

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LETTERS PATENT APPEAL NO.348 OF 2011
IN
WRIT PETITION NO.1256 OF 2011
WITH
LETTERS PATENT APPEAL NO.350 OF 2011
IN
WRIT PETITION NO.1257 OF 2011

Rajeshwar Majoor Kamgar
Sahakari Sanstha Ltd. Pimpri Gawali,
R/o No.BUD/MLA/PRD(1)/1428/92
through its President Mulchand Maniklal
Chandak, resident of Pimpri Gawali
Tq. Motala, District Buldana ... Appellant

-vs-

1. State Information Commissioner,
Amravati Division, Amravati
2. The Assistant Registrar,
Cooperative Societies, Motala,
Tq. Motala, District Buldana
3. Sachin Arunrao Nawale (Reporter)
resident of Shasti Nagar, Malkapur,
District Buldana ... Respondents

Shri P. B. Patil, Advocate for appellant.
Shri R. D. Bhuibhar, Advocate for respondent No.1.
Smt S. S. Jachak, Assistant Government Pleader for respondent No.2.
Shri A. R. Prasad, Advocate for respondent No.3.

WITH
LETTERS PATENT APPEAL NO.349 OF 2011
IN
WRIT PETITION NO.1960 OF 2011

1. Rajeshwar Majoor Kamgar
Sahakari Sanstha Ltd. Pimpri Gawali,
through its President Mulchand Maniklal
Chandak, resident of Pimpri Gawali

Tq. Motala, District Buldana

2. Sanjay Majoor Kamgar Sahakari Sanstha
Buldana, Thr. Its President
Kokilabai Dinkarrao Sambare
3. Yeshwant Majoor Kamgar Sahakari Sanstha
Ltd. Malkapur, Dist. Buldana
Through its President
Santosh Chandrabha Bhagat

... Appellants

-vs-

1. State Information Commissioner,
Amravati Division, Amravati
2. District Deputy Registrar of
Cooperative Societies, Buldana
3. The Assistant Registrar,
Cooperative Societies, Motala,
Tq. Motala, District Buldana
4. Assistant Registrar,
Cooperative Societies,
Buldana, District Buldana
5. Assistant Registrar,
Cooperative Societies, Malkapur,
District Buldana
6. Ramesh Yadaorao Malve
R/o Yeshwant Nagar, Malkapur
District Buldana
7. Laxmanrao Trambakrao Paraskar
Near Hanuman Mandir Malkapur,
Dist. Buldana

... Respondents

Shri P. B. Patil, Advocate for appellants.

Shri R. D. Bhuibhar, Advocate for respondent No.1.

Smt S. S. Jachak, Assistant Government Pleader for respondent Nos.2 to 5.

Shri A. R. Prasad, Advocate for respondent Nos.6 and 7.

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.

Arguments were heard on : August 25, 2021

Judgment is pronounced on : September 03, 2021

Common Judgment : (Per : A. S. Chandurkar, J.)

These Letters Patent Appeals can be decided together as similar points arise for adjudication therein.

The direction issued by the State Information Commissioner, Amravati to the Assistant Registrar, Cooperative Societies to procure information sought by the respondent No.3 from the appellant-Society was challenged by filing writ petition under Articles 226 and 227 of the Constitution of India before the learned Single Judge. By the judgment under appeal the learned Single Judge was pleased to dismiss the said writ petition by holding that the Assistant Registrar under the Maharashtra Cooperative Societies Act, 1960 (for short, the Act of 1960) was obliged to provide such information as a public authority exercising powers under the Act of 1960 by procuring the same from the appellant-Society.

2. For sake of convenience the facts arising in Letters Patent Appeal No.248/2011 are being referred to.

On 10/07/2009 the respondent No.3 sought information under provisions of Right to Information Act, 2005 (for short, the Act of 2005) from the Co-operative Society. The Co-operative Society through its Information Officer did not supply the requisite information on the ground

