

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.4752 OF 2008

Vikas Sahakari Sakhar Karkhana Ltd.,
At Vaishalinagar, Post-Nivli,
Tq. and District-Latur,
Through its Managing Director,
Shri S.D. Bhokare,
Age-51 years, Occu:Service,
R/o-Vaishalinagar, Post-Nivli,
Tq. And District-Latur

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through the Secretary for
Cooperation Department,
Mantralaya, Mumbai,
- 2) The Regional Joint Director of Sugar,
Maharashtra State at Nanded,
District-Nanded,
- 3) Babu s/o Hanumantrao Khandade,
Age-33 years, Occu:Agriculture,
R/o-Gangapur, Tq-Latur,
District-Latur.

...RESPONDENTS

...

Mr. V.D. Hon, Senior Counsel for Petitioner.
Mrs. Y.M. Kshirsagar, A.G.P. for Respondent
Nos.1 and 2.
Mr. N.D. Kendre Advocate for Respondent No.3.

...

WITH

WRIT PETITION NO.992 OF 2009

Ahmednagar Zilla Maratha Vidya
Prasarak Samaj Ahmednagar
Laltaki Road, Ahmednagar,
District-Ahmednagar,
Dist-Ahmednagar,
Through its President,
Genuji Dagduji Khandeshi,
Age-62 years, Occu:Business,
R/o-Agarkar Mala, Station Road,
Ahmednagar, Dist-Ahmednagar.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through the Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai,
- 2) The State Information Commission,
Mumbai, Bench at Aurangabad,
Through the State Information
Commissioner, Aurangabad,
- 3) Sham s/o Suram Shinde,
Age-Major, Occu:nil,
R/o-C/o-Nilesh Satyawam Mhase,
Irrigation Colony, Fakirwada,
Ahmednagar, Dist-Ahmednagar.

...RESPONDENTS

...

Mr. V.D. Hon, Senior Counsel for Petitioner.
Mrs. Y.M. Kshirsagar, A.G.P. for Respondent
Nos.1 and 2.

...

WITH
WRIT PETITION NO.1301 OF 2009

The Jalgaon Peoples Co-operative Bank Ltd.,
152, Polan Peth, Dana Bazaar,
Jalgaon, Dist-Jalgaon,
Through its Authorized Officer,
Manohar Vitthal Atale,
Age-36 years, Occu:Service,
R/o-60, Zilla Peth, Jalgaon,
Dist-Jalgaon.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through the Secretary,
Cooperation Department,
Mantralaya, Mumbai,
- 2) The Commissioner for Cooperation
and the Registrar,
Co-operative Societies,
Maharashtra State, Pune,
- 3) The Public Information Officer
and Special Auditor, Class-I,
Co-operative Societies,
Maharashtra State,
Having his office at
C/o- Office of the Commissioner,
Cooperation and the Registrar,
Cooperative Societies,
Maharashtra, Pune.
- 4) The District Deputy Registrar,
Co-operative Societies, Jalgaon,
District-Jalgaon,

- 5) Sanmukhdas s/o Sukhramdas Mandhwani,
Age-51 years, Occu:Business,
R/o-Sukhamrut Apartment,
Kawarnagar, Jalgaon,
District-Jalgaon.

...RESPONDENTS

...
Mr. V.D. Hon, Senior Counsel for Petitioner.
Mrs. Y.M. Kshirsagar, A.G.P. for Respondent
Nos.1 to 4.

...

WITH

WRIT PETITION NO.5327 OF 2012

WITH

CIVIL APPLICATION NO.12858 OF 2014

Vikas Sahakari Sakhar Karkhana Ltd.,
At Vaishalinagar, Post-Nivli,
Tq. and District-Latur,
Through its Managing Director.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through the Secretary for
Cooperation Department,
Mantralaya, Mumbai,
- 2) The Commissioner for Co-operation
And the Registrar, Co-operative
Societies, Maharashtra State, Pune,

- 3) The Special Auditor, Class-I,
Co-operative Societies (Sugar),
Latur, District-Latur,
- 4) Govind Narayan Mundhe,
Age-Major, Occu:Agriculture,
R/o-Rameshwar, Tq. & Dist-Latur,
- 5) The District Deputy Registrar,
Co-operative Societies, Latur,
District-Latur.

...RESPONDENTS

...
Mr. V.D. Hon, Senior Counsel for Petitioner.
Mrs. Y.M. Kshirsagar, A.G.P. for Respondent
Nos.1 to 3 and 5.
...

WITH

WRIT PETITION NO.187 OF 2008

WITH

CIVIL APPLICATION NO.7307 OF 2012

Jalgaon Zilla Sahakari Doodh
Utpadak Sangh Limited, Jalgaon,
Through its Managing Director.

