am to 3.30 pm and after 3.30 pm there will be no arrangement for the receipt of the required fee. Therefore, he requests that there should be some system in the RTI Cell established by BMP to receive both the initial fee as well as the additional fee in the form of cash to save harassment to the citizens.
4. Commission observed that the procedure being followed in BMP was in violation of Karnataka Right to Information Rules, 2005 which rules provide several options including cash to the applicants for payment of initial fees and additional fees. It is obligatory for BMP to ensure that the applicants seeking information under the Act are enabled to remit the required initial fees as well as the additional fees at one place through any of the options including cash, Indian Postal Order, DD or Banker cheque etc. as prescribed under Karnataka Right to Information Rules, 2005 and a proper receipt is issued to them on the spot.
5. **Therefore, through a copy of this order, the Commission, in exercise of powers vested in it under Section 19(8)(a)(i) of the Act, directs Sri K. Jayraj, Commissioner, BMP, Bangalore to make suitable arrangements in the existing RTI Cell of BMP for acceptance of the initial fee as well as the additional fee in any of the prescribed modes including cash, payable by the applicants towards the cost of supply of information, under proper receipts. He is also directed to ensure that this system is in place at the earliest and a compliance report is sent to the Commission within 30 days.**
6. Commission expresses its displeasure against the Respondent for creating problems for the Complainant and directs the Respondent to provide the required information to the Complainant, free of cost, since he has refused to accept the additional fee payable. Respondent has brought the required information with him and hands over the same to the Complainant on the spot. The Complainant states that he is satisfied with the information furnished to him.”
(Decision was delivered on 11-1-2007)

“KIC 243 COM 2006

KARNATAKA INFORMATION COMMISSION

(Sri Vinod Malhotra, Bangalore vs. PIO & Joint Commissioner (Development), BMP, Bangalore)

ORDER

1. *Petitioner in his request for information dated 9-3-2006 has sought the following information regarding leasing out of properties by the BMP:*

(1) Each and every property that BMP had leased in the past and the lessee(s) is still occupying it, please provide the following information, (a) serial number, (b) ward number, (c) name and address of the lessee, (d) property address, (e) property measurement (units), (f) vacant land or building, (g) period of lease, (h) from (lease start date), (i) to (lease end date), (j) lease amount monthly, (k) lease amount yearly, etc., including the details of the action taken by the BMP against the lessees still occupying the properties even after the expiry of the lease date, details of court cases pending, etc.

2. *The Deputy Commissioner, BMP, had written to the Petitioner by the end of April stating that he is seeking the help of Revenue Officers in various zones of BMP to provide the information as the same was not available with him. Thereafter, the Petitioner filed a complaint to the Commission on 12-5-2008 stating that the BMP has failed to furnish complete information.*

3. *Commission heard the complaint on 12-6-2006, 30-6-2006, 8-8-2006, 12-9-2006. During the course of these hearings, the Commission had directed the public authority through the Joint Commissioner (Development) to undertake the task of cataloguing and indexing of the records as envisaged under section 4(1)(a) of the Act. Meanwhile, the Respondent had provided the information which the Petitioner considered it as incomplete. Commission issued direction under section 19(8)(a)(iii) of the RTI Act for publishing of certain information on the website of the BMP. Respondents thereafter came back to the Commission stating that in pursuance of the Commission's order dated 30/06/2006 the Commissioner, BMP had conducted meetings with heads of the Departments and other senior officers wherein it was decided that cataloguing and indexing of the records in the BMP is very essential and a time bound programme has been evolved in this regard. Further he stated that the Commissioner BMP had issued a circular regarding cataloguing, indexing and maintenance of records in the BMP.*

4. *The Respondent further stated that updating of records pertaining to BMP properties leased to the various persons had been discussed in meetings held both at BMP and Government level and in pursuance of these meetings a Task Force has been constituted under the Chairmanship of the Commissioner (works) along with the other senior officers. The Task Force will review and take suitable action in respect of all the leased properties. The Respondent stated that with above mechanism in place it would be possible to review all the cases and the information on the leased properties would be updated and uploaded to the BMP website within 30 days.*

