



IN THE TRIPURA INFORMATION COMMISSION

P. N. Complex: Gorkhabasti : Agartala

Appeal No TIC-02 of 2009-10.

Sri Badal Kanti Choudhury
S/O Manindra Kr. Choudhury
A.K.Road, West Joynagar
Agartala: West Tripura
Cell Phone No-9774273668.....

Appellant

Vs.

1.Sri B.B. Das, Registrar of Cooperative Societies, Government of Tripura, Agartala (First Appellate Authority).

2.Sri Santanu DebBarma, Chief Executive Officer, Tripura State Cooperative Consumers' Federation Ltd., Sakuntala Road, Agartala (State Public Information Officer).

3.Sri Santi Kr. Deb Barma, Deputy Registrar of Cooperative Societies, Government of Tripura, Agartala (State Public Information Officer).....

Respondents

4. TSCCF- SHRISTI Infrastructure Development Limited represented by Sri Siddharth Kumar ChoudhuryThird Party Respondent

In the matter of a second appeal under section 19(3)
of the Right to Information Act, 2005.

PRESENT:

1. Sri B.K.Chakraborty
State Chief Information Commissioner

2. Sri D.K.Daschaudhuri
State Information Commissioner

For the Appellant: The appellant Sri Badal Kanti Choudhury himself.

For the Respondent No.1: Sri B.B. Das, Registrar of Cooperative Societies,
Government of Tripura, Agartala (First Appellate
Authority).

For the Respondent No. 2: Sri Santanu DebBarma, Chief Executive Officer, Tripura
State Cooperative Consumers' Federation Ltd.,
Sakuntala Road, Agartala (State Public Information
Officer).

For the Respondent No.3: Sri Santi Kr. Deb Barma, Deputy Registrar of
Cooperative Societies, Government of Tripura,
Agartala (State Public Information Officer).

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For the Third Party Respondent : Sri Siddharth Kumar Choudhury for and on behalf of the TSCCF- SHRISTI Infrastructure Development Limited duly authorized.

Date of lodging second appeal : 27.04.2009
Dates of hearing of second appeal: 14.05.2009, 25.05.2009, 11.06.2009 & 06.07.2009
Date of pronouncing judgment and order: 31.07.2009

JUDGMENT & ORDER

Facts:

1. This second appeal under section 19(3) of the RTI Act, 2005 (for short the Act) arose out of a memorandum of appeal dated 27.04.2009 of Sri Badal Kanti Choudhury (here in after referred to as the appellant) received by this Commission on the same date. Facts leading to this second appeal are that the appellant made a written request on 15.10.2008 to the State Public Information Officer (SPIO) in the office of the Registrar of Cooperative Societies (RCS), Government of Tripura, Agartala seeking seven items of information under the Act. Having no response within the statutory period from the concerned SPIO, the appellant preferred a first appeal on 16.11.2008 to the Registrar of Cooperative Societies, Government of Tripura being the First Appellate Authority (FAA). During the pendency of the first appeal, Sri S.K. DebBarma, Deputy Registrar of Cooperative Societies, Government of Tripura being the SPIO in the office of the RCS on 19.11.2008 provided partial information showing reason for inability to provide the rest information. The FAA decided the first appeal on 07.02.2009 by giving a direction to the SPIO in the office of the RCS, to transfer the written request of the appellant to the public authority of the Tripura State Cooperative Consumers' Federation Ltd. (TSCCF) for disposal of the written request seeking information, namely, supply of copy of the Agreement between the TSCCF and SHRISTI as sought for under item -4 of the written request in issue. Being aggrieved with the decision of the FAA, the appellant preferred this second appeal before this Commission for having access to the information sought for, namely, copy of the Agreement and the Memorandum of Understanding (MOU) executed between the TSCCF and SHRISTI and also for clarity in the replies furnished by the SPIO in the office of the RCS, Government of Tripura in respect of other queries made by the appellant in his written request in issue. Along with the memorandum of appeal, the appellant furnished photocopies of all the relevant papers.

2. On perusal of the memorandum of appeal with enclosures, it was found in form and within time and accordingly, was registered as a second appeal under section 19(3) of the Act.

