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W.P. No. 21243 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 21243 of 2022

Public Information Officer/General Manager,
Erode District Central Co-Operative Bank Limited,
The Erode District Central Co-Operative Bank Limited,
No. 1, Bhavani Main Road,
Erode – 638 003.

... Petitioner

-vs-

1. Tamil Nadu Information Commission,
Through its Commissioner,
Block No. 19, Government Farm Village,
Panepet, Nandanam,
Chennai – 600 035.

2. K.R.Sivaraj
Respondents

...

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records of the impugned orders of the First Respondent in SA No. 2272/A/2022, SA No. 2270/A/2022, SA No. 2273/A/2022, SA No. 2274/A/2022, SA No. 2275/A/2022 and SA No. 2276/A/2022 all dated 21.06.2022 and quash the same as illegal, illogical and unconstitutional.

For Petitioner : Mr. M.P.Srivignesh

For Respondents : Mr. C.Vigneswaran (for R1)
Standing Counsel



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No appearance (for R2)



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ORDER

Heard Mr. M.P.Srivignesh, Learned Counsel for the Petitioner and Mr. C.Vigneswaran, Learned Standing Counsel appearing for the First Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. Though notice has been served on the Second Respondent, he has neither entered appearance in the Writ Petition nor any representation on his behalf when the matter is called today.

3. The Second Respondent by applications dated 06.10.2021, 08.11.2021, 22.11.2021, 24.11.2021, 02.12.2021, 04.12.2021 had sought for certain information under the Right to Information Act, 2005 (hereinafter referred to as 'the RTI Act' for short) from the Petitioner, which is a co-operative society governed by the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the TNCS Act' for short). The Petitioner by separate proceedings in Na.Ka.No.000761/2021-22/E5 dated 22.10.2021, Na.Ka.000838/2021-22/E5 dated 03.12.2021, Na.Ka.000916/2021-22/E5 dated 18.12.2021



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Na.Ka.000979/2021-22/E5 dated 28.12.2021 informed the Second Respondent

that as the Petitioner was not a 'Public Authority' within the meaning of Section 2(h)(d)(ii) of the RTI Act as held in various decisions of the First Respondent referred therein, it would not be possible to furnish the information sought under the provisions of the RTI Act, which was confirmed by the Appellate Authority by proceedings dated 21.06.2022 under Section 19(3) of the RTI Act.

4. The Second Respondent challenged the said order in second appeals in Order in SA No. 2272/A/2022, SA No. 2270/A/2022, SA No. 2273/A/2022, SA. No. 2274/A/2022, SA No. 2275/A/2022 and SA No. 2276/A/2022 under Section 19(3) of the RTI Act before the First Respondent, who by order dated 21.06.2022 directed the Petitioner to permit the Second Respondent to inspect the records in its office and make copies of those documents sought by the Second Respondent and furnish the documents sought by the Second Respondent and supply the same free of cost to the Second Respondent in terms of Section 7(6) of the RTI Act and file report within 15 days from that date, which are assailed in this Writ Petition.



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5. The primordial attack of Learned Counsel for the Petitioner on the impugned orders is that when it has been held in the authoritative pronouncement of the Hon'ble Supreme Court of India in ***Thalappalam Service Co-operative Bank Limited -vs- State of Kerala*** [(2013) 16 SCC 84] that a co-operative society would not be a 'Public Authority' within the meaning of Section 2(h) of the RTI Act, the First Respondent ought not to have issued any directions to the Petitioner to furnish the information sought by the Second Respondent. Though there is substantial force in the said contention, it must be recapitulated that in the said decision, it has been explained that the Registrar of Co-operative Societies could require information to be furnished from a co-operative society in certain circumstances and the relevant passages are extracted below:-

“66. Now, the next question is whether a citizen can have access to any information of these Societies through the Registrar of Co-operative Societies, who is a public authority within the meaning of Section 2(h) of the Act.

67. The Registrar of Co-operative Societies functioning under the Co-operative Societies Act is a “public authority” within the



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meaning of Section 2(h) of the Act. As a public authority, the Registrar of Co-operative Societies has been conferred with lot of statutory powers under the respective Act under which he is functioning. He is also duty-bound to comply with the obligations under the RTI Act and furnish information to a citizen under the RTI Act. The information which he is expected to provide is the information enumerated in Section 2(f) of the RTI Act subject to the limitations provided under Section 8 of the Act. The Registrar can also, to the extent law permits, gather information from a society, on which he has supervisory or administrative control under the Co-operative Societies Act. Consequently, apart from the information as is available to him, under Section 2(f), he can also gather those information from the society, to the extent permitted by law. The Registrar is also not obliged to disclose those information if those information fall under Section 8(1)(j) of the Act. No provision has been brought to our knowledge indicating that, under the Co-operative Societies Act, a Registrar can call for the details of the bank accounts maintained by the citizens or members in a co-operative bank. Only those



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information which a Registrar of Co-operative Societies can have access under the Co-operative Societies Act from a society could be said to be the information which is “held” or “under the control of public authority”. Even those information, the Registrar, as already indicated, is not legally obliged to provide if those information falls under the exempted category mentioned in Section 8(j) of the Act. Apart from the Registrar of Co-operative Societies, there may be other public authorities who can access information from a co-operative bank of a private account maintained by a member of a society under law, in the event of which, in a given situation, the society will have to part with that information. But the demand should have statutory backing.

68. *Consequently, if an information which has been sought for relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual, the Registrar of Co-operative Societies, even if he has got that*



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information, is not bound to furnish the same to an applicant, unless he is satisfied that the larger public interest justifies the disclosure of such information, that too, for reasons to be recorded in writing.

69. We, therefore, hold 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 and the State Government Letter dated 5-5-2006 and the Circular dated 1-6-2006 issued by the Registrar of Co-operative Societies, Kerala, to the extent, made applicable to societies registered under the Kerala Co-operative Societies Act would stand quashed in the absence of materials to show that they are owned, controlled or substantially financed by the appropriate Government. The appeals are, therefore, allowed as above, however, with no order as to costs.”

Having regard to the aforesaid legal position, the First Respondent ought to have merely relegated the Second Respondent to resort to the said procedure of seeking the permissible extent of information relating to the Petitioner from the



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jurisdictional Registrar of Co-operative Societies under the TNCS Act or the Rules made thereunder, but could not have straightaway directed the Petitioner to furnish the information sought by the Second Respondent with the mere approval of the jurisdictional Registrar of Co-operative Societies.

6. In that view of the matter, the impugned Order in SA No. 2272/A/2022, SA No. 2270/A/2022, SA No. 2273/A/2022, SA. No. 2274/A/2022, SA No. 2275/A/2022 and SA No. 2276/A/2022 dated 21.06.2022 passed by the First Respondent, which cannot be sustained, is set aside with a clarification that it would not preclude the Second Respondent from obtaining inspection in the manner pointed out in the aforesaid decision of the Hon'ble Supreme Court of India.

In the result, the Writ Petition is ordered on the aforesaid terms. No costs.

01.12.2023

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 22.05.2024.

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To
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The Commissioner,
Tamil Nadu Information Commission,
Block No. 19, Government Farm Village,
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Chennai – 600 035.



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P.D. AUDIKESAVALU, J.

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