

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**BENCH AT AURANGABAD**

**WRIT PETITION NO.2404/2009**

- 1      Kopargaon Sahakari Sakhar  
         Karkhana Ltd.  
         At Gautam Nagar, Post. Kolpewadi,  
         Tq. Kopargaon, Dist. Ahmednagar.  
         Through its Managing Director.
- 2      Girish S/o Jagnnath Jagtap  
         Age : 52 years, Occ : Service,  
         the Managing Director  
         of Kopargaon Sahakari Sakhar  
         Karkhana Ltd., at Gautam Nagar,  
         Post. Kolpewadi, Tq. Kopargaon,  
         Dist. Ahmednagar.  
         ...Petitioners...

**Versus**

- 1      The Regional Joint Director  
         of Sugar, Trilok Chamber,  
         Laltaki Road, Ahmednagar,
- 2      Avinash S/o Prabhakar Pangavane  
         Age : 35 years, Occ : Nil,  
         R/o Mahegaon Deshmukh,  
         Tq. Kopargaon, Dist. Ahmednagar.  
         ...Respondents...

**WITH**

**WRIT PETITION NO. 2405 OF 2009**

- 1      Kopargaon Sahakari Sakhar  
         Karkhana Ltd.  
         At Gautam Nagar, Post. Kolpewadi,  
         Tq. Kopargaon, Dist. Ahmednagar.  
         Through its Managing Director.

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- 2      Girish S/o Jagannath Jagtap  
Age : 52 years, Occ : Service,  
the Managing Director  
of Kopargaon Sahakari Sakhar  
Karkhana Ltd., at Gautam Nagar,  
Post. Kolpewadi, Tq. Kopargaon,  
Dist. Ahmednagar.  
...Petitioners...

**Versus**

- 1      The Regional Joint Director  
of Sugar, Trilok Chamber,  
Laltaki Road, Ahmednagar,
- 2      Vijay S/o Sudhakar Jadhav  
Age : 43 years, Occ : Nil,  
R/o Satchari Takli,  
Tq. Kopargaon, Dist. Ahmednagar.  
...Respondents...

.....

Shri R.N. Dhorde, Senior Advocate h/f Shri P.S. Dighe,  
Advocate for petitioners.

Shri V.G. Shelke, AGP for respondent No.1.

Shri S.P. Brahme, Advocate for respondent No.2.

....

**CORAM: RAVINDRA V. GHUGE, J.**

**DATE: 11.02.2016**

**ORAL JUDGMENT :**

1]            Both these petitions were admitted by this Court  
by order dated 24.4.2009 and interim relief in terms of  
prayer Clause [C] was granted.

2]            An identical issue has been raised in both these  
matters and the identical prayer Clause [C] reads as

under:-

"[C] Pending hearing and final disposal of this Writ Petition grant stay to the impugned order dated 16.02.2009 passed by the Respondent no.1 in the Appeal No.21/2008 and for that purpose issue necessary orders."

(Read 20.02.2009 in Appeal No.1/2009 in W.P.No.2405/2009)

3] Shri Dhorde, the learned Senior Advocate, contends that respondent no.1 had passed orders in Appeal Nos.21/2008 and 1/2009 dated 16.2.2009 and 20.2.2009 respectively, by which the petitioner was directed to provide information to the respondents.

4] Submission is that the Right to Information Act, 2005, is not applicable to the petitioner – organization considering the definition found in Section 2(h) of the said Act.

5] Shri Dhorde submits that this issue is no longer *res-integra* since the learned Apex Court has decided the issue in *Thalappalam Ser.Coop.Bank Ltd. and others v. State of Kerala & others* (2014 (1) ALL MR 451 (S.C.) and the judgment of the learned Division Bench of this Court

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dated 14.1.2016 delivered in Writ Petition No.1809/2009 in the matter between *Kopergaon Sahakari Sakhar Karkhana Ltd.* (the petitioner herein) & another v. *The Regional Joint Director of Sugar* (the respondent no.1 herein) & another. He, therefore, submits that the impugned orders deserve to be quashed and set aside and both these petitions deserve to be allowed.

6] Shri Brahme, learned Advocate, has strongly opposed both the petitions and submits that the impugned orders delivered by respondent no.1 are neither perverse nor erroneous. The said authority has considered the nature of the establishment of the petitioner and the nature of information sought by respondent no.2 in these matters. Cogent reasons have been assigned while delivering the impugned orders.

7] Shri Brahme further submits that this Court, while exercising its writ / supervisory jurisdiction, cannot interfere with an order only because a different view is possible. He further submits that unless the impugned orders are found to be perverse and erroneous and likely to cause grave injustice, no interference is called for.

8] I have considered the submissions of the learned Advocates for the respective sides.

9] In an identical situation involving the instant petitioner – Cooperative Sugar Factory, the learned Division Bench of this Court, by its judgment dated 14.1.2016 in Writ Petition No.1809/2009 has concluded in paragraph nos.4 & 5 as under:-

“4. The aforesaid issue is no longer *res-integra*. We have considered the submissions canvassed by the learned for 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 Cooperative 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 Cooperative societies are not creature of statute but are registered under the Maharashtra Cooperative 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

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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* reported in **2011 (5) Bom. C. R. 128**, 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 Cooperative Credit Societies, Urban and Other Cooperative 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 Cooperative 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 Cooperative Societies/Banks do not come within the ambit of

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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."

10] In the light of the above, I do not find any circumstances emerging from these two cases, which would persuade this Court to take a different view in these matters. In the light of the above and the ratio laid down by the learned Apex Court in the case of *Thalappalam Ser. Coop. Bank Ltd.*(supra) and the view of the learned Division Bench of this Court in the judgment dated 14.1.2016, both these petitions are allowed. The impugned orders dated 16.2.2009 and 20.2.2009 in Appeal Nos.21/2008 and 1/2009 are quashed and set aside. Both the appeals are, therefore, dismissed.

11] Rule is made absolute in the above terms. No order as to costs. Pending civil applications, if any, also stand disposed of.

**(RAVINDRA V. GHUGE, J.)**