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3. In response to the summons, Respondent 1 Sri B.B. Das, Registrar of Cooperative Societies, Government of Tripura and the FAA, Respondent 2 Sri S. DebBarma, Chief Executive Officer (CEO), TSCCF, Agartala and the SPIO and Respondent 3 Sri S.K. DebBarma, Deputy Registrar of Cooperative Societies, and the SPIO in the office of the RCS, Government of Tripura all appeared and submitted their respective written representations. During the pendency of this second appeal, Respondent 2 Sri S. DebBarma in response to the written request of the appellant as transferred by the Respondent 3 on 06.05.2009, sent intimation to the appellant denying disclosure of the Agreement executed between the TSCCF and SHRISTI invoking the provisions of section 8(1) and 9 of the Act and also relying on the confidential status of the documents as mentioned in Article IX of the Agreement. By submitting a written rejoinder dated 15.05.2009, the appellant expressed his dissatisfaction with the above decision of the Respondent 2 and sought for having access to the said documents in the form of certified copies.

4. Since, the Respondent 2 denied disclosure of the impugned documents on the ground of confidentiality, this Commission directed the Respondent 2 to produce the documents in issue before this Commission in a sealed cover for inspection. Accordingly, the Respondent 2 furnished photocopies of the said documents in a sealed cover.

5. On 11.06.2009, the date fixed for pronouncing the judgment and order, Respondent 2 the CEO, TSCCF appeared and moved an application dated 10.06.2009 requesting to implead the TSCCF- SHRISTI Infrastructure Development Ltd (TSIDL) as the Respondent 4 in this appeal on the ground that by virtue of the Joint Venture Agreement (JVA), a new Company named and styled as TSIDL came into existence, which was the owner and the custodian of the said JVA and MOU in issue. He further stated that the TSCCF has no authority to furnish any information relating to the said documents to any person. He also requested for postponement of pronouncing the judgment and order till the disposal of the said application. The Respondent 2 also enclosed with the said application, a copy of the written application dated 10.06.2009 of the TSIDL addressed to this Commission, which contained submission of the said Company claiming third party interest in the aforesaid documents of the JVA and MOU and opposed to the disclosure of the said documents to the appellant relying on the provisions of section 11 and different clauses of section 8 of the Act. The Company also requested to implead them as a necessary party to this appeal as Respondent.

6. After due consideration of the application dated 10.06.2009 of the Respondent 2 including the enclosures appended there with and the oral submission made by him, this Commission postponed the delivery of the judgment and order fixed on 11.06.2009. However, the order on the request for impleading the TSIDL as Respondent was kept reserved for want of adequate materials. This Commission directed the Respondent 2 to instruct the management of the Company to submit a written representation by a duly authorized person stating their case in connection with the present appeal

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including the following particulars and to appear in person before this Commission on 06.07.2009 :-

- (i) The names and other details of the members of the managing body of the Company.
- (ii) Address and contact details of the authorized person to represent the Company before this Commission.
- (iii) Grounds of objection to the disclosure of the documents in issue.
- (iv) A copy of the registration certificate including a copy of the Memorandum of Association of the Company be furnished.
- (v) If the Company has declared itself as the public authority under section 2(h) of the RTI Act, 2005? If so, whether or not, it has designated the First Appellate Authority, the State Public Information Officer and the State Assistant Public Information Officer. If done, the details of such stakeholders.

The Respondents 1 and 2 were also directed to submit additional written representations on the petition dated 10.06.2009 of the Respondent 2 communicating the stand taken by the Company before this Commission on 06.07.2009.

7. In response to the order dated 11.06.2009 of this Commission, Sri Siddharth Kumar Choudhury appeared on 06.07.2009 for and on behalf of the TSIDL duly authorized and submitted a written representation along with a sealed cover containing photocopies of the Memorandum and Articles of Association of the TSIDL, the renewed Municipal license, PAN Card, letter of Income Tax PAN Services Unit - 2 and TAN Card. The original copy of application dated 10.06.2009 of Sri Siddharth Kumar Choudhury submitted for and on behalf of the TSIDL received by this Commission 15.06.2009 was also put up in course of hearing held on 06.07.2009. Respondent 1 Sri B.B. Das, RCS, Government of Tripura and the FAA also submitted an additional written representation on 06.07.2009 stating inter- alia that the JVA was a document belonging to the TSIDL, that the custodian of the JVA was not known to the Respondent 1, that the communication made by the Respondent 1 with the Respondent 2 was the reproduction of a telephonic statement of Sri H.P. Kanoria, Director, TSIDL and that the Respondent 1 did not have any say as to whether the TSIDL was a public authority or not.

