



WEB COPY

W.P.No.19136 of 2011
MP.No.1 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.01.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.19136 of 2011 and
MP.No.1 of 2011

The Railway Employee's Co-operative
Credit Society Ltd.,
Represented by its Chief Executive,
Ashok Vihar Complex, Old Zoo Road,
Chennai - 600 003.

... Petitioner

Vs

1. Central Information Commission,
Represented by its Registrar,
Club Building, Near Post Office,
Old J.N.U. Campus,
New Delhi - 110067.

2. M. Pugalendhi

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the order of the 1st Respondent made in File No.CIC/AD/C/2010/000475 dated 29th July 2011 and quash the same.

For Petitioner : Mr.A.Jenasenan
For Respondents : Mr.AR.L.Sundaresan (for R1)
Additional Solicitor General
assisted by Mr.B.Rabu Manohar
Senior Central Government Standing Counsel

No Appearance - (for R2)



ORDER

The petitioner is the Railway Employee's Co-operative Credit Society. The challenge in this writ petition is to an order passed by the first respondent, the Central Information Commissioner, dated 24.06.2010 under the provisions of the Right to Information Act, 2005 (in short 'Act').

2.The genesis was a request for information by the second respondent on 27.06.2009 seeking the following information:

'

The Railway Employees Co-op. Credit Society Ltd., is functioning at Ashok Vihar Complex, Old Zoo Road, (Near Central Railway Station) Chennai-3 for the benefit of Railway employees under the Chairmanship of Shri.N.Kannaiah

1.Kindly enlighten me whether the above mentioned Society is functioning under Central Government? If so under which department/Ministry with its Hd. quarters address is to be provided to me immediately.

2.Whether the Reservation Policy is adhered in this Society?

3.Kindly arrange to furnish the complete list of SC / ST employees in the above Society, with their full residential address with appointment Date.

4.Give the present strength of employees of the society.'

3.Though there are counsel on record for R2, they report no instructions as has been recorded by this Court on 04.01.2023.

4.Since the petitioner was of the view that it is not amenable to the provisions of the Act, it conveyed the same to the respondent on 15.12.2010, reiterating that it is a voluntary organization comprising railway employees as



its members. The petitioner also pointed out that it is neither controlled nor financed, directly or indirectly, by the Government and thus does not satisfy the ingredients of Section 2(h) of the Act.

5. Not satisfied with the response from the petitioner, R2 filed an appeal before R1. The impugned order has been passed by R1 after hearing both parties, adverse to the petitioner and relying upon the decisions of the Delhi High Court in *Krishak Bharti Cooperative Ltd. v. Ramesh Chander Bawa* (WP.(C)No.6129 of 2007 dated 14.05.2010) and *IFCI Ltd. v. Ravinder Balwani* (WP.(C)No.4596 of 2007 dated 17.08.2010).

6. R1 has, in conclusion, held that the petitioner is a public authority amenable to the provisions of the Act. The petitioner was thus directed to comply with the provisions of Section 4 of the Act, appoint a Public Information Officer and provide the information sought for to R2 within a fixed time frame.

7. Mr. A. Jenasenan, learned counsel appearing for the petitioner would rely on the judgment of the Hon'ble Supreme Court in the case of *Thalappalam Service Cooperative Bank Limited and others v. State of Kerala and others* [(2013) 16 SCC 82]. The Bench was, in the aforesaid case, concerned with the issue of whether co-operative societies registered under the Kerala Co-operative Societies Act, 1969 would fall within the definition of 'public authority' under the Act.



8.After an extensive discussion, the Bench held that the co-operative society registered under the provisions of the respective State Co-operative enactments are neither owned, controlled or substantially financed by the Government and in the absence of such substantial control, do not attract the provisions of the Act.

9.This judgment has been followed by the First Bench of this Court in W.A.Nos.2425 to 2478 and 2500 of 2013 in the case of *the Public Information Officer v. Registrar, Tamilnadu Information Commission and others and other matters* order dated 29.04.2015. The Writ Appeals filed by the Illayankudi Co-operative Urban Bank Limited thus came to be allowed. According to the petitioner, this decision would be applicable on all fours to its case.

10.Mr.AR.L.Sundaresan, learned Additional Solicitor General assisted by Mr.B.Rabu Manohar, learned Senior Central Government Standing Counsel for R1 would accede to the applicability of the decision to the merits of the matter as well. Hence, the order passed by R1 is found to be erroneous in law.

11.Incidentally, and as rightly pointed out by the learned counsel for the petitioner the very same Information Commissioner who has passed the impugned order, has taken a contrary view in the case of *N.E. Railway Employees Multi State Primary Cooperative Bank Ltd., Gorakhpur v. ACIT,*



Range-1, Gorakhpur concluding that the aforesaid co-operative bank was not amenable to the provisions of the Act.

12.In light of the discussion as aforesaid, the impugned order is set aside and this writ petition is allowed. No costs. Connected miscellaneous petition is closed.

13.A footnote. Notwithstanding the above conclusion, the petitioner being a third party for the purposes of the RTI Act, is still bound by the provisions of Section 11 dealing with third party information. Section 11 stipulates that where a request is made for information relating to a third party that is in the possession of a Central or State Public Information Officer, that officer is bound to, in line with Section 11, put the third party to notice and thereafter take a decision as to whether the information must be supplied to the information seeker or not. The nature of the information sought for in this case, particularly query No.1, may well attract provisions of Section 11.

31.01.2023

vs

Index : Yes

Speaking Order

Neutral Citation: Yes



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Dr.ANITA SUMANTH,J.

VS

To

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