HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.7746 OF 2013

ORDER:

The petitioners seek writ of mandamus declaring all the proceedings leading up to and including Appeal No.5125/SIC-PVB/2011, dated 25.02.2012 of the 2nd respondent as arbitrary, illegal and against the provisions of Right to Information Act, 2005 (for short, 'RTI Act') and consequently, nullify the same and grant such other pleas.

2. (a) Petitioners case is that 1st petitioner is the Gooty Co-operative Town Bank Limited. The 3rd respondent approached the said bank to furnish various documents under letter dated 02.03.2011, to which the bank gave a letter dated 28.03.2011 to the effect that the said bank is not covered by the definition 'Public Authority' under the RTI Act and therefore, information cannot be provided. However, he was requested to come and inspect the records sought for by him, since he is a member of the petitioner bank. Then he made an application to the 2nd petitioner on 02.05.2011, but the said request was declined under letter dated 31.05.2011. Thereafter, the 3rd respondent preferred Appeal No.5125/SIC-PVB/2011 before the 2nd respondent, who is the State Information Commissioner and the said Authority, in its order dated 25.02.2012, allowed the appeal and directed the PIO of

the 1st petitioner to furnish the information to the application within thirty days from the date of receipt of the order.

(b) Learned counsel for the petitioners submits that the 1st petitioner is not a public authority as defined under Section 2(h) of the RTI Act and therefore, it is not under obligation to furnish the information as sought for by the 3rd respondent.

Hence, the present writ petition.

3. When the matter is taken up for hearing on 15.11.2018 and also today, there is no representation on behalf of 3rd respondent. Hence, heard learned counsel for petitioner.

4. Seriously fulminating the order of the 2nd respondent, learned counsel for petitioners would submit that the 1st petitioner, which is Gooty Co-operative Town Bank Limited, is purely a private bank established by raising the funds from private persons and therefore, it is not a public authority within the ambit of Section 2(h) of RTI Act. He sought to explain that merely because the 1st petitioner bank was registered under A.P. Co-operative Societies Act that does not mean that it was established under the said enactment. It was only incorporated under the said enactment. On the aspect of the difference between 'establishment' and 'incorporation', he relied upon ***Dalco Engineering Private***

***Limited v. Satish Prabhakar Padhye and others*[1].** He would thus submit that the 1st petitioner would not come under the definition of public authority. To buttress his point, learned counsel also relied upon the judgment of the Apex Court in ***Thalappalam Service Cooperative Bank Limited and Others v. State of Kerala and Others*[2].**

5. Then referring to the order of the 2nd respondent, learned counsel for petitioners would submit that the 2nd respondent has erroneously held that in view of the definition of the term 'information' as provided in Section 2(f) of RTI Act, the information sought for by the 3rd respondent can be provided to the informant. He would submit that the information sought for by the 3rd respondent is in respect of 1) the contingency account related to general expenses from the year 2001 to till date and 2) the details relating to the purchase and installation of computers in the bank including the branch office and other points. The information, no doubt, will be mentioned in the consolidated form in the 1st petitioner bank's annual accounts and if at all the auditing authorities have any doubt with regard to the said aspect, they may call for the particulars and verify it. However, the 3rd respondent cannot directly approach the 1st petitioner and seek for information under RTI Act. He would incidentally argue that if such an application is made before the

[1] 2010 (4) SCC 378
[2] (2013) 16 SCC 82

concerned authority, it may in its discretion allow or disallow the said application. Therefore, the 3rd respondent has no right under RTI Act to directly approach the 1st petitioner seeking the information as sought for in his application. He would thus submit that the order of the 2nd respondent directing the 1st petitioner to furnish information is unsustainable under the provisions of RTI Act.

6. The point for determination is :

Whether the order of the 2nd respondent is legally sustainable?

7. The 3rd respondent, it appears, sought for the following information:

A) The contingency account related to General expenses from the year 2001 to till date.

B) The details relating to purchase and installation of computers in the bank including the branch office and other points.

8. The PIO of the bank and appellate authority have turned down the said request on the main ground that the 1st petitioner is not a public authority. However, the 2nd respondent having regard to the definition 'information' provided in Section 2(f) of RTI Act has observed that the information relating to any private body which can be accessed by a public authority under any law for the time being force and also having regard to the definition of public

authority mentioned in Section 2(h) of the RTI Act, held that though the 1st petitioner – Gooty Cooperative Town Bank Limited is a private body, but the information sought for by the 3rd respondent which is in the hands of private body can be accessed by public authorities and therefore, the 1st petitioner is liable to furnish the information. On that premise, the 2nd respondent directed the 1st petitioner to furnish the information within thirty days from the date of receipt of order, which is being impugned in the writ petition.