...PETITIONER

VERSUS

- 1) The Divisional Deputy Registrar,
Co-operative Societies (Dairy),
Nashik Division, Nashik,
- 2) The Assistant Registrar,
Co-operative Societies (Dairy),
Nashik Division, Nashik,

- 3) The Collector, Jalgaon,
District-Jalgaon,
- 4) Devidas s/o Kashinath Patil,
Age-52 years, Occu:Service,
R/o-"Matoshri", Gat No.28,
Plot No.33, S.M.I.T. College,
Jalgaon, District-Jalgaon.

...RESPONDENTS

...

Mr. V.D. Hon, Senior Counsel for Petitioner.
Mrs. Y.M. Kshirsagar, A.G.P. for Respondent
Nos.1 to 3.

...

**CORAM: S.V. GANGAPURWALA AND
A.I.S. CHEEMA, JJ.**

DATE : 10TH APRIL, 2015

ORAL ORDER :

1. All these matters challenge the order passed by the authorities under the Right to Information Act, 2005. According to Mr. Hon learned Senior Counsel, the petitioners are the Co-operative Societies registered under the provisions of Maharashtra Co-operative Societies Act. According to the learned counsel the

provisions of Right to Information Act, 2005 would not be applicable to the petitioner Co-operative Societies. The Registrar of Co-operative Societies exercises only supervisory, regulatory and indirect control and the real control is exercised by the Management or the governing body of the society. The Managing Body is elected from the members of the General Body. There is no substantial control nor the petitioners are substantially financed by the State. As such the Co-operative societies do not come within the ambit and purview of the public authority as defined under section 2 (h) of the Right to Information Act, 2005. The learned Senior Counsel relies on the Judgment of the Apex Court in a case of Thalappalam Ser. Coop. Bank Ltd. and Others V/s State of Kerala and Others reported in 2013 AIR (SCW) 5683 so also the Judgment of the Division Bench of this Court in a case of Agriculture Produce Market Committee V/s Meghraj Pundlikrao Dongre and Others reported in 2011 (5)

Bom. C. R. 128.

2. The learned A. G. P. submits that, the petitioner Societies/Banks come within the ambit and purview of the definition of public authority as defined under the Right to Information Act, 2005. Even proviso to section 8 (j) of the Right to Information Act, 2005 would be relevant. The said aspect has been considered by the authority while delivering impugned Judgment assailed in Writ Petition No. 6271 of 2006. According to the learned A.G.P., there is a direct control of the Registrar Co-operative Societies over the working of the Co-operative Societies. Even many times State gives counter guarantee to the Sugar Factories.

3. Mr. Kendre, the learned counsel for Respondent No. 3 in Writ Petition No. 4752 of 2008 also adopts the arguments of learned A.G.P.

4. We have considered the submissions

canvassed by the learned counsel for the respective parties. The Apex Court in a case of Thalappalam Ser. Coop. Bank Ltd. and Others V/s State of Kerala and Others referred supra, observed that the Co-operative Society in the said case was not substantially financed by the State. It further held that the degree of finance must be actual, existing, positive and real to a substantial extent, not moderate, ordinary, tolerable etc. The control should also be of a substantive nature and not mere supervision or regulation.

5. The Petitioner Co-operative societies are not creature of statute but are registered under the Maharashtra Co-operative Societies Act. In the present case also the contention of Petitioners is that they are not substantially financed by the State. The said statement is not controverted by the State or any of the Respondents. In view of the same the Petitioner

societies would not come within the purview of the definition of public authority as enshrined under Section 2 (h) of the Right to Information Act, 2005. The Division Bench of this Court in a case of Agriculture Produce Market Committee V/s Meghraj Pundlikrao Dongre and Others referred supra, in para 14 had observed as under -

"We, thus, hold that the appellant/ Market Committee is established and constituted as an institution of self-Government and is a local Authority and by law made by the State Legislature. Consequently, the provisions of the RTI Act do apply to the appellant / APMC. Before parting with the judgment, looking to the increase in number of scams in the Co-operative Credit Societies, Urban and Other Co-operative banks due to frauds played by the persons within the Society or the bank causing severe losses to the poor depositors and since the money of the depositors is involved in such societies / banks, it would be far better to cover all the Co-operative Credit Societies / banks etc. under the RTI Act. We recommend accordingly to the Central Government. In the result, we find no merit in the present appeal. Hence, the L. P. A. is dismissed."

. This also shows that, the Division Bench of this Court had held that, the Co-operative Societies/Banks do not come within the ambit of Right to Information Act, 2005 and recommendation was made to the Central Government to take steps to bring it within the ambit of Right to Information Act, 2005.

6. Considering the aforesaid aspects of the matters, all the Writ Petitions are allowed. The impugned orders are quashed and set aside. Rule is accordingly made absolute. No costs.

7. In view of disposal of the Writ Petitions itself, nothing survives for consideration in the Civil Applications. All pending Civil Applications are disposed of.

[A.I.S.CHEEMA, J.]

asb/APR15

[S.V. GANGAPURWALA, J.]