8. Heard oral submissions made by the appellant, the Respondents 1, 2 and 3 and Sri Siddharth Kumar Choudhury for and on behalf of the TSIDL.

Issues for decision:

9. In consideration of the facts and the circumstances of the case, the following issues require determination:-

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- (i) Is the TSIDL a necessary party to this appeal being a third Party in respect of the information sought for by the appellant? If so, whether or not it has any reasonable ground to oppose disclosure of the information.
- (ii) Are the information provided by the Respondent 3 against items- 1, 2, 3, 5, 6 & 7 as mentioned in the written request dated 15.10.2008 of the appellant clear and adequate?
- (iii) Does the order dated 07.02.2009 of the Respondent 1 passed in Appeal No. RTI/APPL/4 of 2009 suffer from any impropriety?
- (iv) Is the decision of the Respondent 2 denying disclosure of the Agreement and MOU executed on 02.04.2005 between the TSCCF and SHRISTI in the form of copy maintainable?
- (v) To what relief the appellant is entitled?

Reasons for decision:

10. Issue No.(i) We have examined the photocopies of the JVA and MOU, registered Memorandum of Articles of Association of TSIDL, the written representations of the TSIDL submitted by the authorized representative Sri S.K. Choudhury and also the written representations of the Respondents 1 and 2. To ascertain the interest of the TSIDL in any of the information sought for by the appellant, it is necessary to know the factual position about the nature and description of the said information and their latest status. Out of 7 items of information sought for by the appellant under his written request dated 15.10.2008 pertaining to AITORMA project at Agartala, the Respondent 3 being the SPIO in the office of the RCS, Government of Tripura provided 6 items of information under items – 1, 2, 3, 5, 6 and 7 as mentioned in the written request of the appellant in issue. In compliance with the order dated 07.02.2009 of the Respondent 1, the Respondent 3 on 02.03.2009 transferred the written request in issue to the Respondent 2 for supply of the information sought for under item - 4, the description of which may be summarized as – 'If the selling price was not received by the Cooperative Society, on what Agreement/MOU the said deal was materialized (copy of the Agreement/MOU is to be enclosed)'. The reply of the Respondent 3 to the query was that the Agreement belonged to the TSCCF-SHRISTI. As the documents belonged to other organization, the Respondent 3 had no authority or custody for delivery of the copy of the said documents. Sri S.K. Choudhury, the representative of the TSIDL in his written representation dated 10.06.2009 submitted that the Joint Venture Company i.e. TSIDL consisted of two entities viz ; SHRISTI Infrastructure Development Corporation Ltd (SIDCL) and TSCCF. The TSIDL is a developer Company entrusted for execution of the AITORMA project including construction, marketing, operation and maintenance thereof during the development period. It is also submitted that all the queries made by the appellant were touching their interest and, therefore, the Company should be added as a party to this proceedings. In the said written representation, Sri S.K. Choudhury also submitted that the information sought for

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by the appellant cannot be divulged because of the third party interest clause under section 11 of the Act and under different sub sections of section 8 i.e. the exemption clauses. In his written representation dated 06.07.2009, Sri S.K. Choudhury reiterated his earlier submission and argued for impleading the said Company as a party to this appeal and to consider their objection to the disclosure of the said information.

11. The information sought for under item – 4 of the written request of the appellant was corollary to items – 1, 2 & 3 of the said written request, under which the appellant sought to know (1) the reason for demolishing AITORMA in 2005; (2) if the land after demolishing had been handed over and sold to any private party and (3) the price fixed for selling the property to private party. The substance of the replies given to the above queries by the Respondent 3 were that AITORMA was demolished to construct multistoried commercial complex, that the land was not handed over or sold to any private party and that the question of fixing selling price did not arise. In the backdrop, the information sought for under item- 4 is to be considered. The fact revealed is that AITORMA land was not sold and no selling price was fixed, which information had already been intimated to the appellant by the Respondent 3. Now, the information left to be provided under item - 4 are copies of the JVA and the MOU, disclosure of which is opposed by the Respondent 2 and the TSIDL. Perusal of the JVA and MOU in issue reveals that these two documents were executed between SIDCL and TSCCF with the main purpose of setting up of a Company for the execution of the AITORMA project and by virtue of the said JVA and MOU, the TSIDL was constituted. Therefore, there remains no controversy as to the involvement of interest of the said Company in the affairs relating to infrastructure development of AITORMA project. Thus, the position of the TSIDL as a third party Respondent is considered to be quite justified and let it be treated as a third party Respondent in the present appeal.

