

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.11444 OF 2011

AND

W.M.P.NOS.1 AND 2 OF 2011

G.Chinnathambi

... Petitioner

-vs-

1. The Tamil Nadu Information Commission,
Post Box No. 6405,
Kamadhenu Super Market 1st Floor,
No. 273, New No. 378, Ann salai,
Teynapet, Chennai - 600 018.
2. The Public Information Officer,
Pavandur Primary Agricultural Co-operative
Credit Socceity,
Pavandur Village and Post,
Tirukoilur Taluk, Villupuram District.

3. V Krishnamoorthy

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari to call for the entire records relating to the impugned order passed by the first respondent in its proceedings No. Case No.14/Enquiry/2011, dated 31.03.2011 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.Niranjan Rajagopal
Standing Counsel for R1

O R D E R

The prayer sought for herein is for a Writ of Certiorari to call for the entire records relating to the impugned order passed by the first respondent in its proceedings No.14/Enquiry/2011, dated 31.03.2011 and quash the same.

2. The petitioner is a member of a Co-operative Society called Pavandur Primary Agricultural Co-operative Society, Villupuram District. From the said Society, the third respondent / Information Seeker seems to have sought for some information, which pertains to the petitioner, in other words, the information pertained to the petitioner about the loan sanctioned to the petitioner seems to have been sought for by way of information under Right to Information Act by the third respondent.

3. Since such information has not been furnished by the Society concerned, the third respondent / Information Seeker approached the first respondent / Information Commission, who after having considered the petition filed by the third respondent / Information Seeker, having conducted an enquiry, has passed an order on 31.03.2011, thereby, it has given direction to the second respondent / Society to give such information pertaining to the petitioner to the third respondent / Information Seeker. Aggrieved over the said order passed by the first respondent / Information Commission, the petitioner has filed the present Writ Petition with the aforesaid prayer.

4. Heard Mr. C.Prakasam, learned counsel appearing for the petitioner, who would submit that, as per the orders of the Hon'ble Supreme Court as well as the Division Bench of this Court, the law has been settled, where it was held that, the Co-operative Society cannot be brought under the purview of the Right to Information Act, 2005. In other words, the Co-operative Society is not amenable to the Right to Information Act, to seek for information from the Society.

5. Therefore, the learned counsel appearing for the petitioner would also submit that, since the information sought for by the third respondent, which was directed to be supplied by the impugned order passed by the first respondent pertain to the personal information of the petitioner with regard to the loan sanctioned by the second respondent / Society to the petitioner, the procedure as contemplated under Section 11 of the Right to Information Act, 2005 should have been followed, which the first respondent has not followed and no notice to that effect since has been issued to the petitioner, even under the said provisions under Section 11 of the Right to Information Act, 2005 which is being violative of the said provision, that order directing the society to furnish information ought not have been passed by the first respondent, on that ground the impugned order is liable to be set aside, he contended.

6. Mr. Niranjan Rajagopal, learned Standing counsel appearing for the first respondent / Information Commission would submit that, as has been pointed out by the learned counsel appearing for the petitioner, the Hon'ble Supreme Court

in (2013) 16 SCC 82 in the matter of Thalappalam Service Cooperative Bank Limited vs. State of Kerala and others has held that, Co-operative Society is not amenable to the provisions under the Right to Information Act, unless and until, it is proved that, such Society is substantially financed and controlled by the Central or State Government within the meaning of Section 2 of the said Act.

7. Subsequent to the said law having been declared in (2013) 16 SCC 82, similar judgment has been rendered by this Court in Writ Appeals in W.A. Nos. 2425 to 2428 and 2500 of 2013 dated 29.04.2015 in the matter of Public Information Officer, Illayankudi Co-operative Urban Bank Limited., Sivagangai District vs. Registrar, Tamil Nadu Information Commission, Chennai and others reported in AIR 2015 MADRAS 169.

