



W.P. No. 17047 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2024

CORAM

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

W.P. No. 17047 of 2022

and

W.M.P. No. 16354 of 2022

Assistant General Manager/Public Information Officer,
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. T.A.Rajendran

3. The Public Information Office,
Office of the Joint Registrar of Co-operative Societies,
Cuddalore.
(R3 *suo motu* impleaded as per order dated
17.11.2023 in W.P. No. 17047 of 2022)

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Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for records on the file of the First Respondent relating to the order bearing No. SA. 793/A/2022 dated 12.04.2022 passed by the First Respondent and quash the same.



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For Petitioner : Mr. R.Arumugam
For Respondents : Mr. C.Vigneswaran (for R1)
Mr. S.Ganesh (for R2)
M.S.R.Sugumar (for R3)

ORDER

Heard Mr. R.Arumugam, Learned Counsel for the Petitioner, Mr. C.Vigneswaran, Learned Counsel for the First Respondent, Mr. S.Ganesh, Learned Counsel for the Second Respondent and Mr. M.S.R.Sugumar, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent by application dated 01.11.2021 had sought information from the Third Respondent under the Right to Information Act, 2005 (hereinafter referred to as 'the RTI Act' for short). The Third Respondent by proceedings in Na. Ka. No. 5106/2020/ThuVaTha.2 dated 08.11.2021 forwarded the said letter to the Petitioner, which is a Co-operative Society governed by the Tamil Nadu Co-operative Societies Act, 1983 to furnish the information sought by him. The Petitioner by proceedings in Na. Ka. No. 3635/2016-2017/CR dated 22.11.2021 informed the Second Respondent



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that as the Petitioner was not a 'Public Authority' within the meaning of Section 2(h)(d)(ii) of the RTI Act, it would not be possible to furnish the information sought under the provisions of the RTI Act. The Second Respondent challenged the said order in a Second Appeal in S.A. No. 793/A/2022 under Section 19(3) of the RTI Act before the First Respondent, who had by order dated 12.04.2022 directed the Petitioner to furnish the information sought by the Second Respondent, which is assailed in this Writ Petition.

3. 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:-



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“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 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



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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 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



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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 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*



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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.”

Viewed from that perspective, it would still remain as an obligation on the Third Respondent to ascertain whether the information sought by the Second Respondent relate to matters to which the Third Respondent could have access from the Petitioner under the TNCS Act or the Rules made thereunder or any other law. Consequently, the impugned order in S.A. No.793/A/2022 dated 12.04.2022 passed by the First Respondent is set aside and the matter is remitted to the Third Respondent to carry out the said exercise. It would also be incumbent upon the Third Respondent to then examine whether the furnishing of the information sought would disproportionately divert its resources or would be detrimental to the safety or preservation of the record in question under Section 7(9) of the RTI Act, or it is exempted from disclosure under Section 8 of the RTI Act, or has to be treated as confidential inviting the submissions of the Petitioner before taking a decision for its disclosure under Section 11 of the RTI Act. It is needless to add here that while carrying out such exercise, the Third



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Respondent shall ensure that full opportunity of personal hearing is afforded to the Petitioner following the prescribed procedure in consonance with principles of natural justice, and a reasoned order is passed dealing with each of the contentions raised by the rival parties on merits and in accordance with law, and the decision taken communicated to them under written acknowledgment. Though obvious, it is made clear that no view has been expressed by the Court on the merits of the controversy involved in the matter.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

07.03.2024

Index: Yes/No

Neutral Citation: Yes/No

Note: Issue order copy by 22.05.2024.

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To

1. The Tamil Nadu Information Commission,
19, Government Farm Village,
Panepet, Nandanam,
Chennai – 600 035.
2. The Public Information Office,
Office of the Joint Registrar of Co-operative Societies,



Cuddalore.

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P.D. AUDIKESAVALU, J.

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