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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2022

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THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.7336 of 2011
and M.P.No.2 of 2011

M.Muthusamy

... Petitioner

Vs.

1. The Assistant Director of Handloom & Textiles,
Department / Public Information Officer,
No.23, Bharathipark 2nd Cross Street,
Saibaba Colony, Coimbatore - 11.
2. The Special Officer,
Alangkombu Devanga Cotton and Silk Weavers Coop.
Production and Sale Society Ltd., K.1317,
Alangkombu Post, Sirumugai - 641 302,
Coimbatore District.

3. A.E.Rajendran

... Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the entire records relating to the impugned order passed by the first respondent in his Proceedings Na.Ka.No.9300/2010/C, dated 31.01.2011 and quash the same.

For Petitioner : M/s.C.Prakasam

For 1st Respondent: M/s.M.Rajendiran
Additional Government Pleader

For 3rd Respondent: M/s.M.Selvaraju

O R D E R

The present Writ Petition has been filed for the issuance of a Writ of Certiorari, to call for the entire records relating to the impugned order passed by the first respondent in his Proceedings Na.Ka.No.9300/2010/C, dated 31.01.2011 and quash the same.

2. The Writ Petitioner is a Member of the second



respondent Cooperative Society. It appears that the third respondent sought for certain information with regard to the affairs of the Cooperative Society under the Right to Information Act. The first respondent in his Proceedings Na.Ka.No.9300/2010/C, dated 31.01.2011 directed the second respondent to furnish all the details to the third respondent and report the same to the Head Office. Aggrieved over the same, the Writ Petitioner has preferred the present Writ Petition on the ground that the Cooperative Societies will not fall under the purview of the Right to Information Act as per the judgment of the Hon'ble Supreme Court in the case of Thalappalam Service Cooperative Bank Limited and Others Vs. State of Kerala and Others [(2013) 16 SCC 82] and it is followed by the Division Bench of this Court in W.A.No.2425 to 2428 and 2500 of 2013 dated 29.04.2015.

3. A perusal of the said judgment, it is noted that the Cooperative Societies will not fall under the definition "Public Authority" as defined under Section 2(h) of the RTI Act and they are not bound to provide information sought for by a citizen under the Right to Information Act, the reason being that the Cooperative Societies registered under the Tamil Nadu Cooperative Societies Act are not substantially financed by the State or Central Government or formed, established or constituted by law made by Parliament or State Legislature. The Hon'ble Supreme Court made 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 and held that the Societies are not Statutory Bodies, but only a body corporate within the meaning of the Cooperative Societies Act. Therefore, they will not fall within the expression 'State' or 'instrumentally of the State' within the meaning of Article 12 of the Constitution. The relevant paragraphs of the judgment made in W.A.No.2425 to 2428 and 2500 of 2013 dated 29.04.2015 are extracted as follows:-

"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



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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



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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."

4. Further, an argument was raised in the Writ Appeal in W.A.No.2425 to 2428 and 2500 of 2013 that in certain cases, it is governed by the Special Officer appointed by the Government, when there is no elected Board of Directors. The Division Bench has categorically held that it could hardly make any difference in the light of the recent pronouncement of the Hon'ble Supreme Court in Thalappalam Service Cooperative Bank Limited' case.

5. Therefore, it is very clear that the Cooperative Societies will not fall under the purview of the Right to Information Act and there is no obligation for the second respondent to provide any information of the Society or its members. Therefore, the direction issued by the first respondent to provide information under the Right to Information Act and report back to the Head Office is without jurisdiction and illegal and therefore, the impugned order is liable to be set aside and accordingly, the same is set aside. It is made clear that the second respondent Society is not under an obligation to provide any information under the Right to Information Act to the third respondent. Accordingly, the Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-VII)

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Sub Assistant Registrar



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To

1. The Assistant Director of Handloom & Textiles,
Department / Public Information Officer,
No.23, Bharathipark 2nd Cross Street,
Saibaba Colony, Coimbatore - 11.
2. The Special Officer,
Alangkombu Devanga Cotton and Silk Weavers Coop.
Production and Sale Society Ltd., K.1317,
Alangkombu Post, Sirumugai - 641 302,
Coimbatore District.

+1cc to M/s.M.Selvaraju, Advocate, S.R.No.11055

W.P.No.7336 of 2011
and M.P.No.2 of 2011

PMK(CO)
SB(08/03/2022)