8. In this context, the learned Standing counsel appearing for the first respondent / Information Commission would also submit that, during that point of time, it seems that, Special Officer had been appointed to administer the Co-operative Society throughout the State, hence a point was raised before this Court in the said Writ Appeals that, in view of the appointment of Special Officer, who is the Government Official having been appointed by the State Government to administer the Co-operative Society in the absence of elected body, it is fully controlled only by the State Government through its official and therefore, the Society atleast for the time being, so long as the Special Officer administering the Society, would come within the purview of the provisions of the Right to Information Act in view of the definitions made in the Act under Section 2(h). The learned counsel would further contend that, though such a plea was raised on behalf of the Information Seeker, the Division Bench of this Court in the aforesaid judgment has rejected that plea also, by stating that, the law having been declared by the Hon'ble Supreme Court in (2013) 16 SCC 82, still holds good, merely because the Special Officer is administering the Society, the position and character of the Society is not changed as it is not substantially financed by the Government, therefore the said argument was also rejected by following the aforesaid judgment of the Hon'ble Supreme Court and accordingly, the Division Bench of this Court once again reiterated the same, by following the aforesaid dictum.

9. By relying upon these two decisions, the learned counsel appearing for the first respondent / Information Commission would contend that, insofar as the present case is concerned, since the third respondent / Information Seeker sought for information from the second respondent / Society and since the direction was given by the first respondent / Information Commission, through the impugned order and this was happened

sometime in the year 2011 and at that point of time, the law was not declared by the Hon'ble Supreme Court, since the same had came only in the year 2013, following which, subsequent order, since has also been passed by the Division Bench of this Court as referred to above, he would fairly submit that, the said legal position would squarely apply to the case, accordingly plea raised by the petitioner side can be accepted.

10. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

11. It is not in dispute that, the information sought for by the third respondent / Information Seeker from the second respondent was only pertaining to the information of the petitioner, of course with regard to the loan he obtained from the second respondent / Society. Therefore, the said information first of all to be construed as a third party information, for which, the procedure as contemplated under Section 11 of the Right to Information Act should have been followed. However, it has been categorically stated before this Court by the learned counsel appearing for the petitioner that, the first respondent has not followed the procedure contemplated under Section 11 of the Right to Information Act, before passing the impugned order giving direction to the second respondent to give such information. Neither the Public Information Officer nor the first respondent / Information Commission noted as to whether, the information sought for in this case comes within the purview of the third party information as per the procedure contemplated under Section 11 of the Right to Information Act.

12. That apart, insofar as the very applicability of the provisions of the Right to Information Act itself on the Co-operative Society is concerned, as has been rightly pointed out by the learned counsel appearing for the petitioner and the learned Standing counsel appearing for the first respondent, the issue is no more res integra. In Thalappalam Service Cooperative Bank Limited case i.e., (2013) 16 SCC 82, the Hon'ble Supreme Court having exhaustively discussed this issue has held that, the Co-operative Society registered under the Kerala Co-operative Societies Act, will not fall within the definition as defined under Section 2(h) of the Right to Information Act. However, in respect of the point, as to whether the particular organization under the case, which is a Co-operative Society, was substantially financed as has been stated in Sections 2(h) (d)(i)&(ii) of the Act, the Hon'ble Apex Court has made the following discussions which are extracted hereunder for easy reference:

"Substantially financed

46. The words "substantially financed" have been used in Sections 2(h)(d)(i) & (ii), while defining the expression public authority as well as in Section 2(a) of the Act, while defining the expression "appropriate Government". A body can be substantially financed, directly or indirectly by funds provided by the appropriate Government. The expression "substantially financed", as such, has not been defined under the Act. "Substantial" means "in a substantial manner so as to be substantial". In *Palser v. Grinling* (1948) 1 All ER 1, 11 (HL), while interpreting the provisions of Section 10(1) of the Rent and Mortgage Interest Restrictions Act, 1923, the House of Lords held that "substantial" is not the same as "not unsubstantial" i.e. just enough to avoid the de minimis principle. The word "substantial" literally means solid, massive etc. The Legislature has used the expression "substantially financed" in Sections 2(h)(d)(i) and (ii) indicating that the degree of financing must be actual, existing, positive and real to a substantial extent, not moderate, ordinary, tolerable, etc.

