



W.P.Nos.32947 & 32949 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2023

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

W.P.Nos.32947 & 32949 of 2018
and W.M.P.Nos.38193 & 38188 of 2018

S.512-Vilangamudi Primary Agricultural
Co-operative Credit Society Ltd.,
Rep. by its Secretary,
Vilangamudi Post,
Pochampalli Taluk,
Krishnagiri District.

...Petitioner in both W.P's

vs.

1.The Public Information Officer /
Co-operative Deputy Registrar,
O/o, Deputy Registrar of
Co-operative Societies,
Krishnagiri Circle,
Krishnagiri.

2.V.Arumugam

... Respondents in W.P.No.32947 of 2018

1.The Public Information Officer /
Co-operative Deputy Registrar,
O/o, Deputy Registrar of
Co-operative Societies,
Krishnagiri Circle,
Krishnagiri.

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2.M.Sriramulu

...Respondents in W.P.No.32949 of 2018

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Prayer in W.P.No.32947 of 2018 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the first respondent in his letter in Na.Ka.231/2017/Tho.Va(2) dated 08.10.2018, directing the petitioner to forward the information sought by the second respondent, quash the same holding that the petitioner's Co-operative Credit Society registered under the Tamilnadu Co-operative Societies Act, that will not fall within the definition of "public authority" as defined under Section 2(h) of the RTI Act.

Prayer in W.P.No.32949 of 2018 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the first respondent in his letter in Na.Ka.231/2017/Tho.Va, dated 09.11.2018, directing the petitioner to forward the information sought by the second respondent, quash the same holding that the petitioner's Co-operative Credit Society registered under the Tamilnadu Co-operative Societies Act, that will not fall within the definition of "public authority" as defined under Section 2(h) of the RTI Act.



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For Petitioner	: Mr.M.S.Palaniswamy in both W.P's
For R1	: Mr.U.Bharanidharan Additional Government Pleader in both W.P's
For R2	: No Appearance in W.P.No.32947 of 2018
For R2	: M/s.Selvigeorge in W.P.No.32949 of 2018

COMMON ORDER

The subject matter of challenge in the present writ petitions pertains to the impugned orders passed by the first respondent, dated 08.10.2018 and 09.11.2018, wherein the petitioner / Cooperative Society has been directed to furnish the information sought for by the second respondent under the Right to Information Act.

2.Heard Mr.M.S.Palaniswamy, the learned counsel appearing on behalf of the petitioner, Mr.U.Bharanidharan, the learned Additional Government Pleader appearing on behalf of the first respondent and



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M/s.Selvigeorge, the learned counsel appearing on behalf of the second respondent in W.P.No.32949 of 2018.

3.The issue involved in the present writ petitions 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 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 Division Bench Judgment 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 Cooperative 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 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 Cooperative 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 not a statutory body and the ultimate authority in the Co-operative society is the general body, 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).

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)

13. The word 'control', as we have seen, was used for



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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.

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.



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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 orders are quashed and these writ petitions are allowed. No Costs. Consequently, connected miscellaneous petition are closed.

16.03.2023

Index : Yes/No
Speaking order : Yes/No

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To:
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