5. *The Commission observed that BMP authorities had initiated some earnest action in this regard and agreed to allow them four weeks time to update the information and put it on their website with the condition that in case all the records cannot be updated, the partly updated information shall be placed on the website with a note that the information was being published in compliance of the directions of the Commission, that the information was provisional and under revision and that the updated information would be available within a specified time period to be mentioned, which period will not be more than two more weeks.*

6. *In the hearing held on 12-9-2006, the Respondent stated that as ordered by the Commission the information relating to the leased properties of the B.M.P. has been published zone-wise on the website of the B.M.P. including partial information in respect of the some of the properties where the full details yet to be provided by the concerned Revenue Officers. Further the Respondent states that the website is being updated every week after obtaining the required information from the concerned Revenue officers including the information on status of the court cases. The Respondent states that the task of updating of the leased properties on the website will be continuous and it will be periodically updated and it will be strictly monitored. (Decision was delivered on 12-9-2006)*

KIC 1324 COM 2006

KARNATAKA INFORMATION COMMISSION

(Sri M. Venkatesh vs. PIO, DGP's Office, Bangalore)

ORDER

1. In the hearing held on 2-2-2007, the Respondent states that the information sought for has been furnished to the Complainant on 02-08-2006, 14-12-2006 and 27-1-2007. However Complainant states that he is in receipt of information only in respect of 8 districts. Respondent states that information in respect of 2 districts was sent on 27-1-2007. However, Complainant states that he is not in receipt of the said information. Respondent hands over a copy of the information already sent to the Complainant on the spot.

2. Complainant states that there is no system in the office of the DG & IGP to receive the applications under RTI Act and it is difficult to hand over the requests for information and obtain acknowledgement for it. Respondent however states that there is a tappal inward section on the V floor of the DGP's office to receive the general tappal including the requests for information under RTI Act. Further, he states that instructions have been issued to the tappal inward section to mark the request for information on top priority and sent them to concerned PIO for taking suitable action.

3. **However, the Respondent undertakes to put up suitable signs and displays at appropriate places in the office indicating names of the PIOs and Appellate Authorities as also the counter for receipt of requests for information for the benefit of general public. He also agrees to send a compliance report to the Commission in this regard within 15 days."**

(Decision was delivered on 2-2-2007)

C. Important decisions of the Karnataka Information Commission in respect of exemption under section 8(1) and also third party information under section 11 of the RTI Act:

Section 8(1) provides exemption of certain category of information from disclosure.

The relevant extract of section 8(1) of the RTI Act is reproduced below:

- “8. **Exemption from disclosure of information.-** (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-
- (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
 - (b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
 - (c) Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
 - (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
 - (e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
 - (f) information received in confidence from foreign Government;
 - (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
 - (h) information which would impede the process of investigation or apprehension or prosecution of offenders;
 - (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

- (j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.”

However, many of the public information officer and first appellate authorities had wrongly rejected the request for information on the ground that the information such as service particulars and assets and liabilities statements of the Government servants are personal, confidential and third party information, information in respect of availing benefit under welfare scheme and subsidy schemes, enquiry reports, etc. Commission had analyzed these issues and directed the public information officers and public authorities to provide appropriate information subject to certain conditions.

“KIC 348 APL 2006

KARNATAKA INFORMATION COMMISSION

(Sri R.V. Deshpande vs. (1) Sri Suresh & (2) PIO, & Deputy Registrar, Karnataka Lokayukta)

