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W.P.No.16279 of 2011



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 19-10-2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.16279 of 2011

G.Chinnathambi

...

Petitioner

-VS-

1.The Deputy Registrar of Coop. Societies,
Tirukoilur Circle,
Tirukoilur,
Villupuram District.

2.The Public Information Officer,
Pavandur Primary Agricultural Coop. Credit Society,
Pavandur Village & Post,
Tirukoilur Taluk,
Villupuram District.

3.V.Krishnamoorthy

...

Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari to call for the entire records relating to the impugned order passed by the first respondent in its proceedings Na.Ka.6/2010-Pa, dated 24.06.2011, and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondent 1 : Mr.R.P.Murugan Raja,
Govt. Advocate.



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For Respondent 2 : Mr.A.Raja Perumal,
for Mr.L.P.Shanmugasundaram

For Respondent 3 : Mr.Sunny Sheen,
for Mr.V.Raghavachari.

ORDER

In this Writ Petition, a challenge has been made to the impugned order passed by the first respondent, dated 24.06.2011, directing the second respondent to furnish the information sought for by the third respondent,

2. The third respondent, claiming to be a member of the second respondent-Co-operative Society, sought for information from the second respondent regarding the loan availed by other members of the Society, including the petitioner, and also waiver of the same. As the said information was not furnished by the second respondent, the third respondent filed an appeal before the first respondent, who allowed the appeal and directed the second respondent to furnish the information sought for by the third respondent. Aggrieved over the same, the petitioner has filed this Writ Petition.

3. Learned counsel for the petitioner would submit that the information sought for by the third respondent relating to other members of the Society, including



the petitioner, is not amenable to Right To Information Act, 2005, whereas, the first respondent passed the impugned order in violation of the provisions of the said Act and, therefore, the impugned order is liable to be set aside. In support of his submission, the learned counsel relied upon a decision of the Hon'ble Apex Court in Thalappalam Ser. Coop. Bank Ltd. v. State of Kerala, 2013 (16) SCC 82, and other decisions of this Court in W.P.No.1421 of 2013, dated 22.06.2022; W.P.No.11444 of 2011, dated 02.12.2020; and W.P.No.33282 of 2016, dated 15.11.2021, wherein this Court held that Right To Information Act is not applicable to Co-operative Societies. Accordingly, he seeks to quash the impugned proceedings.

4. Per contra, learned counsel for the third respondent vehemently contended that the decision in Thalappalam Ser. Coop. Bank Ltd.'s case, referred to by the petitioner, is of the year 2013 and subsequent to that, Article 243-ZO has been incorporated in the Constitution of India, enabling the members of the Society to seek for information, and, therefore, every member has a right to seek information from the Society. It is his further submission that a Society substantially financed either directly or indirectly by funds provided by the Government is amenable to Right To Information Act. As such, he submits that the information sought for is not in respect of personal information and there is no scope for personally affecting the right or privacy of the other members, as the third respondent, as a member, has sought certain details of the



loan availed by other members, and, therefore, the impugned order is to be sustained.

The learned counsel placed reliance on the decisions of this Court in W.P.No.15158 of 2012, dated 02.12.2020, and of Kerala High Court in W.P.(C) No.29928 of 2018, dated 01.04.2019.

5. I have heard the learned counsel for the parties and also perused the material available on record.

6. The judgment of the Apex Court, in Thalappalam Ser. Coop.Bank Limited's case, cited above, has been followed by a Division Bench of this Court in W.A.No.2425 to 2428 and 2500 of 2013, dated 29.04.2015, wherein, it is held as follows :

"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, (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, (supra), these Writ Appeals are allowed and the orders passed in the Writ Petitions are set aside. No costs."

7. The above decisions make it clear that unless Cooperative Societies are substantially financed either directly or indirectly by the appropriate Government, they are not amenable to Right To Information Act. In Thalappalam Ser. Coop. Bank Limited's case, cited supra, the Apex Court, in Paragraphs 36 to 38, held as under :

"36. 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. Grimling* (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. 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.

37. 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 '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; sold; 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.

38. Merely providing subsidiaries, 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)."

8. From the above decision of the Apex Court, it is very clear that merely because a Society has been granted subsidy, that will not satisfy the requirement of being substantially financed by the Government.



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9. Similarly, in W.P.No.33282 of 2016, dated 15.11.2021, this Court also held that Cooperative Society is not amenable to Right To Information Act and, accordingly, quashed the impugned order.

10. In W.P.No.11444 of 2011, dated 02.12.2020, this Court, in Paragraph 15, held that merely because a Co-operative Society is administered by a Special Officer, that would not alter the situation, and, whether a particular Society is substantially financed by the appropriate Government or not is to be established only by the information seeker. In such view of the matter, as there is no material available on record to show that the second respondent Society is substantially financed either directly or indirectly by the Government, this Court has no other option but to hold that Right To Information Act is not applicable to the present case.

11. In the decision of the Kerala High Court in W.P.(C) No.29928 of 2018, dated 01.04.2019, liberty was granted to the petitioner to seek and obtain information and copies of the documents, taking note of the provisions available under Section 90 (b) and Rule 25 of the Kerala Co-operative Societies Act and the Rules respectively, and also the Minutes passed by the Managing Committee of the Society. Therefore, the above decision cannot be applied to the facts of the present case.



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12. In W.P.No.15158 of 2012, dated 02.12.2020, this Court in Paragraph 15, held that unless a Society is substantially financed directly or indirectly by an appropriate Government, it cannot be brought under the provisions of Right To Information Act.

13. Therefore, the contention of the learned counsel for the respondents cannot be countenanced at this stage. As the very factum that the second respondent Co-operative Society is substantially financed either directly or indirectly by the Government has not been established, the question of invoking the provisions of Right To Information Act does not arise in this case.

14. Though Article 243-ZO has been incorporated in the Constitution of India at a later point of time, on perusal of the same, it is seen that only the Legislature of a State may, by law, provide for access to every member of a co-operative society to the books, information and accounts of the co-operative society kept in regular transaction of its business. In the absence of any such legislation, the respondents cannot claim the benefit under Article 243-ZO of the Constitution of India.



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15. Accordingly, the impugned order passed by the first respondent stands quashed. Writ Petition is allowed. No costs. Consequently, the connected M.P.No.2 of 2011 is closed.

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To

- 1.The Deputy Registrar of Coop. Societies,
Tirukoilur Circle,
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N.SATHISH KUMAR,J.

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