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W.P. No. 24994 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2024

CORAM

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

**W.P. No. 24994 of 2021
and
W.M.P. No. 26315 of 2021**

DK. 84, Varattanapalli Primary Agricultural Co-operative Credit Society,
Represented by its Secretary,
Varattanapalli,
Krishnagiri District.

... Petitioner

-VS-

1. The Deputy Registrar of Co-operative Societies,
Krishnagiri Circle,
Krishnagiri.

2. G. Ekambaram

3. R.Paranthaman

4. V.Venkateshan

5. R.Gopinath

6. M.Murali

... 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 letter of direction issued by the First Respondent in Na. Ka. 53/2021 tho.va920 dated 21.09.2021, Na. ka. 53/2021 tho.va dated 28.10.2021, 01.11.2021, 02.11.2021 and 08.11.2021 and quash the same holding that the Petitioner Co-operative



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Credit Society registered under the Tamil Nadu Co-operative Societies Act will not fall within the definition of 'Public Authority' as defined under Section 2(h) of the RTI Act.

For Petitioner : Mr. M.S.Palaniswamy

For Respondents : Mr. P.Sathish,
Additional Government Pleader (for R1)

No appearance (for R2 to R6)

ORDER

Heard Mr. M.S.Palaniswamy, Learned Counsel for the Petitioner and Mr. P.Sathish, Learned Additional Government Pleader appearing for the First Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. There is no representation for the Second to Sixth Respondents when the matter is called at 11.10 a.m. today.

3. The Petitioner, viz., DK. 84 Varattanapalli Primary Agricultural Co-operative Credit Society, is a co-operative society governed by the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the TNCS



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Act' for short), and placing reliance on the decision of the Hon'ble Supreme Court of India in *Thalappalam Service Co-operative Bank Limited -vs- State of Kerala* [(2013) 16 SCC 84], it claims immunity from the applicability of the Right to Information Act, 2005 (hereinafter referred to as 'the RTI Act' for short).

4. It is the case of the Petitioner that the First Respondent has on receipt of separate applications from the Second to Sixth Respondents under Section 6(1) of the RTI Act relating to the Petitioner, quoted Section 6(3) of the RTI Act and transferred the same to the Petitioner by Proceedings in Na. Ka. No. 53/2021/Tho.Va(2) dated 21.09.2021 and Na. Ka. No. 53/2021/Tho.Va dated 28.10.2021, 01.11.2021, 02.11.2021 and 08.11.2021, requiring to furnish the information sought by them, which are assailed in this Writ Petition.

5. The primordial attack of Learned Counsel for the Petitioner on the impugned orders is that when it has been held in the said authoritative pronouncement that a co-operative society would not be a 'public authority' within the meaning of Section 2(h) of the RTI Act, it would be without any jurisdiction to indirectly require the Petitioner to furnish the information sought by the Second to Sixth Respondents under Section 6(3) of the RTI Act. As there



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is force in the said contention, which deserves acceptance, the impugned orders, which cannot be sustained, are set aside.

6. At the same time, it must be recapitulated that in the said ruling, 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 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



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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 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



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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 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*



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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.”

Viewed from that perspective, it would still remain as an obligation on the First Respondent to ascertain whether the information sought by the Second to Sixth Respondents relate to matters to which the First Respondent could have access from the Petitioner under the TNCS Act or the Rules made thereunder or any other law. In that event, it would be certainly incumbent upon the First Respondent to 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 First Respondent shall ensure that full opportunity of personal hearing is afforded to the Petitioner following the



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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

NCC: Yes/No

Note: Issue order copy by 13.03.2024.

vjt

To

The Deputy Registrar of Co-operative Societies,
Krishnagiri Circle,
Krishnagiri.

Copy to

1. G.Ekambaram,
S/o. Govindan,
Kambamballi Village & Post,
Krishnagiri Taluk & District – 635 120.



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2. R.Paranthaman,
S/o. Ramakrishna Naidu,
6/27, Pillayar Koil Street,
P.K.Puram Village & Post,
Vellore District – 632 209.
3. V.Venkateshan,
S/o. P.Venkattappan,
Flat No. F2, BS Maktha Somajiguda,
Secandrabad,
Begum Pet,
Hyderabad,
Telungana – 500 016.
4. R.Gopinath,
No. 7/113, Muthalamman Koil Street,
Sathurangapattinam Village,
Thirukazhukundram Taluk,
Chengalpattu District.
5. M.Murali,
Union President,
Konganapalli Village,
Sigaramahanapalli Post,
Krishnagiri Taluk & District.



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P.D. AUDIKESAVALU, J.

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