1. *Petitioner in his request for information 14-8-2006 has sought the following information: Assets and Liability statement of the Sri R.V. Deshpande MLA for the Assessment Year 1986-87 and 2004-05 and concerned PIO in the Lokayukta passed the order for the disclosure for the information after hearing the 3rd party considering information sought for as 3rd party. However, the Public Information Officer had withheld the disclosure of the information for the period of 30 days to enable the 3rd party to make appeal if any to the first appellate authority. However, the first appellate authority viz., the Registrar in the Lokayukta had declined to hear the appeal filed by the Appellant on the ground that Karnataka Information Commission is the first appellate authority as regards to the 3rd party concerning with the information has been sought. Thereafter, the 3rd party namely Sri R.V. Deshpande filed an appeal to the Commission. After hearing appeal filed by the 3rd party, the Commission noted as follows;*
2. *The 1st Respondent Sri Suresh has filed an application for information with the 2nd Respondent seeking information about assets and liabilities filed by Sri R.V. Deshpande, Member of Karnataka Legislative Assembly, before Karnataka Lokayukta for two years namely 1986-87 and 2004-05. The Second Respondent informs that while the assets and liabilities statement for the year 86-87 was treated as confidential by the third party, namely Sri R.V. Deshpande, that for 2004-05 was not so treated. As such the 3rd party procedure need not be followed for the year 2004-05. Further, even according to the statement filed by the Appellant himself the assets & liabilities statement of Sri Deshpande for the year 2004-2005 would be available on the website of the Election Commission of India.*
3. *Information sought about the year 86-87, however, does fall within the definition of the 3rd party information and the second Respondent has therefore rightly followed the procedure laid down under section 19(2) and 19(3) of the Act in respect of that year.*

4. The 2nd Respondent in his order dated 30-9-06 has held that the information sought for both the years should be disclosed. However, he ordered withholding of the information sought by the applicant for a period of 30 days or till the expiry of appeal period. The Commission of the view that the 2nd Respondent should have taken a different view with regard to the information for the year 2004-05 which was not treated as confidential by the third party.

5. Coming back to the preliminary issue it is seen that the first appellate authority has isolated and completely relied on Section 19(4) of RTI Act, in isolation, which states that the Information Commission shall give a reasonable opportunity of being heard to the third party, if the order of the PIO appealed against relates to information of a third party. The view of the Commission is that Section 19(4) should not be read in isolation, but should be read in conjunction with section 19(1) of the Act.

6. It is clear that Sections 19(1) and 19(2) deal with the first appeal and the period within which the first appeal is to be made to the departmental first appellate authority. Sections 19(3) and 19(4) deal with the 2nd appeal and the period during which the second appeal can be made is 90 days. Again Section 19(6) provides a time limit for appeals under sub sections 1 and 2 of Section 19 and provide that these shall be disposed off within a period not exceeding 45 days. This also substantiates the view that the appeals under Section 19(2) have to be made before the first appellate authority because the Act does not, in general provide any time limit for the Commission to dispose off the second appeal petitions filed under Section 19(3) of the Act.

7. The Commission also noted that only a part of the information sought by the Appellant was 3rd party information since only a part of the information sought was treated confidential by the concerned third party. For this reason also, the first appellate authority should have dealt with this appeal. On basis of the foregoing, the Commission decides that the first appellate authority erred in holding that he had no jurisdiction to entertain the appeal of the third party and that the State Information Commission was the first appellate authority by virtue of provisions of Section 19(4) of the Act.

8. In the result, the Commission remands the appeal petition back to the first appellate authority for a decision. As regards time limit for deciding appeal, the period during which this appeal was pending before the Commission would be excluded from the time limit laid down under section 19(6). Accordingly, the appeal shall be disposed off by the First Appellate Authority within 45 days of receipt of this order along with the appeal petition.

9. Operation of the order dated 13-09-06 passed by the 2nd Respondent is stayed till such time as the appeal is taken up for hearing for the first time by the first appellate authority.
(Decision was delivered on 8-12-2006)

KIC 1137 COM 2006

KARNATAKA INFORMATION COMMISSION

(Sri Gaurav Nigam Lucknow vs. PIO & Counselor-in-charge, Vanitha Shayvani, Office of Commissioner of Police Bangalore)

1. Petitioner in his Request for information dated 30-8-2006 has sought the following information:

I need the copy of the complaint filed by my wife Mrs. Tripti Nigam at VSV, Bangalore on 15/10/2006 against me along with the dates of counselling sessions of Mrs. Tripti Nigam at VSV office. I also need the information about the actions taken by VSV on Mrs. Tripti Nigam's complaint.

2. In response the respondent Organization which claimed that information sought for is exempt from Disclosure of Information under Section 8(1)(j) of the RTI Act of 2005 as it relates to the personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual.

3. Complainant filed a complaint to the commission on 22-10-2006. Commission heard the complaint on 10-1-2007 and passed the following orders.

