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W.P.No.6285 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.6285 of 2023

and

W.M.P.No.6305 of 2023

Public Information Officer/
General Manager,
Cuddalore District Central Co-operative Bank Ltd.,
1, Beach Road, Cuddalore – 607 001.

... Petitioner

Vs.

1.The Tamil Nadu Information Commission,
19, Government Farm Village, Panepet,
Nandanam, Chennai – 600 035.

2.P.Barathi

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for records on the file of the first respondent relating to the order bearing No.SA.9664/A/2022 dated 21.12.2022 passed by the first respondent and quash the same.



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For Petitioner : Mr.R.Arumugam
(in both WPs)

For Respondents : Mr.C.Vigneswaran
(in both WPs) Government Advocate [R1]

ORDER

The subject matter of challenge in the present writ petition pertains to the impugned order passed by the first respondent dated 21.12.2022, wherein, the Cooperative Society has been directed to furnish the information sought for by the second respondent under the Right to Information Act.

2. Heard Mr.R.Arumugam, learned counsel for the petitioner and Mr.C.Vigneswaran, learned Government Advocate appearing for the first respondent.

3. The issue involved in the present writ petition has been substantially discussed by the learned Single Judge of this Court in W.P.No.11444 of 2011 through an order dated 02.12.2020, wherein, the learned Single Judge took into consideration the Judgment of the



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Hon-ble Supreme Court in ***Thalappalam Service Cooperative Bank***

Ltd., and Others vs. State of Kerala and others reported in **2013 (16)**

SCC 82 and also the Judgment of the Division Bench of this Court in

W.A.Nos.2425 to 2428 and 2500 of 2013, dated 29.04.2015 and it was

held as follows:

“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



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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.”



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4. It is clear from the above that unless and otherwise it is clearly established that a Cooperative Society is substantially financed directly or indirectly by an appropriate Government, it cannot fall within the purview of Section 2(h) of the Right to Information Act.

5. In the present case, the petitioner Society is run by its elected Board of Directors and just because it is administered by a Public Information Officer/General Manager, that by itself does not raise a presumption that the Society is substantially financed by the Government.

6. The Hon-ble Supreme Court in the Judgment referred supra has dealt with the term "Substantially Financed" at Paragraph Nos.36 to 38 of the Judgment and the same is extracted hereunder for easy reference:

36. A body which is controlled by the appropriate Government can fall under the definition of public authority under Section 2(h)(d)(i).



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37. *Let us examine the meaning of the expression “controlled” in the context of the RTI Act and not in the context of the expression “controlled” judicially interpreted while examining the scope of the expression “State” under Article 12 of the Constitution or in the context of maintainability of a writ against a body or authority under Article 226 of the Constitution of India. The word “control” or “controlled” has not been defined in the RTI Act. and hence, we have to understand the scope of the expression “controlled” in the context of the words which exist prior and subsequent i.e. “body owned” and “substantially financed” respectively.*

38. *The meaning of the word “control” has come up for consideration in several cases before this Court in different contexts. In State of W.B. v. Nripendra Nath Bagchi, while interpreting the scope of Article 235 of the Constitution of India, which confers control by the High Court over District Courts, this Court held that the word “control” includes the power to take disciplinary action and all other incidental or consequential steps to effectuate this end and made the following observations: (AIR pp. 453 & 455, paras 13 & 18)*



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13. The word -control-, as we have seen, was used for the first time in the Constitution and it is accompanied by the word -vest- which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day-to-day working of the court but contemplates disciplinary jurisdiction over the Presiding Judge.

18.... In our judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal.... ”

The above position has been reiterated by this Court in Chief Justice of A.P. v. L.V.A.Dixitulu.



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7. It is clear from the above that merely because a Society is being granted subsidiaries, exemptions or privileges, that by itself will not satisfy the requirements of "Substantially Financed" by the Government.

8. As a result of the above discussion, this Court has absolutely no hesitation to interfere with the impugned orders passed by the first respondent on the ground that the petitioner Cooperative Society does not fall within the purview of the Right to Information Act and accordingly, the impugned order is hereby quashed and the writ petition is allowed accordingly. No Costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No



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To

The Tamil Nadu Information Commission,
19, Government Farm Village, Panepet,
Nandanam, Chennai – 600 035.



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M.DHANDAPANI, J.

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