47. We often use the expressions "questions of law" and "substantial questions of law" and explain that any question of law affecting the right of parties would not by itself be a substantial question of law. In *Black's Law Dictionary* (6th Edn.), the word 'substantial' is defined as

"Substantial - ' of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real: not seeming or imaginary; not illusive; solid; true; veritable... Something worthwhile as distinguished from something without value or merely nominal... Synonymous with material."

The word "substantially" has been defined to mean "essentially; without material qualification; in the main; in substance; materially." In the *Shorter Oxford English Dictionary* (5th Edn.), the word "substantial" means "of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; solid; weighty; important, worthwhile; of an act, measure etc. having force

or effect, effective, thorough." The word "substantially" has been defined to mean "in substance; as a substantial thing or being; essentially, intrinsically." Therefore the word "substantial" is not synonymous with "dominant" or "majority". It is closer to "material" or "important" or "of considerable value." "Substantially" is closer to "essentially". Both words can signify varying degrees depending on the context.

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. Like that, the Hon'ble Supreme Court also in the said judgment has further stated that, the burden of proof to show that a particular body is owned, controlled or substantially financed or a non-Government organization is substantially financed directly or indirectly by the funds provided by the appropriate Government, would lie on the shoulder of the Information Seeker. In this context, following has been held by the Hon'ble Supreme Court, which reads thus:

"Burden to show

50. The burden to show that a body is owned, controlled or substantially financed or that a non-government organization is substantially financed directly or indirectly by the funds provided by the appropriate Government is on the applicant who seeks information or the appropriate Government and can be examined by the State Information Commission or the Central Information Commission as the case may be, when

the question comes up for consideration. A body or NGO is also free to establish that it is not owned, controlled or substantially financed directly or indirectly by the appropriate Government.

51. Powers have been conferred on the Central Information Commissioner or the State Information Commissioner under Section 18 of the Act to inquire into any complaint received from any person and the reason for the refusal to access to any information requested from a body owned, controlled or substantially financed, or a non-government organization substantially financed directly or indirectly by the funds provided by the appropriate Government. Section 19 of the Act provides for an appeal against the decision of the Central Information Officer or the State Information Officer to such officer who is senior in rank to the Central Information Officer or the State Information Officer, as the case may be, in each public authority. Therefore, there is an inbuilt mechanism in the Act itself to examine whether a body is owned, controlled or substantially financed or an NGO is substantially financed, directly or indirectly, by funds provided by the appropriate authority.

52. The legislative intention is clear and is discernible from Section 2(h) that intends to include various categories, discussed earlier. It is trite law that the primarily the language employed is the determinative factor of the legislative intention and the intention of the legislature must be found in the words used by the legislature itself. Magor and St. Mellons Rural District Council v. New Port Corporation stated that the courts are warned that they are not entitled to usurp the legislative function under the guise of interpretation. This Court in D.R. Venkatachalam v. Transport Commissioner, Union of India v. Elphinstone Spinning and Weaving Company Limited, District Mining Officer v. Tata Iron and Steel Company, Padma Sundara Rao v. State of Tamil Nadu, Maulvi Hussain Haji Abraham Umarji v. State of Gujarat held that the court must avoid the danger of an a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the

provisions to be interpreted is somehow fitted. It is trite law that words of a statute are clear, plain and unambiguous i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of the consequences, meaning thereby when the language is clear and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the statute speaks for itself. This Court in *Kanai Lal Sur v. Paramnidhi Sadhukhan* held that: (AIR p.910, para 6)

"6... If the words used are capable of one construction only then it would not be open to courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act."