(1) Commission went through the connected records and perused the information sought by the Complainant. After taking all factors into account, the Commission agrees that the information sought by the complainant is personal information and is exempted from disclosure under section 8(1) (j) of the Act.

(2) The Complainant states that he is the husband of the person who has lodged the complaint against him and she has also filed several cases against him and his parents, sisters etc. in Lucknow falsely alleging dowry harassment. He, therefore, needs this information as a defense in those cases.

(3) Commission advised the Complainant that the RTI Act treats all the information seekers alike, as citizens, and only such information as can be provided under the Act to any citizen can be provided to the applicant. The Act does not recognize any special purpose or relationship as justification for providing information that is otherwise exempted from disclosure under the Act. It is however open for the Respondent to consider the request of the Complainant outside the confines of the Act, on merits, in accordance with its practices and procedures.

4. In the result the complaint is rejected since the information sought is exempted from disclosure under section 8(1) (j) RTI Act.

(Decision was delivered on 10-1-2007)

KIC 1308 COM 2006

KARNATAKA INFORMATION COMMISSION

(Sri J. M. Rajashekar vs. Manager, Primary Co operative Agricultural and Rural Development Bank Ltd., Huvina Hadagali)

ORDER

1. In the hearing held on 7-2-2007, the Respondent states that the information sought relates to personal assets and liability statements filed by Sri Bennur. He states that this information is personal and therefore the First Appellate Authority, namely the President of the Bank has issued an endorsement to the Complainant on 05-09-2006 stating that the information sought is a personal information, that it also includes income tax details of Sri Bannur and that it is exempted from disclosure under the provisions of RTI Act also.

2. Commission observed that it has already held in earlier cases that information relating to assets and liabilities of Government servants is not personal information and in any case it is not exempted from disclosure under the provisions of RTI Act. Therefore, this information has to be made available to the Complainant. However, information such as Income tax PAN and Income tax returns filed by Govt. servants need not be provided.

3. Respondent states that information relating to last five years i.e. from 2001 to 2006 is available with the PCARD Bank Ltd., Huvina Hadagali and the same would be provided to the Complainant, within 15 days. Further, he states that information in respect of service particulars is available with the Secretary, Common Cadre Committee, Karnataka Co operative Agricultural and Rural Development Bank, Bangalore.

4. Respondent undertakes to transfer the relevant parts of the request for information to the Secretary, Common Cadre Committee, Karnataka Co operative Agricultural and Rural Development Bank, Bangalore under intimation to the Complainant.

5. Through a copy of this order, the Commission directs Secretary, Common Cadre Committee, Karnataka Coop. Agriculture and Rural Dev.Bank, Bangalore to furnish the required information to the Complainant, within 30 days, free of cost, through RPAD, under intimation to the Commission.

(Decision was delivered on 7-2-2007)

KIC 1291 COM 2006

KARNATAKA INFORMATION COMMISSION

(Smt. J. N. Jayashree vs. U.S., DPAR (Services-1), KGS, Bangalore)

ORDER

1. In the hearing held on 28-3-2007, the Complainant is present along with Sri M.N.Vijayakumar to assist her. Respondent Sri Ashok P. Atre, PIO and Under Secretary, DPAR (Services-1), K.G.S., Bangalore is present.

2. Complainant reads over her submission and hands over a copy of her submission to the Commission. Another copy is handed over to the Respondent

3. In her request for information dated 25-11-06, Complainant has sought names of IAS officers whose transfers were modified, details of notices etc. issued to them for not reporting and the reasons for modifying their transfer orders. Under item no. 2, she has sought names of all IAS officers who were posted to Gulbarga more than 3 times.

4. Respondent states that as regards item no. 2, the required information has been furnished. He admits that only part-information has been provided in response to item no.1. He represents that information sought also needs to be clarified. For example, the term, 'modification of transfer order' needs to be defined and clarified.

5. It was decided in consultation with the Respondent that 'modification of transfer order' means changing or canceling of a transfer order before the transferred officer(s) has been relieved or has handed over charge of his office.

6. It was also pointed out that in several instances, transfer orders are kept in abeyance or modified by the Government on its own motion and the concerned officers are orally advised not to handover or takeover charge. There is no question of any action being taken against the concerned officers in such cases.