12. After appreciation of the facts and the circumstances narrated above and the submission placed by Sri S.K. Choudhury for and on behalf of the TSIDL, we hold that notwithstanding the fact that the TSIDL is a third party in the present appeal, its opposition to the disclosure of the information is found to be groundless for the reasons stated below:-

(i) Firstly, out of 7 items of information, the Respondent 3 being the SPIO in the office of the RCS, Government of Tripura had already provided the information in respect of items – 1, 2, 3, 5, 6 & 7 to the appellant.

(ii) Secondly, as regards the information sought for under item- 4, the Respondent 2 being the SPIO in the TSCCF denied disclosure on the ground that it has no authority or custody over the JVA and MOU in issue. In course of hearing, the Respondent 3 who is the SPIO in the office of the RCS, Government of Tripura disclosed that the copies of the Agreement and the MOU in issue had already been laid in the House of the Tripura Legislative Assembly. This fact was also admitted by the Respondents 1 and 2. According to the proviso to section 8(1)

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of the Act, the information which cannot be denied to the Parliament or a State legislature shall not be denied to any person.

(iii) Thirdly, since the JVA and MOU in issue had already been laid in the House of the Tripura Legislative Assembly, being records of the concerned public authority, the said documents in issue are in the domain of the public and, therefore, the material information were subject to be published pro-actively by the concerned public authority in compliance with the provisions of section 4(1) (b) (v) of the Act.

(iv) The submission of the TSIDL that they are the sole custodian of the JVA and MOU in issue is not correct. The TSCCF being the First Party in execution of the JVA and MOU in issue is also the natural custodian of the said documents.

13. Having regard to the discussion made here in above, although the TSIDL being a third party has some interest in the affairs of the AITORMA project, for which the JVA and MOU had been executed but, there is no scope for it to raise any objection to the disclosure of the information/documents, which had already been placed in the public domain. Thus, the greater public interest prevails over particular Company interest and, therefore, the objection of the TSIDL being the third party to the disclosure of the JVA and MOU is not sustainable.

14. Issue No.(ii): We have perused the memorandum of appeal with rejoinder thereto, the written representations of the Respondents 1, 2 & 3 and the additional written representation of the Respondent 2. We have also perused the contents of the JVA and the MOU executed between the TSCCF and SHRISTI on 02.04.2005. We have also considered the oral submissions placed by both the parties.

15. After careful appreciation of the information provided by the Respondent 3 being the SPIO in the office of the RCS, Government of Tripura in response to the written request of the appellant dated 15.10.2008, it is found that the information provided as against items- 1, 2, 3 & 5 were adequate and unambiguous. There was no want of clarity as agitated by the appellant. In course of hearing, the appellant also admitted that after having discussion with the Commission, he was satisfied with the information provided under the aforesaid items. However, he insisted that the information provided under items – 6 & 7 were not adequate and clear. In this circumstance, it is necessary to reproduce below the information sought for under items – 6 & 7 and the replies thereto given by the Respondent 3 :-

" Q 6. The Loss accrued for such unwarranted deal is to be intimated?

Ans. Not known.

Q 7. From which date the new construction of the Aitorma building will start?

Ans. Construction work will start after completion of preliminary work for the proposed construction."


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16. Careful scrutiny of the above information explicit that both the information provided by the Respondent 3 leave room for further clarification to the extent that 'Not Known' cannot be a answer to any query since an SPIO is under obligation to supply the information on the basis of the current status of the records pertaining to the information. If no such record exists in the custody of the concerned public authority, the SPIO should have replied accordingly. Again, the concerned SPIO did not clarify the words 'preliminary work'. So he is under obligation to mention the names of the works meant by 'preliminary work'. Therefore, the Respondent 3 being the SPIO in the office of the RCS, Government of Tripura is under obligation to provide specific information to the appellant against items 6 & 7 in the light of the discussion made here in above.