9. As already noted supra, the main plank of the argument of the learned counsel for petitioner is that the 1st petitioner is not a public authority. The definition of public authority is given under Section 2(h) of RTI Act, which reads thus:

> *"2(h) Public Authority means any authority or body or institution of self-government established or constituted –*
> *(a) by or under the Constitution;*
> *(b) by any other law made by Parliament;*
> *(c) by any other law made by State Legislature;*
> *(d) by notification issued or order made by the appropriate Government, and includes any –*
> *(i) body owned, controlled or substantially financed;*
> (ii) *non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;"*

10. The submission of learned counsel for petitioners is that merely because the 1st petitioner bank was registered as per the provisions contained in A.P. Cooperative Societies Act, it cannot be said to be established under the said enactment. It

is only registered under the said Act and therefore, it will not fall within the definition of public authority. In this regard, in ***Dalco Engineering Private Limited* case [supra (1)]** the Apex Court drawn distinction between the terms 'established' and 'incorporated', which reads thus:

> *"20. A "company" is not "established" under the Companies Act. An incorporated company does not "owe" its existence to the Companies Act. An incorporated company is formed by the act of any seven or more persons (or two or more persons for a private company) associated for any lawful purpose subscribing their names to a memorandum of association and by complying with the requirements of the Companies Act in respect of registration. Therefore, a "company" is incorporated and registered under the Companies Act and not established under the Companies Act. Per contra, the Companies Act itself establishes the National Company Law Tribunal and the National Company Law Appellate Tribunal, and these statutory authorities owe their existence to the Companies Act.*
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> *21. Where the definition of "establishment" uses the term "a corporation established by or under an Act", the emphasis should be on the word "established" in addition to the words "by or under". The word "established" refers to coming into existence by virtue of an enactment. It does not refer to a company, which, when it comes into existence, is governed in accordance with the provisions of the Companies Act. But then, what is the difference between "established by a central Act" and "established under a central Act"?*
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> *22. The difference is best explained by some illustrations. A corporation is established by an Act, where the Act itself establishes the corporation. For example, Section 3 of State Bank of India Act, 1955 provides that a Bank to*

> *be called the State Bank of India shall be constituted to carry on the business of banking. Section 3 of Life Insurance Corporation Act, 1956 provides that with effect from such date as the Central Government may by notification in the Official Gazette appoint, there shall be established a corporation called the Life Insurance Corporation of India."*
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> *State Bank of India and Life Insurance Corporation of India are two examples of corporations established by "a Central Act".*

11. Thus, the Apex Court has drawn the distinction between the terms 'established' and 'incorporated'. When the same is applied to the case on hand, the submission of learned counsel for petitioners that the 1st petitioner bank is incorporated by the members of the bank by pooling the amount and the origin of the bank or the establishment of the bank cannot be traced to the Cooperative Societies Act seems to be correct. Mere registration and functioning of the bank as per the provisions of the Cooperative Societies Act will not make it as a public authority.

12. In ***Thalappalam Service Cooperative Bank Limited and others (supra 2),*** the Apex Court while dealing with the issue makes a question whether a cooperative society registered under Kerala Cooperative Societies Act, 1969 fall within the definition of public authority under Section 2(h) of RTI Act. In that context, the Apex Court, made certain observations, which are thus:

"18. We can, therefore, draw a clear distinction between a body which is created by a Statute and a body which, after having come into existence, is governed in accordance with the provisions of a Statute. The Societies, with which we are concerned, fall under the latter category that is governed by the Societies Act and are not statutory bodies, but only body corporate within the meaning of Section 9 of the Kerala Cooperative Societies Act having perpetual succession and common seal and hence have the power to hold property, enter into contract, institute and defend suites and other legal proceedings and to do all things necessary for the purpose, for which it was constituted. Section 27 of the Societies Act categorically states that the final authority of a society vests in the general body of its members and every society is managed by the managing committee constituted in terms of the bye-laws as provided under Section 28 of the Societies Act. Final authority so far as such types of Societies are concerned, as Statute says, is the general body and not the Registrar of Cooperative Societies or State Government.

31. Section 2(h) exhausts the categories mentioned therein. The former part of 2(h) deals with:

(1) an authority or body or institution of self-government established by or under the Constitution,

(2) an authority or body or institution of selfgovernment established or constituted by any other law made by the Parliament,

(3) an authority or body or institution of self-government established or constituted by any other law made by the State legislature, and

(4) an authority or body or institution of self-government established or constituted by notification issued or order made by the appropriate government.

