



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.08.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.(MD)No.12711 of 2013andM.P.(MD)No.1 of 2013

D.Ponraj

Co-operative Sub Registrar (Execution and Liquidation)
Tuticorin District Central Co-op Bank,
Ettayapuram Road, Tuticorin 628 002. : Petitioner

Vs.

1.The State Information Commissioner,
No.2, Sir Thyagaraja Salai,

Tenampet, Chennai-600 018.

2.The Deputy Registrar of Co-op Societies,
Thiruchendur, Tuticorin District.

3.The Deputy Registrar of Co-op Societies,
Tuticorin Circle,
Tuticorin.

4.P.Isakki Muthu : Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorari, to call for the records relating to the impugned order dated 30.07.2012 (served on 09.07.2013) passed by the first respondent in Case No.24791/Visaranai/BS/2011 and the consequential charge memo issued by the second respondent in his proceedings Na.Ka.43/13 Tho.Ve.Ku.Sa, dated 21.06.2013 and the consequential order of recovery passed by the third respondent in his proceedings Na.Ka.2684/2013. Pa. Tho, dated 17.07.2013 and quash the same as illegal.

For Petitioner : Mr.S.Muthukumar

For Respondents 1to3 : Mr.M.Murugan,
Government Advocate

For Respondent No.4 : No Appearance

**ORDER**

The petitioner in his capacity as the Public Information Officer refused to part with certain information on the basis of the advice that the Co-operative Society is not a Public Authority, as defined under section 2(h) of the Right to Information Act. The fourth respondent preferred an appeal before the State Information Commissioner. The Commissioner, while allowing the appeal, directed the petitioner to pay a sum of Rs.25,000/- as cost and called upon the disciplinary authority to initiate disciplinary proceedings against him. The order passed by the State Information Commissioner and the charge memo issued by the Deputy Registrar of Co-operative Societies, pursuant to the order passed by the first respondent and the consequential order of recovery passed by the third respondent, are challenged in this Writ Petition.

2. Heard the learned counsel for the petitioner and the learned Government Advocate appearing on behalf of the respondents 1 to 3. None appeared on behalf of the fourth respondent.

3. The petitioner functioned as the Special Officer of Tuticorin District Central Co-operative Bank, Tuticorin, which was under liquidation. By virtue of his position as the Special Officer, the petitioner was designated as the Public Information Officer. The fourth respondent made an application for furnishing certain details. The petitioner, on legal advice, informed the fourth respondent that Co-operative Society is not a Public Authority and as such, it is not possible to furnish the information. The State Information Commissioner was of the view that the Co-operative Society is a Public Authority, as defined under Section 2(h) of the Right to Information Act. According to the State Information Commissioner, the petitioner failed to furnish the information and as such, he is liable to pay the maximum penalty. The first respondent allowed the appeal filed by the fourth respondent and directed recovery of a sum of Rs.25,000/- from the petitioner. The Commissioner directed the third respondent to initiate disciplinary proceedings against the petitioner under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

4. The State Information Commissioner allowed the appeal filed by the fourth respondent, on the strength of the order passed by the High Court dated 25.04.2012 in W.P.Nos.9763 of 2008, etc., batch cases. In short, the appeal was allowed by following the



5. The order passed by the learned Single Judge dated 25.04.2012 was challenged by the Public Information Officer, Sivagangai before the Division Bench in W.A.Nos.2425 to 2428 and 2500 of 2013. The Division Bench followed the judgment of the Supreme Court in **Thalappalam Service Coop., Bank Ltd., v. State of Kerala [2013(16) SCC 82]** and allowed the appeals. The Division Bench made the position very clear that the Co-operative Society is not a 'Public Authority' under Section 2(h) of the Right to Information Act or a 'State' or 'instrumentality of the State' within the meaning of Article 12 of Constitution. The judgment of the learned Single Judge was set aside.

6. The Supreme Court in **Thalappalam's** case cited *supra* held that the appellant's Co-operative Societies are not Public Authorities and hence, not legally obliged to furnish any information sought for by a citizen under the Right to Information Act.

7. The impugned order dated 30 July, 2012, was passed by the State Information Commissioner only on the basis of the order passed by the learned Single Judge of this Court dated 25.04.2012 in W.P.Nos.9763 of 2008, etc., batch cases. The order has already been set aside by the Division Bench. The second respondent issued the charge memo on the strength of the order passed by the first respondent. Since the very order, which was the basis for allowing the appeal by the State Information Commissioner, was set aside by the Division Bench, by judgment dated 29.04.2015, the order passed by the first respondent is liable to be set aside. The consequential disciplinary proceedings initiated by the second and third respondents are also liable to be quashed.

8. In the result, the order passed by the State Information Commissioner dated 30 July, 2012, is quashed. The charge memo issued by the Deputy Registrar of Co-operative Societies, Thiruchendhur, Tuticorin District, dated 21 June, 2013, is quashed. The consequential order of recovery passed by the third respondent dated 17 July, 2013 is also quashed.

9. In the upshot, I allow the Writ Petition. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AS)

/TRUE COPY/

Sub Assistant Registrar



To

1.The State Information Commissioner,
No.2, Sir Thyagaraja Salai,
Tenampet,
Chennai-600 018.

2.The Deputy Registrar of Co-op Societies,
Thiruchendur,
Tuticorin District.

3.The Deputy Registrar of Co-op Societies,
Tuticorin Circle,
Tuticorin.

+1cc to MR.M.E.ILANGO, ADVOCATE SR.NO. 45517

+1cc to M/S.THE SPECIAL GOVERNMENT PLEADER, SR NO: 45977

SML

JA-KBM-31.08.2016/4P:6C

Order made in
W.P.(MD)No.12711 of 2013
and
M.P.(MD)No.1 of 2013

Dated: 18.08.2016