

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29 .04.2015

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.A.Nos.2425 to 2428 & 2500 of 2013

W.A.No.2425 of 2013:

The Public Information Officer,
O/o. The Illayankudi Co-operative
Urban Bank Ltd.,
No.349, Kamarajar Road,
Illayankudi - 630 702,
Sivagangai District.

... Appellant/Petitioner

Vs.

- 1.The Registrar,
Tamilnadu Information Commission,
No.37, Annasalai,
Teynampet, Chennai - 18.
- 2.The Public Information Officer,
O/o.The Joint Registrar of Co-operative
Societies, Madurai Road,
Sivagangai District.

3.S.P.S.Zafurallah

... Respondents/Respondents

W.A.Nos.2426 to 2428 of 2013:

The General Manager,
The Illayankudi Co-operative
Urban Bank Ltd.,
No.349, Kamarajar Road,
Illayankudi - 630 702
Sivagangai.

... Appellant/Petitioner in W.A.No.2426 to
2428 of 2013

Vs.

K.M.Akbar Ali

... Respondent/Respondent in W.A.No.2426 to
2428 of 2013

W.A.No.2500 of 2013:

The Rasipuram Co-operative
Urban Bank Ltd., Rep., by its
General Manager,
No.58, Nagara Vanki Street,
Rasipuram - 637 408
Namakkal District.

... Appellant/Petitioner

Vs.

1.The Deputy Registrar of
Co-operative Societies,
Namakkal Circle,
Namakkal.

2.The Deputy Registrar/Special Officer,
Rasipuram Co-operative Urban Bank Ltd.,
Rasipuram, Namakkal District.

3.Nalveni. Viswaraj ... Respondents/Respondents

Common Prayer:-Writ Appeals filed under Section 15 of the Letters patent against the common order dated 25.04.2012 passed by learned single Judge in W.P. Nos.24746 of 2009, 16041, 17738, 17739 of 2010, and 9763 of 2008.

WP.No.24746 of 2009:

This Petition praying for the issue of a Writ of Certiorari to call for the records of the 1st respondent in Case No.14378/Enquiry/09 dt.16.11.2009 and quash the same.

W.P.No.16041 of 2010:

This writ petition praying for the issue of a Writ of Certiorari to call for the records of the Tamil Nadu Information Commission in Case No.1001814/Enquiry/2010, dated 16.6.2010 and quash the same by declaring that the petitioner bank is not a public authority as defined under Section 2(h) of the RTI Act.

WP.No.17738 and 17739 of 2010:

These petitions praying for the issue of a Writ of Certiorari to call for the records of the Tamil Nadu Information Commission, Chennai 18 in case No.5314/Enquiry/2010 and No.5849/Enquiry/2010 dated 23.7.2010 and quash the same by declaring that the petitioner bank is not a public authority as defined under Section 2(h) of the RTI act.

WP.No.9763 of 2008:

This Petition praying for the issue of a Writ of Certiorari to call for the records of the 1st Respondent in Na.Ka.No.6388/2007 Pa.Tho(II) dated 25.2.2006 and consquential proceedings of the second respondent dated 18.3.2008 and quash the same by declaring that the petitioner bank is not a public authority as defined under Section 2 (h) of the RTI Act.

For Appellant .. Mr.M.S.Palaniswamy in all W.As.,

For Respondents .. Mr.Niranjana Rajagopalan for
G.R.Associates for R1

Mr.S.T.S.,Murthy G.P., for R2

Mr.N.R.R.Arun Natarajan for R3 in
W.A.No.2426 to 2428 of 2013

Mr.Vivek Sriram for W.A.No.2500/2013

COMMON JUDGMENT

(Order of the Court made by Hon'ble Mr.Justice T.S.SIVAGNANAM)

These appeals by Co-operative Societies, registered under the provisions of the Tamil Nadu Co-operative Societies Act, 1983, are directed against the dismissal of W.P.No.9713 of 2012, etc., batch by common order dated 25.04.2012.

2. The Appellants were the Writ Petitioners. Though varied prayers were sought for in the Writ Petitions, the question which fell for consideration is whether a co-operative registered under the Tamil Nadu Co-operative Societies Act, 1983, is a "public authority" within the meaning of Section 2(h) of the Right to Information Act, 2005 (hereinafter referred to as "RTI Act". The Writ Petitions were dismissed, consequently holding that the co-operative societies fall within the definition of "public authority" as defined under Section 2(h) of the RTI Act. Challenging the said order, these appeals have been preferred contending that the co-operative societies is not a body, which is controlled by the Government and hence, does not fall within the definition of Section 2(h) of the RTI Act. Further, it is contended that the word "control" in Section 2(h) of the RTI Act relates to administrative control and not a regulatory control and the various provisions relied on by the Writ Court and the judgments referred pertain to a regulatory control and are not applicable to the facts and circumstances of the case. It was further contended that though the co-operative societies are manned by Special Officer appointed by the Government, it would not become a "public authority" to be covered under the provisions of RTI Act.