17. Issue No.(iii): We have perused the order dated 07.02.2009 passed in Appeal No. RTI/APPL/4 of 2009 by Sri B.B. Das, Registrar of Cooperative Societies, Government of Tripura and the FAA. The above first appeal was preferred by the appellant on 16.11.2008. A written rejoinder to the memorandum of first appeal was also submitted on 20.01.2009 challenging the decision of the Respondent 3 being the SPIO given on 19.11.2008. In the said written rejoinder to the memorandum of first appeal, the appellant sought for two reliefs firstly, copy of the Agreement between the TSCCF and SHRISTI and secondly, clarity in replies given by the Respondent 3. The Respondent 1 being the FAA in his order dated 07.02.2009 did not consider the second part of the relief at all. He simply considered the first part of the relief and passed the order stating that since the TSCCF is a public authority having its own SPIO under the provision of RTI Act, the required information should be supplied by it, if otherwise permissible. He also directed the Respondent 3 being the SPIO to issue requisition form under the provision of Rule 13(7) of the Tripura Right to Information Rules, 2008 (for short the Rules). Keeping in view the facts stated above, we are constrained to observe that the decision of the Respondent 1 being the FAA was incomplete since he did not consider the second part of the relief sought for by the appellant at all. However, as regards the first part of the relief, we are of the view that the order passed by the Respondent 1 was quite inconformity with the relevant provisions of the Act and the Rules. We are constrained to make observation that the Respondent 1 being the FAA should be more careful in future in deciding the first appeal. The second issue is decided accordingly.

18. Issue No.(iv): The Respondent 2 in his written representation dated 23.05.2009 raised so many points including challenging the authority of this Commission to entertain the allegations of the appellant against his decision denying disclosure of the information. According to him, since there was an FAA in the organization of the TSCCF, the appellant should have challenged the matter before the former instead of coming before this Commission. Without disputing the contention of the Respondent 2, it is to be kept in mind that a dissatisfied information seeker has the option either to lodge a complaint under section 18(1) of the Act before this Commission or to prefer a first appeal under section 19(1) of the Act before the FAA when he considers the rejection of his request for information as unreasonable. A duty is also cast upon the SPIO to intimate the



information seeker the name and other details of the FAA and the period by which the first appeal should be preferred. But, the Respondent 2 being the SPIO failed to do so. In the present case, since there was a proceeding of second appeal already pending before this Commission, it was quite justified for this Commission to entertain the grievances of the appellant against the decision of the Respondent 2 being the SPIO considering it as a complaint under section 18(1) of the Act. There is no scope for the Respondent 2 to be prejudiced by such procedure adopted by this Commission.

19. As regards justification shown by the Respondent 2 in support of his decision not to disclose the JVA and the MOU executed between the TSCCF and SHRISTI are not at all found to be maintainable. In his decision dated 06.05.2009 as communicated to the appellant, it was stated that the Agreement in issue was confidential according to the Article IX of the Agreement and that such disclosure was barred under sub section (1) of section 8 and section 9 of the Act. We have read the Article IX of the Agreement in issue wherein, we do not find any iota of words treating the Agreement itself to be confidential. The Agreement does not contain anything of commercial confidence, trade secret or intellectual property, the disclosure of which would harm the competitive position of third party. So, there is no scope for the Respondent 2 to invoke the provisions of section 8(1) or section 9 of the Act to exempt the Agreement and the MOU in issue from disclosure as argued by the Respondent 2.

20. It has already been discussed in paragraphs 12 and 13 above that the documents namely, JVA and MOU had already been laid in the house of the Tripura Legislative Assembly and thus, they were in the public domain. Consequently, the said documents being the records are covered by the definition of 'information' within the meaning of section 2(f) of the Act held in the custody of the concerned public authority. So, the aforesaid information was liable to be published proactively by the concerned public authority. TSCCF is a body subordinate to the Department of Cooperation, Government of Tripura and thus a public authority. On demand by this Commission, the Respondent 2 being the SPIO in the TSCCF had already supplied photocopies of the aforesaid documents to this Commission for examination. The TSCCF is the co-executant of the documents in issue. So, the Respondent 2 being the SPIO in the TSCCF is debarred from taking a contrary plea at this stage that he is not in possession of the documents in issue. The Respondent 2 being the SPIO of TSCCF is, therefore, under obligation to provide certified copies of the JVA and the MOU in issue to the appellant free of charge since the information could not be provided by the concerned SPIO within the statutory period as prescribed by section 7(1) of the Act.

