



W.P.(MD)No.15099 of 2021

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Reserved on : 07.03.2024

Pronounced on : 22.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.15099 of 2021

and

W.M.P.(MD)Nos.12027 & 12028 of 2021

A958, Kethaiyurambu Primary Agricultural,
Co-operative Credit Society,
Rep by its Secretary,
P.Anandhan,
S/o.Pandi.
Kethaiyurambu Village,
Ottanchathiram Taluk,
Dindigul District.

... Petitioner

Vs.

1. The Tamil Nadu Information Commission,
Rep by its Commissioner,
No.2. Thiyagaraya Salai,
Near Aalai Amman Koil,
Teynampet, Chennai-600 018.
- 2.The Joint Registrar of Co-operative Societies,
The Appellate Authority,
Collectorate Campus, Dindigul,
Dindigul District-624 004.



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3.S.Venkatachalam

4.L.Lakshmi Priya

... Respondents

Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned Order in Order No.SA. 6514/A/2021 dated 22.07.2021 on the file fo the first respondent and quash the same as illegal and consequently, direct the first respondent to drop the further proceedings against the A958, Kethaiyurambu Primary Agricultural Co-operative Credit Society.

For Petitioner : Mr.M.Mahaboob Fazil

For R1 : Mr.K.K.Senthil

For R2 : Mr.S.R.A.Ramachandran
Additional Government Pleader

For R3 & R4 : No Appearance

ORDER

The Writ Petition is directed against the order dated 22.07.2021 passed by the first respondent and direct him to provide information sought for by the respondents 3 & 4.



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2.The petitioner is a Co-operative Society registered under the Provisions of Tamil Nadu Co-operative Societies Act, 1983. The third respondent, Venkatachalam has filed an application on 16.03.2021 under Right to Information Act seeking information from the petitioner's Society with regard to the loans obtained by the agriculturists, Women Welfare Groups and other related particulars before the Public Information Officer/ Deputy Registrar (Co-operative Societies) Palani, Dindigul District, who in turn, directed the Secretary of the petitioner's Society to furnish the information sought for by the third respondent. The Secretary of the petitioner's Society has sent a reply to the third respondent stating that as per the judgment of the Madras High Court that the Co-operative Societies are not public institutions under the provisions of the Right to Information Act and hence, the question of furnishing information about the petitioner's Society does not arise.

3. The Deputy Registrar (Co-operative Societies) Palani, Dindigul District, who is also the Public Information Officer has sent another letter dated 05.05.2021 to the petitioner's Society by enclosing the application of the third respondent and directed them to submit the information so as to



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enable the Joint Registrar to furnish information to the applicant, for which, the petitioner's Society has sent a letter stating that they have already sent a reply to the third respondent on 15.04.2021 itself. Since the informations sought for were not furnished by the petitioner's Society, the third respondent has preferred an appeal before the second respondent herein. The third respondent, not satisfied with the reply of the second respondent has filed the second appeal before the first respondent. The first respondent directed the petitioner's Society to submit their explanation. In pursuance of the same, the petitioner's Society has submitted their explanation to the first respondent. The first respondent not satisfied with the the explanation given by the petitioner's Society, has passed the impugned order dated 22.07.2021 directing the petitioner's Society to furnish all the information sought for by the applicant before 12.08.2021. Aggrieved by the said order, the petitioner's Society has approached this Court by filing the present writ petition.

4.The learned counsel appearing for the petitioner would mainly contend that the Hon'ble Supreme Court, our High Court and other High Courts have repeatedly held that the Co-operative Society is not a 'public



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institution' under the provisions of the Right to Information Act; that the Co-operative Society is not a 'State' within a meaning of Article 226 of the Constitution of India and that therefore, the petitioner being a Co-operative Society, is not liable to provide information to the applicants. He has also relied on the judgment of the Hon'ble Supreme Court in the case of **Thalappalam Service Co-operative Bank Limited & Others Vs. State of Kerala & Others** reported in **2013 (16) SCC 82** wherein, the Hon'ble Apex Court has settled the legal position that the Co-operative Society is not amenable to the jurisdiction of the Right to Information Act and that the co-operative Society is not a 'State' within a meaning of Article 226 of the Constitution of India and as such, the Co-operative Society is not liable to provide information to the informations seeker under the Provision of Right to Information Act.

5. The learned counsel appearing for the writ petitioner has also relied on the decision of this Court in the case of **V.K.Kalaimani Vs. The Textile Control Officer, Assistant Director of Handloom & Textiles, Tiruppur and Others** in **W.P.No.4 of 2013, dated 05.09.2018** and in the case of **Tindivanam Co-operative Urban Bank Limited Vs. The**



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Commissioner, State Information Commission, Chennai in W.P.No.

15158 of 2012 dated 02.12.2020 wherein, the learned Judges of this Court by relying on the judgment of the Hon'ble Supreme Court in **Thalappalam's** case referred above, have held that the Co-operative Society registered under the Tamil Nadu Co-operative Societies Act, 1983 will not fall within the definition of 'public authority' under Section 2(h) of the Right to Information Act.

