

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2018

CORAM

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No.13122 of 2011
and M.P.No.2 of 2011

N.Viswanathan

...Petitioner

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.

2.The Manager,
A.A.399 Chennimalai Industrial Weavers
Coop. Production and Sale Society Ltd.,
Chennimalai,
Erode District.

3.S.Ponnusamy

..Respondents

Prayer: Writ petition filed under Article 226 of the
Constitution of India to issue a Writ of Certiorari, calling for
the entire records relating to the impugned order passed by the
first respondent in his proceedings Na.Ka.6186/2011/G, dated
06.05.2011 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondents: Mr.L.P.Shanmugasundaram
Special Government Pleader

ORDER

This writ petition has been filed calling for the entire
records relating to the impugned order passed by the first
respondent in his proceedings Na.Ka.6186/2011/G, dated
06.05.2011 and quash the same.

2. According to the learned counsel for the petitioner, the petitioner is one of the member of the second respondent's co-operative Society. The third respondent applied before the second respondent to furnish the particulars of the second respondent society. On the basis of the said application, the first respondent directed the second respondent to disclose the particulars as requested by the third respondent under the Right to Information Act. Challenging the said proceedings in Na.Ka.6186/2011/G, dated 06.05.2011, the petitioner has filed the present writ petition before this Court.

3. The learned counsel for the petitioner would submit that the subject matter in issue under the Right to Information Act, has been considered by 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). Following the above decision of the Hon'ble Supreme Court, this Court by order dated 29.04.2015 has allowed the appeals in W.A.Nos.2425 to 2428 and 2500 of 2013, The Public Information Officer vs. The Registrar , Tamil Nadu Information Commission, 37, Annasalai, Teynampet, Chennai-18 and two others reported in 2015(4) CTC 105, wherein, at para Nos.6 and 9, this Court has 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 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.

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.Co-op.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 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."

In the above decision, this Court has held that the Co-operative societies will not fall within the definition of Public Authority as defined under Section 2(h) of the RTI Act, 2005.

4. The learned counsel appearing for the respondents has not disputed the said fact.

5. Therefore, the principles laid down in the above said decisions squarely applicable to the facts of the present case. Hence, the impugned order passed by the first respondent dated 06.05.2011 is liable to be quashed.

6. Accordingly, this writ petition is allowed. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kdd/rst

To

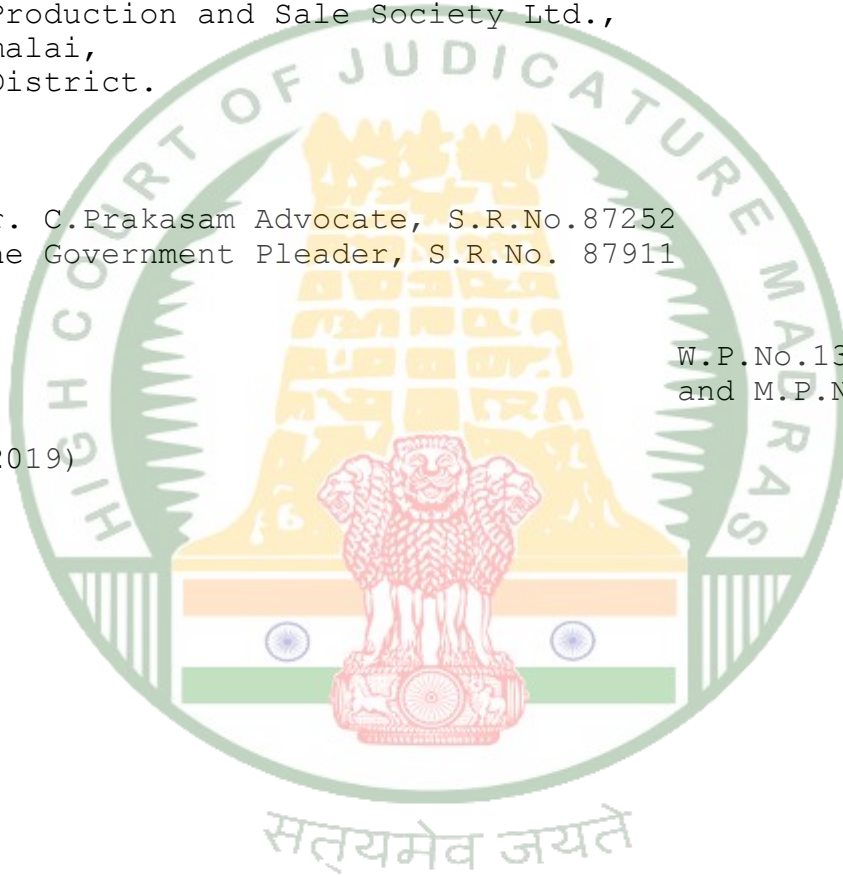
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+lcc to Mr. C.Prakasam Advocate, S.R.No.87252
+lcc to the Government Pleader, S.R.No. 87911

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SKV(CO)
GN(01/02/2019)



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