21. Some procedural irregularities committed by the Respondent 2 in disposing of the written request seeking information in issue have not escaped our notice, which prompted us to make some observations for his future guidance. Firstly, the Respondent 2 did not use the format for intimation of such denial to the appellant as prescribed under the Rules wherein, there is a

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provision for intimating the name and other details of the FAA and the period by which the information seeker should prefer the first appeal. Secondly, the Respondent 2 in his written representation submitted that he acted on the advice of a lawyer to dispose of the demand for disclosure of the information. This practice is absolutely contrary to the provisions of the Act and the Rules. An SPIO being a statutory authority shall act quasi - judicially following the principle of natural justice and the relevant provisions of the Act and the Rules independently according to his own judgment and wisdom without being dictated by others. Because he himself only is accountable and responsible for his act. He cannot shift his responsibility to the shoulder of anybody else for taking any decision under the Act.

22. Issue No.(v): Having regard to the facts discussed here in above, we hold that the appellant is entitled to have further specific information as against items - 6 & 7 of his written request in issue from the Respondent 3 being the SPIO in the office of the RCS, Government of Tripura and he is also entitled to have access to the JVA and the MOU executed between the TSCCF and the SHRISTI on 02.04.2005 in the form of certified copy from the Respondent 2 being the SPIO in TSCCF.

Decision:

23. In fine, this second appeal is allowed on contest with the following orders:-

- (i) The decision dated 06.05.2009 of the Respondent 2 being the SPIO in TSCCF denying disclosure of the Joint Venture Agreement and the MOU executed between the TSCCF and the SHRISTI on 02.04.2005 is hereby set aside. He is directed to provide the certified copies of the above two documents as sought for under item - 4 of the written request in issue to the appellant within a period of 15 days from the date of passing of this judgment and order free of charge since the SPIO could not provide the information to the appellant within the statutory period as prescribed by the Act.
- (ii) The Respondent 3 being the SPIO in the office of the RCS, Government of Tripura is directed to provide specific and unambiguous information to the appellant as sought for under items - 6 & 7 of his written request dated 15.10.2008 in the light of discussion made in paragraph - 16 above within a period of 15 days from the date of passing of this judgment and order.

24. Let copy of this order be sent to the appellant and the Respondents.

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25. Pronounced.

Sd/-
(D.K.Daschauthuri)
State Information Commissioner

Sd/-
(B.K.Chakraborty)
(State Chief Information Commissioner)

Authenticated

31/7/09
(S.C.Saha)
Secretary

Tripura Information Commission

Tripura Information Commission
P. N. Complex: Gorkhabasti : Agartala

Appeal No- 02 of 2009-10 / 29-33

Dated, 31.07.2009

Copy to:-

- 1.Sri Badal Kanti Choudhury, S/O Manindra Kr. Choudhury, A.K.Road, West Joynagar, Agartala: West Tripura (Appellant).
- 2.Sri B.B. Das, Registrar of Cooperative Societies, Government of Tripura, Agartala (First Appellate Authority) – Respondent 1.
- 3.Sri Santanu DebBarma, Chief Executive Officer, Tripura State Cooperative Consumers' Federation Ltd., Sakuntala Road, Agartala (State Public Information Officer)- Respondent 2.
- 4.Sri Santi Kr. Deb Barma, Deputy Registrar of Cooperative Societies, Government of Tripura, Agartala (State Public Information Officer in the office of the RCS, Government of Tripura) – Respondent 3.
5. Sri Siddharth Kumar Choudhury, authorized representative of the TSCCF-SHRISTI Infrastructure Development Limited, Corporate Office – Ganga Jamuna Building, 28/1 Shakespeare Sarani, Kolkata – 700 017 – Third party Respondent.

31/7/09
(S.C.Saha)
Secretary

Tripura Information Commission