14. Therefore, if we apply the said principle enunciated by the Hon'ble Supreme Court in *Thalappalam* case cited supra, the Co-operative Society which are established by the provisions of the Tamil Nadu Co-operative Societies Act also would fall under the said category that, unless and until, it is established that a particular Co-operative Society is substantially financed directly or indirectly by the appropriate Government, it cannot be construed that such Society can be brought in under the purview of the provisions of the Right to Information Act. When the law declared by the Hon'ble Supreme Court as cited supra has been governing the field, the subsequent issue had come up for consideration before this Court in *Public Information Officer, Illayankudi Co-operative Urban Bank Limited, Sivagangai District vs. Registrar, Tamil Nadu Information Commission, Chennai* and others reported in AIR 2015 MADRAS 169. In the said decision, the Division Bench of this Court, having taken into account, the law declared by the Hon'ble Supreme Court in *Thalappalam* case, has held that, Co-operative Society registered under Tamil Nadu Co-operative Societies Act is not a Public Authority within the meaning of Section 2(h) of the Right to Information Act. Before the Division Bench, it seems that, yet another issue was raised on behalf of the Information Seeker that could be a distinction between the Co-operative Society administered by the elected body and the Co-operative Society administered or controlled by the Government Official acting as a Special Officer of the Society concerned. Even this distinction sought to be made on behalf of the Information Seeker or Information Commission has also been negated by the Division Bench and the relevant portion of the said judgment are usefully referred to hereunder:

"6. In the case of Thalappalam Ser. Coop., Bank Ltd., and Others, (supra), 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.

7. On the first issue with regard to Co-operative 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 much after having come into existence 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 Co-operative 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 "instrumentally of the State" within the meaning of Article 12 of the Constitution.

8. On the next issue relating to Constitutional provisions and Co-operative autonomy, it was held that co-operative 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 co-operative societies registered under the Kerala Co-operative 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, (AIR 2013 SC (Supp) 437) (supra). 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, (AIR 2013 SC (Supp) 437) (supra), these Writ Appeals are allowed and the orders passed in the Writ Petitions are set aside. No costs."

15. On perusal of the aforesaid judgments they have made it abundantly clear that, the Co-operative Society established by the provisions of the concerned Co-operative Societies Act, unless it is established that, a particular Society is

substantially financed directly or indirectly by an appropriate Government, it cannot be brought under the provisions of the Right to Information Act, in other words, it is not amenable to the said Act. In this Context, merely because, the Co-operative Society is administered by the Special Officer, that would also not alter the situation. It has also been held that, as to whether the particular Society is substantially financed by an appropriate Government is to be established only by the Information Seeker, as the burden of proof to come such conclusion that, it has been substantially financed, only rest with the Information Seeker and not on the Society, from whom such information is sought for. Therefore, in view of the aforesaid legal proposition as has been envisaged by the Honble Supreme Court in Thalappalam case followed by the Division Bench judgment cited supra of this Court, the point raised by the learned counsel appearing for the petitioner and in fact supported, by way of assistance to the Court made by the learned Standing Counsel for the first respondent, can very well be accepted.

16. In view of the settled legal position, that the Co-operative Society would not be amenable to the provisions of the Right to Information Act, the information sought for by the third respondent need not given by the second respondent / Society. Therefore, consequently such a direction ought not have been made by the first respondent / Information Commission through the impugned order dated 31.03.2011. Therefore, this Court feels that, the impugned order cannot be sustained, and it is liable to be interfered with.

17. In the result, the impugned order is set aside and accordingly, the Writ Petition is allowed, however, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vji

To

1. The Tamil Nadu Information Commission,
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+1cc to M/s.V.Raghavachari, Advocate, S.R.No.38813

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and
W.M.P.Nos.1 and 2 of 2011

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