7. Respondent states that action against the officer(s) would be necessary only if the transferred officer(s) declines to handover charge and / or join his new assignment. Respondent states that in several cases, it may not be very clear from records whether the transfer orders were modified at the behest of the officer or by the Government on its own initiative. Hence, the Dept can only provide factual information as regards number of orders modified and number of cases in which notices were issued to the concerned officers for disobeying the transfer orders and such disobedience is on record.

8. Respondent also states that information is not available in the form in which it is sought. It is spread over hundreds of files relating to transfer of IAS officers and has to be culled out from these files. Information is also very voluminous and as laid down u/s 7(9) of the Act, would disproportionately divert the resources of the public authority.

9. In view of the above submission made by the Respondent, Commission directs that the Respondent has the option of either culling out and providing the required information or in the alternative allow the Respondent to inspect all the files connected with transfer of IAS officers for last 6 years beginning March 2001. In other words if culling out of information disproportionately diverts the resources of public authority, then the information, as it exists in files, shall be allowed to be inspected by the Complainant, free of cost.

10. Respondent undertakes to comply with the above direction of the Commission within 15 days.

11. Complainant states that threat to physical safety of Sri M. N. Vijayakumar is real and that he and his family need some protection. He has been transferred to a post much below his seniority. There is no

work in this post and services of a senior officer are being wasted. He does not have any office, telephone, transport or staff. He needs some essential facilities to enable him to function in his official capacity. Complainant also states that Shri Vijay Kumar has not been paid his salary for last 5 months. Since above are not connected with Complainant's request for information, Commission directs the Respondent to take note of these submissions of the Complainant and bring them to the notice of the Government for such action as deemed appropriate. Respondent states that a G.O has since been issued on 27-3-07 for drawl and disbursal of Sri Vijaya Kumar's salary. Respondent agrees to pursue the matter with the IRLA and the A.G.'s office to get Shri Vijay Kumar's salary released as early as possible. He also agrees to bring the above facts to the notice of his superior officers including the Chief Secretary.

KIC 02 COM 06
KARNATAKA INFORMATION COMMISSION
ORDER

1. In the hearing held on 19-4-2006, Dr. T. K. Nagabhushana, Registrar, who was present was not sure who is the PIO as he is not having a copy of notification published by the RAGUHS. However, he has sent replies to the notice sent by the Commission on 5-4-2006. Further, he says that the Health University is an autonomous institution under the State Act and the matter of framing rules for implementation of the Act including sharing of answer script is before the Syndicate of the University and is likely to be issued after approval. He requests for ten days time for furnishing the information sought, for which the applicant's representative also agrees.
2. In the hearing held on 19-5-2006, the Respondent submits that the documents sought for by the Complainant have been furnished to him.
(Decision was delivered on 19-5-2006)

KIC 560 COM 2006
KARNATAKA INFORMATION COMMISSION
(Sri Krishnamurthy S. vs. PIO, Mysore University, Mysore)
ORDER

1. Petitioner in his request for information dated 22.05.2006 has sought the following information:
 - (1) I may be provided with specific information as to the faculties from which these three experts were drawn, as required under Regulation No.7. The information may state the subject area specialty of the three subject experts. I am not seeking in this request, any details regarding their names or their personal.
 - (2) I may also add that as advised by the Information Commissioner, such an information has no bearing on the secrecy of any examination. As such details of the faculty or area of expertise of the three subjects experts needs to be given so that I can draw an inference on the compliance to the regulation.
 - (3) The copy will have to reflection the area of a specialisation or expertise, as for example like Sociology or Botany or History or Psychology and so on and must state all the three experts area.
2. In response, the Petitioner issued an intimation declining to provide information. Complainant filed a complaint to the Commission on 02.07.06. When the Complainant heard the Respondent stated that as follows:
 - (1) Respondent states that he had earlier stated that there was no formal order of the Vice-Chancellor. His order was there on a note sheet, an extract of which have since been provided to the Complainant.

(2) Complainant states that he has now received the information sought for in this particular request for information and that he is satisfied with the information.”
(Decision was delivered on 2-2-2007)