that the provisions of Act of 2005 were not applicable to it. The respondent No.3 therefore filed an appeal before the Assistant Registrar, Co-operative Societies who by his order dated 27/08/2009 directed the Society to supply the information sought by the respondent No.3 and allowed the appeal. The respondent No.3 however preferred a Second Appeal before the State Information Commission and by the order dated 23/06/2010 the State Information Commissioner held that by exercising authority under the Act of 1960, the Assistant Registrar, Co-operative Societies could obtain relevant information from the Society and that information could be supplied to the respondent No.3. By directing that the same be done within a period of four weeks, the Second Appeal was disposed of. An application for review preferred by the Society came to be rejected on 20/09/2010. These orders were the subject matter of challenge in the writ petition filed by the Society. The learned Single Judge held that the Society was not a “public authority” within the meaning of the Act of 2005. However in view of the fact that it was statutorily possible for the Assistant Registrar to obtain “information” as provided for in Section 2(f) of the Act of 2005 from the Society, the learned Single Judge felt that there was no reason to interfere with the order passed by the State Information Commissioner in that regard. As stated above similar orders were passed in connected writ petitions thus giving rise to these appeals.

3. Shri P. B. Patil, learned counsel for the appellant submitted that in view of the fact that the Society was not a public authority as defined by Section 2(h) of the Act of 2005 there was no justification on the part of the Assistant Registrar to seek information from the Society and supply the same to the respondent No.3. The Society was not substantially financed or controlled by the appropriate Government and it could not be compelled to supply information under the Act of 2005. The provisions of Section 2(f) could not be interpreted to mean that such information that could be accessed by the Assistant Registrar could be supplied to the applicant under the Act of 2005. On these grounds the impugned judgment was liable to be set aside.

The learned counsel for the appellant however fairly brought to the notice of the Court the decision of the Honourable Supreme Court in *Thalappalam Service cooperative Bank Limited and ors. vs. State of Kerala and ors. (2013) 16 SCC 82* wherein, in the context of Co-operative Societies in the State of Kerala, it was held that the Registrar could gather information from a Co-operative Society to the extent permitted by law and supply the same to the person seeking such information under the Act of 2005. He also submitted that the decision of the Division Bench of this Court in *Jalgaon Jilla Urban Co-operative Banks Association Ltd. Jalgaon vs. State of Maharashtra and ors. 2017(4) Mh.L.J. 301* holding that everything that was mentioned in Section 2(f) of the Act of 2005 was required to be supplied under the Act of

2005 was in wide terms and without noticing the judgment of the Honourable Supreme Court in *Thalappalam Service Co-operative Bank Ltd. And ors.* (supra). It was thus submitted that in the light of aforesaid position the order passed by the State Information Commissioner ought to be set aside.

4. Shri R. D. Bhuibhar, learned counsel appearing for the respondent No.1 submitted that in the light of the judgment of the Honourable Supreme Court in *Thalappalam Services Co-operative Bank Ltd. And ors.* (supra) it was clear that the information that could be accessed by the Assistant Registrar under the Act of 1960 could be obtained from the Society and supplied to the applicant. The State Information Commissioner had rightly directed the Assistant Registrar to obtain relevant information from the Society and supply the same to the respondent No.3. He also referred to the provisions of Section 79 of the Act of 1960 as well as Rule 65 of the Maharashtra Co-operative Societies Rules, 1961 (for short, the Rules of 1961).

Shri A. R. Prasad, learned counsel for the respondent No.3 adopted the aforesaid contentions raised on behalf of respondent No.1 and submitted that no interference was called for with the directions issued by the State Information Commissioner. Smt S. S. Jachak, learned Assistant Government Pleader appeared for respondent No.2.

5. We have heard the learned counsel for the parties and we have given due consideration to their respective submissions. The information sought by respondent No.3 from the Society was not supplied to it by the Society on the ground that the provisions of the Act of 2005 were not applicable to it. The State Information Commissioner however has noted that it was permissible for the Assistant Registrar to obtain information with regard to matters provided for by the Act of 1960 from the Society and such information was liable to be supplied to the respondent No.3. In this regard it is to be noted that the appellant is a Co-operative Society duly registered under the Act of 1960. As per provisions of Section 79 of the Act of 1960 the Society is obliged to file returns and statements with regard to matters stipulated in Section 79(1A) thereof. The Registrar is empowered by Section 79 (2) to take action to ensure compliance with the order made under Section 79(1) and (1A). Rule 65 of the Rules of 1961 requires every Society to maintain accounts and books as detailed therein. From these provisions it becomes clear that it is the duty of a Society duly registered under the Act of 1960 to file returns and statements as per Section 79 and also to maintain account books as per Rule 65. Failure to maintain aforesaid returns, accounts and books empowers the Registrar to ensure compliance in that regard. In other words, the material referred to in Section 79 and Rule 65 is statutorily accessible to the Registrar under the Act of 1960. He can

compel the Co-operative Society to furnish this information under the Act of 1960.

