

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2015

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

W.P. Nos. 21994 to 22001 of 2012

&

M.P. Nos. 2 of 2012

D.Kalaiselvi	..Petitioner	WP.No.21994	of 2012
A.Rajendran	..Petitioner	WP.No.21995	of 2012
G.Duraisamy	..Petitioner	WP.No.21996	of 2012
M.Murugesan	..Petitioner	WP.No.21997	of 2012
MG.Ayyamperumal	..Petitioner	WP.No.21998	of 2012
SP.Marimuthu	..Petitioner	WP.No.21999	of 2012
PM.ChandraMoorthy	..Petitioner	WP.No.22000	of 2012
T.Prakasam	..Petitioner	WP.No.22001	of 2012

Vs.

1. The Assistant Director of Handloom & Textiles, Department/Public Information Officer, No. 426, Bhavani Main Road, Ashokapuram, O/o. Assistant Director of Handloom & Textiles, Erode.Ist Respondent in All Wps
2. The Special Officer, Kavunthapadi Weaver's Co-op. Production and Sale Society Ltd., No.K. 706, Kavunthapadi Post, Bhavani Taluk, Erode District.2nd Respondent in WP.21994/12
3. S. Rajagopalan3rd Respondent in All Wps
- 4.The Special Officer, Anna Handloom Weavers Co.Op.Production

and Sale society Ltd, No.C.H.69,
P.Mettupalayam Post, Sakthi Nagar,
Erode Dist - 638 315. ...2nd Respondent in WP.21995/12

5.The Special Officer,
Rani Anna Weaver's,
Co.Op.Production and Sale society Ltd
No.E.H.78, Bommanpatii,
Kavunthapadi Post - 638455,
Bhavani Taluk, Erode Dist. ...2nd Respondent in WP.21996/12

6.The Special Officer,
Co.Op.Production and Sale society Ltd,
No.C.H.54,P.Mettupalayam Post,
Sakthi Nagar Via, Gobichettipalayam Taluk,
Erode District ...2nd Respondent in WP.21997/12

7.The Special Officer,
Nallagoundmpalayam Weavers,
Co.Op.Production and Sale society Ltd,
No.E.H.127, Nallagoundmpalayam,
Bhavani Taluk, Erode Dist. ...2nd Respondent in WP.21998/12

8.The Special Officer,
Kalaivanar Weavers,
Co.Op.Production and Sale society Ltd,
No.E.H.100, Senthampalayam,
Erode Dist. ...2nd Respondent in WP.21999/12

9.The Special Officer,
Sakthi Weaver's,
Co.Op.Production and Sale society Ltd,
No.E.H.118, Kavunthapadi,-638 455.
Bhavani Taluk, Erode Dist. ...2nd Respondent in WP.22000/12

10.The Special Officer,
Periyar Primary Cum-Industrial
Weavers, Co.Op.Production and Sale society Ltd,
No.EH.67,
P.Mettupalayam - 638 3115.
Erode Dist. ...2nd Respondent in WP.22001/12

Prayer: Petitions under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the entire records relating to the impugned order passed by the 1st respondent in his proceedings RTI Act 36/2012/G dated 06.06.2012 and quash the same.

For Petitioners

in all the WPs :: Mr.C. Prakasam

For Respondents

in all the WPs :: Mr.L.P. Shanmugasundaram

Special Govt. Pleader (Co-op)
for R1
Mr.B. Anand for R2
Mr.N. Manokaran for R3

COMMON ORDER

As the issue involved in all the writ petitions is one and the same, the writ petitions are taken up together for hearing and disposed of by this common order.

2. In all these writ petitions, the proceedings of the 1st respondent under the Right to Information Act dated 06.06.2012 is under challenge.

3. The legal issue involved in these cases have been settled by the Honourable Apex Court in Thalappalam Ser. Co-op. Bank V. State of Kerala reported in 2013 (6) CTC 98 (SC) which has been taken note of the Division Bench of this Court in W.A. Nos. 2425 to 2428 & 2500 of 2013, wherein, by judgment dated 21.04.2015, it has been held as follows:

"6. In the case of Thalappalam Ser.Coop. Bank Ltd. And others V. State of Kerala and others, 2013 (6) CTC 98 (SC), Appeals were filed by Cooperative Societies and the question which fell for consideration before the Hon'ble Supreme Court was whether a Co-operative Society registered under the Keala 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 Cooperative 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 Cooperative 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 Cooperative Societies. Before the Hon'ble Supreme Court, the Cooperative 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 Cooperative Societies which do not fall in the above mentioned categories.

7. On the first issue with regard to Cooperative 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 which comes into existence and 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 Cooperative 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 'instrumentality of the State' within the meaning of Article 12 of the Constitution.

8. On the next issue relating to Constitutional provisions and Cooperative autonomy, it was held that Cooperative 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 Cooperative Societies registered under the Kerala Cooperative 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 V. State of Kerala and others, 2013 (6) CTC 98 (SC). 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 V. State of Kerala and others, 2013 (6) CTC 98 (SC), these Writ Appeals are allowed and the Orders passed in the Writ Petitions are set aside. No costs."

Thus, in the light of the above said pronouncement, all these writ petitions will have to be allowed as the very applications made seeking information themselves are not maintainable since the Co-operative Societies are not created by statute and the Circular dated 18.01.2014 sent by the Joint Registrar (Law and Training) in Na.Ka. No. 95879/2013/epm1 has no legal basis and therefore, cannot be implemented.

4. In the result, the writ petitions are allowed. No costs. Connected M.Ps are closed.

Sd/
ASSISTANT REGISTRAR (CS-IV)

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SUB-ASSISTANT REGISTRAR

nv
To,

1. The Assistant Director of
Handloom & Textiles,
Department/Public Information
Officer, No. 426, Bhavani Main Road,
Ashokapuram, O/o. Assistant Director of
Handloom & Textiles, Erode.

+1 CC to MR.C.Prakasam Advocate. SR.NO. 61605
+8 CC to MR.N.Manokaran Advocate. SR.NO.61275, 61274, 61273,
61272, 61271, 61277, 61278, 61279.

+ 8 ccs to Mr.A.S.Thambuswamy, Advocate Sr 60893 (5/1/16)

CO-CA
JD 11/12/2015

W.P. Nos. 21994 to
22001 of 2012

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