



W.P. No. 34812 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2024

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

W.P. No. 34812 of 2023

and

W.M.P. Nos. 34820 and 34822 of 2023

The Administrator,
Elanthoppu Primary Agricultural Co-operative Credit Society,
Elanthoppu Village and Post,
Mayiladuthurai Taluk and District.

... Petitioner

-VS-

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

2. R.Ameerhaidarkhan

3. S.James

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, to call for the records relating to the impugned order dated 12.10.2023 in Na. Ka. 25/2023/pa. Tho passed by the First Respondent and quash the same.



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W.P. No. 34812 of 2023

For Petitioner : Mr. R.Balaramesh
For Respondents : Mr. S.Ravikumar,
Special Government Pleader (for R1)
Mr. H.Imthiyaz Ahamed (for R3)
No appearance (for R2)

ORDER

Heard Mr. R.Balaramesh, Learned Counsel for the Petitioner, Mr. S.Ravikumar, Special Government Pleader for the First Respondent appearing for the First Respondent and Mr. H.Imthiyaz Ahamed, 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 25.09.2023 and the Third Respondent by application dated 25.07.2023 had separately sought information from the First Respondent under the Right to Information Act, 2005 (hereinafter referred to as 'the RTI Act' for short). The First Respondent forwarded the said letters to the Petitioner, which is a Co-operative Society to furnish the information sought by them, which is assailed in this Writ Petition.



WEB COPY



W.P. No. 34812 of 2023



W.P. No. 34812 of 2023

3. The Petitioner, viz., Elanthoppu Primary Agricultural Co-operative Credit Society, claims immunity from the applicability of the RTI Act placing

reliance on the decision of the Hon'ble Supreme Court of India in ***Thalappalam Service Cooperative Bank Limited -vs- State of Kerala*** [(2013) 16 SCC 82].

However, in the same 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 Cooperative Societies, who is a public authority within the meaning of Section 2(h) of the Act.

67. The Registrar of Cooperative Societies functioning under the Cooperative Societies Act is a “public authority” within the meaning of Section 2(h) of the Act. As a public authority, the Registrar of Cooperative 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



W.P. No. 34812 of 2023

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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 Cooperative 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 Cooperative Societies Act, a Registrar can call for the details of the bank accounts maintained by the citizens or members in a cooperative bank. Only those information which a Registrar of Cooperative Societies can have access under the Cooperative 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



W.P. No. 34812 of 2023

Act. Apart from the Registrar of Cooperative Societies, there may be other public authorities who can access information from a cooperative 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 Cooperative 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 Cooperative Societies registered under the Kerala Cooperative Societies Act will not fall within the definition of “public authority” as defined under*



W.P. No. 34812 of 2023

WEB COPY

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 Cooperative Societies, Kerala, to the extent, made applicable to societies registered under the Kerala Cooperative 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.”

It is evident from the impugned order sent by the First Respondent to the Petitioner that it has not disclose in any manner as to how the information sought by the Second and Third Respondents falls within the permissible limits under which the Petitioner has an obligation to furnish the information to the Second and Third Respondents.

4. In such circumstances, the impugned Order No. Na. Ka. 25/2023/pa. Tho dated 12.10.2023 passed by the First Respondent, which cannot be sustained, is set aside and the matter is remitted to the First Respondent to examine the claim made by the Second and Third Respondents in the light of the aforesaid dictum laid down by the Hon'ble Supreme Court of India and take further action in accordance with law.



W.P. No. 34812 of 2023

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Consequently, the connected Miscellaneous Petitions are closed. No costs.

07.03.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 02.04.2024.

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To

The Deputy Registrar of Co-operative Societies,
Mayiladuthurai Circle,
Mayiladuthurai District.



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W.P. No. 34812 of 2023

P.D. AUDIKESAVALU, J.

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W.P. No. 34812 of 2023

07.03.2024