6. In this regard reference can be made to the observations in *Thalappalam Service Co-operative Bank Ltd. And ors.* (supra). While considering the question as to whether a Co-operative Society registered under the Kerala Co-operative Societies Act, 1969 would fall within the definition of “public authority” under Section 2(h) of the Act of 2005 and be bound by the obligations to provide information sought by a citizen under the Act of 2005, it was held that a Co-operative Society which was not a “public authority” as defined by Section 2(h) of the Act of 2005 was nevertheless bound to supply information to the Registrar of Co-operative Societies under the Act governing such Co-operative Society. The Registrar functioning under the Co-operative Societies Act was a “public authority” within the meaning of Section 2(h) of the Act of 2005 and hence as a public authority he could in exercise of statutory powers under the Kerala Co-operative Societies Act, 1969 gather information from a Society on which he had supervisory or administrative control. The Registrar however is not obliged to disclose such information which falls within the purview of Section 8(1)(j) of the Act of 2005. Similarly, if the Registrar is of the view that information sought is in relation to personal information he is not bound to furnish the same unless he is satisfied that larger public interest justifies the disclosure of such

information for reasons to be recorded in writing. We find that the aforesaid observations are applicable to the cases in hand.

7. It is seen from the decision in *Thalappalam Service Co-operative Bank Ltd. And ors.* (supra) that the Registrar of Co-operative Societies is empowered under the Kerala Co-operative Societies Act, 1969 to gather information from a Society on which he has supervisory or administrative control under that Act. He is in a position to gather such information from the Co-operative Society to the extent the same is permitted by law. It is found that under Section 79 of the Act of 1960 as well Rule 65 of the Rules of 1961 a Co-operative Society is required to maintain returns, accounts and books as referred to therein. This material can be accessed statutorily by the Registrar under the Act of 1960. Hence, when such information which can be accessed by the Registrar statutorily under the Act of 1960 is sought for by any applicant by invoking the provisions of the Act of 2005, the same would be liable to be supplied by the Society through the Registrar. At the same time if it is found that certain information falls under the category exempted under Section 8(1) of the Act of 2005 the same can be refused to be supplied by the Registrar.

8. We find that the Information Commissioner has applied similar analogy while directing the Society to supply information to the respondent

No.3. The learned Single Judge has held that what was directed to be supplied to the respondent No.3 was information which the Assistant Registrar could statutorily access. It is thus clear that information as contemplated by Section 2(f) of the Act of 2005 as well as such information which is accessible to the Registrar under the Act of 1960 including that which is required to be maintained under Section 79 and Rule 65 of the Rules of 1961 would be liable to be supplied to the applicant. The same would however be subject to the restrictions imposed in that regard by Section 8(1) of the Act of 2005.

9. In *Jalgaon Jilla Urban Co-operative Banks Associations Ltd.* (supra) the association of Urban Co-operative Banks and credit societies sought a declaration that urban co-operative banks, co-operative financial institutions, Patpedhis and other co-operative societies under the Act of 1960 were not “public authority” under Section 2(h) of the Act of 2005. The Division Bench of this Court after referring to the decision in *Reserve Bank of India vs. Jayantilal N. Mistry (2016) 3 SCC 525* proceeded to observe that the Co-operative Societies were duly registered under the Act of 1960. The authority under the Act of 1960 could get the audit done and also conduct enquiry into irregularities. Hence when the information was sought from an authority like the Registrar or his subordinates under the Act of 1960 the same was liable to be supplied. The writ petition was accordingly dismissed.

It may be noted that in *Jayantilal N. Mistry* (supra) the Honourable Supreme Court in the context of the provisions of Section 2(f) of the Act of 2005 has observed that it could be inferred from the said provisoin that the legislature's intent was to make available to the general public such information which could be obtained by the public authorities from the private body.

10. In the light of aforesaid it is held that the appellant is duty bound to supply the information sought by the respondent No.3 in LPA Nos.348/2011 and 350/2011 as well as by respondent Nos.6 and 7 in LPA No.349/2011 through the concerned Assistant Registrar in the light of observations made hereinabove. There is no reason to interfere with the judgment of the learned Single Judge. The Letters Patent Appeals are accordingly dismissed leaving the parties to bear their own costs.

JUDGE

JUDGE