32. Societies, with which we are concerned, admittedly, do not fall in the above mentioned categories, because none of them is either a body or institution of self-government, established or constituted under the Constitution, by law made by the Parliament, by law made by the State Legislature or by way of a notification issued or made by the appropriate government. Let us now examine whether they fall in the later part of Section 2(h) of the Act, which embraces within its fold:

> *(5) a body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate government,*
>
> *(6) non-governmental organizations substantially financed directly or indirectly by funds provided by the appropriate government.*

……. x x x x ….

48. Merely providing subsidies, grants, exemptions, privileges etc. as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist. The State may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD etc., but those facilities or assistance cannot be termed as "substantially financed" by the State Government to bring the body within the fold of "public authority" under Section 2(h)(d)(i) of the Act. But, there are instances, where private educational institutions getting ninety five per cent grant-in-aid from the appropriate government, may answer the definition of public authority under Section 2(h)(d)(i)."

13. On the above observations, the Apex Court ultimately held thus:

> *"65. We have found, on facts, that the Societies, in these appeals, are not public authorities and, hence, not legally obliged to furnish any information sought for by a citizen under the RTI Act. All the same, if there is any dispute on facts as to whether a particular Society is a public authority or not, the State Information Commission can examine the same and find out whether the Society in question satisfies the test laid in this judgment."*

14. When the above ratio is applied to the case on hand, in the instant case also the 1st petitioner bank cannot be said to be a public authority for the reason that though it was incorporated and got registered as per the A.P. Cooperative Societies Act, it was not established under that Act. Further, as per the submission of the learned counsel for petitioners, the State Government is not funding in any manner leave aside substantially to the 1st petitioner bank. On that count also, it cannot be said to be a public authority within the mischief of Section 2(h) of the RTI Act. Therefore, the 1st petitioner is not obligated under RTI Act to furnish the information sought for by the 3rd respondent. Then with regard to the observation of the 2nd respondent that information which is held by the private authority and hence, on that ground, the 1st petitioner is liable to furnish the information is concerned, the same is also not tenable. The Apex Court in ***Thalappalam Service Cooperative Bank Limited and Others case (supra 2)*** also discussed this aspect.

"67. The Registrar of Cooperative Societies functioning under the Cooperative Societies Act is a "public authority" within the meaning of Section 2(h) of the Act. As a public authority, the Registrar of Co-operative Societies has been conferred with lot of statutory powers under the respective Act under which he is functioning. He is also duty bound to comply with the obligations under the RTI Act and furnish information to a citizen under the RTI Act. The information which he is expected to provide is the information enumerated in Section 2(f) of the RTI Act subject to the limitations provided under Section 8 of the Act. The Registrar can also, to the extent law permits, gather information from a Society, on which he has supervisory or administrative control under the Cooperative Societies Act. Consequently, apart from the information as is available to him, under Section 2(f), he can also gather those information from the Society, to the extent permitted by law. The Registrar is also not obliged to disclose those information if those information fall under Section 8(1)(j) of the Act. No provision has been brought to our knowledge indicating that, under the Cooperative Societies Act, a Registrar can call for the details of the bank accounts maintained by the citizens or members in a cooperative bank. Only those information which a Registrar of Cooperative Societies can have access under the Cooperative Societies Act from a Society could be said to be the information which is "held" or "under the control of public authority". Even those information, Registrar, as already indicated, is not legally obliged to provide if those information falls under the exempted category mentioned in Section 8(j) of the Act. Apart from the Registrar of Co-operative Societies, there may be other public authorities who can access information from a Cooperative Bank of a private account maintained by a member of Society under law, in the event of which, in a given situation, the society will have

> *to part with that information. But the demand should have statutory backing."*

15. For securing the information, the application need to be filed before the concerned pubic authority who is holding that information or who can seek the information from the 1st petitioner. However, in the instant case, the information was directly sought from the 1st petitioner which, as is already held, need not be furnished by the 1st petitioner as it is not a public authority. Secondly, if the information is sought from the concerned public authority, it may or may not order using its discretion. Therefore, on that ground also, the 3rd respondent cannot seek for the information directly from the 1st petitioner. The 2nd respondent's direction to the 1st petitioner to furnish the information cannot be upheld or countenanced in view of the above legal position. Therefore, the impugned order is liable to be set aside.

16. In the result, this writ petition is allowed and the impugned order in Appeal No.5125/SIC-PVB/2011, dated 25.02.2012 is set aside. No costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

20.11.2018
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