3. The learned counsel appearing for the Appellants submitted that the legal issue involved is squarely covered by the decision of the Hon'ble Supreme Court in the case of Thalappalam Ser. Coop., Bank Ltd., and Others vs. State of Kerala and others reported in (2013) 7 MLJ 407 (SC).

4. The learned counsel appearing for the Tamil Nadu Information Commission, the first respondent in W.A.No.2425 of 2015, while agreeing, that after the decision of the Hon'ble Supreme Court in the case of Thalappalam Ser. Coop., Bank Ltd., and Others, (supra), the Commission has been following the decision holding that the co-operative societies would not fall within the definition of "public authority", however, he seeks to add caveat contending that there is a slight distinction, if the society is manned by a Special Officer appointed by the Government.

5. The submission of the learned counsel appearing for the private respondents who are the applicants under the RTI Act is also on the same lines as that of the learned counsel appearing for the Tamil Nadu Information Commission.

6. In the case of Thalappalam Ser. Coop., Bank Ltd., and Others, (supra), appeals were filed by Co-operative societies and the question which fell for consideration before the Hon'ble Supreme Court was whether a co-operative society registered under the Kerala Co-operative Societies Act, 1969, will fall within the definition of "public authority" under Section 2(h) of the RTI Act and be bound by the obligations to provide information sought for by a citizen under the RTI Act. On behalf of the Co-operative Societies, it was contended that the societies are not statutory bodies and are not performing any public functions and will not come within the expression "State" within the meaning under Article 12 of the Constitution of India. The State of Kerala sought to sustain the circular issued by the Registrar of Co-operative Societies by contending that the Registrar has got all pervasive control over the societies with power to supersede the management of the society and to appoint an Administrator and this would indicate that though the societies are body corporates, they are under the statutory control of Registrar of Co-operative Societies. Before the Hon'ble Supreme Court, the Co-operative Societies registered under the provisions of the Kerala Act, which are owned, controlled or substantially financed by the State or Central Government or formed, established or constituted by law made by Parliament or State Legislature, were not subject matter of consideration. In other words, the appeals related to cases pertaining to Co-operative Societies which do not fall in the above mentioned categories.

7. On the first issue with regard to Co-operative Societies and Article 12 of the Constitution, the Hon'ble Supreme Court pointed out

that a clear distinction can be drawn between a body which is created by a statute and a body much after having come into existence is governed in accordance with the provisions of a statute and the societies which were subject matter of the appeals were held to fall under the later category, i.e., governed by the Kerala Societies Act and not statutory bodies, but only body corporate within the meaning of Section 9 of the Kerala Co-operative Societies Act. After referring to several decisions of the Hon'ble Supreme Court, it was held that the said societies which were subject matter of those appeals will not fall within the expression 'State' or 'instrumentally of the State' within the meaning of Article 12 of the Constitution.

8. On the next issue relating to Constitutional provisions and Co-operative autonomy, it was held that co-operative societies are not treated as unit of self Government like Panchayat and Municipalities. The Hon'ble Supreme Court then proceeded to examine the provisions of the Right to Information Act, the effect of words "substantially financed" and the restrictions and limitations, which could be imposed in the larger public interest and held that the co-operative societies registered under the Kerala Co-operative Societies Act will not fall within the definition of "public authority" as defined under Section 2(h) of the RTI Act.

9. In the light of the above, we have no hesitation to hold that the legal issue arising in these appeals are squarely covered by the decision of the Hon'ble Supreme Court in the case of Thalappalam Ser. Coop., Bank Ltd., and Others, (supra). The distinction sought to be drawn by the learned counsel for the respondent stating that the provisions of the RTI Act would be applicable to cases where the Government Officers are appointed to function as Special Officers of the society, when there is no elected Board of Directors, could hardly make any difference in the light of the recent pronouncement of the Hon'ble Supreme Court. The learned counsel appearing for the appellants submitted that for all the societies, elections were conducted and the societies are managed by the elected members.

10. In the light of the above, following the decision of the Hon'ble Supreme Court in the case of Thalappalam Ser. Coop., Bank Ltd., and Others, (supra), these Writ Appeals are allowed and the orders passed in the Writ Petitions are set aside. No costs.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Registrar,
Tamilnadu Information Commission,
No.37, Annasalai,
Teynampet, Chennai - 18.
 2. The Public Information Officer,
O/o.The Joint Registrar of Co-operative
Societies, Madurai Road,
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 3. The Deputy Registrar of
Co-operative Societies,
Namakkal Circle,
Namakkal.
 4. The Deputy Registrar/Special Officer,
Rasipuram Co-operative Urban Bank Ltd.,
Rasipuram, Namakkal District.
- + 2 ccs to Mr.M.S.Palaniswamy, Advocate SR 24361
- + 1 cc to Mr.R.Nalliyappan, Advocate SR 24650

jsv(co)
prk4/5

Common Judgment in
W.A.Nos.2425 to 2428 & 2500 of 2013



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