6. The learned counsel for the petitioner has also relied on the decision of the Hon'ble Division Bench of this Court, in the case of **Public Information Officer, Ilaiyankudi Co-operative Urban Bank Limited, Sivagangai District Vs. Registrar, Tamil Nadu Information Commission, Chennai and Others** reported in **AIR 2015 Mad 169** wherein also the Hon'ble Division Bench has specifically observed that the Societies will not fall within the expression 'State' or 'instrumentally of the State' within the meaning under Article 12 of the Constitution of India, that they will not fall within the definition of 'Public Authority' as defined under Section 2(h) of the RTI Act and that a distinction was sought to be made that the provisions of the RTI Act would be applicable to cases



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where the Government Officers are appointed to function as Special Officers of the Society, when there is no elected Board of Directors, but the same was also rejected on the ground that for all Societies, elections were conducted and the Societies were managed by the elected members.

7. The learned counsel appearing for the first respondent has also relied upon the judgment of the Hon'ble Supreme Court in **Thalappalam's** case referred above, and argued that the Registrar, the Joint Registrar and the Deputy Registrar of the Co-operative Societies are Public Authorities within the meaning of Section 2(h) of the Act and that when the information is sought for from the Registrars, they are duty bound to gather the same from the concerned Societies and furnish the same to the applicant and the relevant passages in **Thalappalam's** case are extracted hereunder:-

“ 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



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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 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 Act. Apart from the Registrar of Cooperative Societies, there may be



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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.”

8. The learned counsel for the first respondent has also relied on the decision of the Division Bench of the Bombay High Court in **Rajeshwar Majoor Kamgar Sahakari Sanstha Ltd, Pimpri Gawali Vs. State Information Commissioner, Amravati and Others** wherein also the judgment of the Hon'ble Supreme Court in **Thalappalam** case was referred and the relevant paragraphs 7 and 8 are extracted hereunder:-



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“7.In the case of Thalappalam Ser.Co-op., Bank Ltd., (AIR 2013 SC (Supp) 437) (supra), appeals were filed by co-operative societies and the question which fell for consideration before the Hon'ble Supreme Court was whether a cooperative society registered under the Kerala Co-operative Societies Act, 11969, will fall within the definition of “public authority” under Section 2(h) of the RTI Act and be bound by the obligations to provide information sought for by a citizen under the RTI Act. On behalf of the Co-operative Societies, it was contended that the societies are not statutory bodies and are not performing any public functions and will not come within the expression “State” within the meaning under Article 12 of the Constitution of India. The State of Kerala sought to sustain the circular issued by the Registrar of Co-operative Societies by contending that the Registrar has got all pervasive control over the societies with power to supersede the management of the society and to appoint an Administrator and this would indicate that though the societies are body corporates, they are under the statutory control of Registrar of Co-operative Societies. Before the Hon'ble Supreme Court, the Cooperative societies registered under the provisions of the Kerala Act, which are owned, controlled or substantially financed by the State or Central Government or formed, established or constituted by law made by Parliament or State



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Legislature, were not subject-matter of consideration. In other words, the appeals related to cases pertaining to Co-operative Societies which do not fall in the above mentioned categories.

8. On the first issue with regard to Co-operative Societies and Article 12 of the Constitution, the Hon'ble Supreme Court pointed out that a clear distinction can be drawn between a body which is created by a statute and a body much after having come into existence is governed in accordance with the provisions of a statute and the societies which were subject-matter of the appeals were held to fall under the later category, i.e., governed by the Kerala Societies Act and not statutory bodies, but only body corporate within the meaning of Section 9 of the Kerala Co-operatives Societies Act. After referring to several decisions of the Hon'ble Supreme Court, it was held that the said societies which were subject-matter of those appeals will not fall within the expression 'State' or 'instrumentally of the State' within the meaning of Article 12 of the Constitution. ”

9. The above decisions are squarely applicable to the case on hand.

In the present case also, the third respondent has not submitted the application under RTI Act directly to the petitioner's Society. On the other



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hand, he has submitted the application only to the Deputy Registrar of the Co-operative Societies.

10.No doubt, the Hon'ble Supreme Court has specifically held that the Co-operative Societies are not amenable to the jurisdiction of the Information Act; that the Society is not a 'Public Institution' and it is not a 'State' within the meaning of Article under Section 226 of the Constitution of India and as such, they are not liable to provide information to the information seekers. But, as rightly observed by the Hon'ble Supreme Court, the same is not absolute. The Registrar of the Co-operative Societies is a Public Authority and he is duty bound to comply with the obligations under RTI Act and furnish information to a citizen under the RTI Act as he has supervisory or administrative control under the Co-operative Societies Act. But, at the same time, he is not legally duty bound to provide if those informations falls under the exempted category shown in Section 8(j) of the Act.

11. In the case on hand also, the first respondent, has directed the petitioner's Society to furnish the information by showing the Secretary of the petitioner's Society as the Public Information Officer. As already



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pointed out, the private respondents have approached the Deputy Registrar of the Co-operative Societies, who is the Public Information Officer and thereafter, approached the first respondent, who is the Appellate Authority.

12. Hence, the first respondent is directed to get information from the petitioners Society and furnish the same to the respondents 3 & 4 subject to the limitations provided under Section 8 of the Act and also subject to the satisfaction of the first respondent that the larger public interest justifies the disclosure of the information.

13. With the above direction, the writ petition is disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

22.03.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
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K.MURALI SHANKAR,J.

dss

To

1. The Tamil Nadu Information Commission,
Rep by its Commissioner,
No.2. Thiyagaraya Salai, Near Aalai Amman Koil,
Teynampet, Chennai-600 018.
- 2.The Joint Registrar of Co-operative Societies,
The Appellate Authority,
Collectorate Campus, Dindigul,
Dindigul District-624 004.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Pre-Delivery Order made in

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and

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Dated : 22.03.2024