



W.A(MD)No.868 of 2016

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 03.01.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE C.KUMARAPPAN**

**W.A(MD)No.868 of 2016
and
C.M.P(MD)No.5181 of 2016**

The Special Officer,
R-27, Ilayangudi Cooperative Urban
Bank Limited, Ilayangudi,
Sivagangai District.

... Appellant/Petitioner

.Vs.

1.The Deputy Registrar of Cooperative Societies,
Madurai Road,
Sivagangai.

2.P.S.Rasoolkhan,
Member of General Body,
Hajee K.K.E.Higher Secondary School Society,
6, Ansari Street, Pudur,
Ilayangudi Taluk – 630 709.

....Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act praying this Court to set aside the order passed by this Court in W.P(MD)No.11723 of 2009, dated 28.11.2011.



WEB COPY

W.A(MD)No.868 of 2016

For Appellants : Mr.S.Seenivasagam
For Respondent-1 : Mr.P.T.Thiraviam
Govt.Advocate
For Respondent-2 : Dismissed for default
(vide order, dated 4.10.2019)

JUDGMENT

DR.G.JAYACHANDRAN,J.
AND
C.KUMARAPPAN,J

This Writ Appeal is directed against the order passed by the learned Single Judge of this Court in W.P(MD)No.11723 of 2009, dated 28.11.2011.

2.The second respondent herein has made an application on 14.08.2009 under Right to Information Act seeking certain information about the third party.

3.The first respondent vide communication, dated 28.10.2009 requested the Special Officer, R27, Ilayangudi Cooperative Urban Bank Limited to consider the application filed under the Right to Information Act. Meanwhile, the second respondent, who is the third party and information sought had been objected, without furnishing the information, on the ground that the Cooperative Society



W.A(MD)No.868 of 2016

will not fall within the explanation of the term Public Authority under the Right to Information Act. In the said circumstances, the Special Officer has filed a Writ Petition to quash the order passed by the first respondent/The Deputy Registrar of Cooperative Societies, Sivagangai, dated 28.10.2009, wherein, a direction been issued to the Writ Petitioner to furnish the information to third party. That Writ Petition was considered by the learned Single Judge of this Court and passed the following order:

"4. In the present case, the petitioner-Society had two options either to consider the direction issued by the first respondent, in the light of the provisions of the Right to Information Act, 2005 and after giving notice to the second respondent, they can pass a reasoned order or if they construe that any letter received from the first respondent, viz., the Deputy Registrar is the binding direction, then they have got a right of appeal under Section 19 of the Right to Information Act, 2005 before the Tamil Nadu Information Commission. Since the Act is a self-contained code, the question of the petitioner invoking the jurisdiction of this Court as against the so-called direction issued by the first respondent will not arise, as the first respondent himself has clarified that it is not a positive direction but a direction to consider the request of the second respondent in accordance with the provisions of



W.A(MD)No.868 of 2016

WEB COPY

*the Act. The statement made by the first respondent was that the petitioner while refusing the information did not comply with the legal requirement of Section 7 of the Right to Information Act, 2005. Therefore, it is for the petitioner to act in terms of the impugned order and take a decision one way or other. If the petitioner has any doubt as to whether the provisions of the Right to Information Act, 2005 will apply to them or not, the said question is no longer res-integra. Already, this Court in the judgment in **A.C.Sekar v. Dy. Registrar of Co-operative Societies** reported in **2008(2) MLJ 733** has held that a Co-operative Society is also covered by the provisions of the Act. With reference to the exemption under Section 8, the petitioner will have to give notice to the concerned account holders and thereafter, decide whether the information should be furnished or not. In any event, they should pass a speaking order, so that the second respondent can work out his remedy in terms of the Right to Information Act, 2005. But if the petitioner construed that the impugned communication is one of positive direction, then the question of non availing the appellate remedy before the Tamil Nadu Information Commission stares at the face of the petitioner-Society.”*

4. Being aggrieved, the Writ Appeal is filed by the Special Officer on the



W.A(MD)No.868 of 2016

ground that Section 2(h) defines Public Authority and that the Cooperative Bank does not come within the ambit of Public Authority and therefore, Right to Information Act will not apply to their institution. In support of the said submission, judgments of the Honourable Supreme Court were cited. It is specifically contended that the appellant/Bank is governed under the Banking Regulation Act, 1949 and under Section 36-AD(c) of the above Act states that disclosure of the details of account of an Account Holder in the appellant/Bank amounts to an act of undermining the confidence of the depositor and also punishable under the said Act. Except in exceptional cases where information is required for other purposes, details cannot be disclosed to third parties under the Right to Information Act. Referring to Section 8(d)(e)(j) of the Right to Information Act, the learned counsel for the appellant contended that the direction of the first respondent asking the second respondent to furnish the details is not only contrary to the Banking Rules and as per the provisions of the Right to Information Act, but also will amount to breach of commercial confidence and fiduciary relationship. The order of the learned Single Judge which is impugned before this Bench, as extracted above, had only expressed and reiterated the law and provisions of the Right to Information Act and has pointed out that the



W.A(MD)No.868 of 2016

communication of the first respondent is only to consider the application, but it is not a final order. The learned Single Judge has also pointed out that it is left to the discretion of the society, in the facts and circumstances of the case, where they are bound to disclose such facts and whether the right of any party is affected as per the immunity provided under Section 8 of the Right to Information Act.

5. On considering the order passed by the learned Single Judge in the Writ Petition and the grounds as well as the judgment of the Honourable Supreme Court in the case of *Thalappalam Ser. Co-operative Bank Limited and others .vs. State of Kerala and others reported in 2013(6) CTC 98*, it is suffice to point out the legal position regarding Bank qua Right to Information Act to dispose this Writ Appeal. The Honourable Supreme Court while considering Section 2(h) of the Right to Information Act had categorically held that liberal construction to the term Public Authority cannot be given for Right to Information Act and when there is a conflict of interest between the term of transparency and accountability vis-a-vis privacy for individual. Primacy must be given to privacy of the individual, if an element of accountability is absent. The



W.A(MD)No.868 of 2016

WEB COPY

judgment of the Honourable Supreme Court cited supra clearly held that any information which leads to interference of privacy of the individual which has no nexus with the public activity or interest, not to be provided. Further, information in relation to the banking of citizens or members of Cooperative society will not fall within the term of information available with the public authority.

6. With these clarifications, this Writ Appeal is allowed. There is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

[G.J.,J.] [C.K.,J.]
03.01.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
vsn

To

The Deputy Registrar of Cooperative Societies,
Madurai Road,
Sivagangai.

7/8



WEB COPY



W.A(MD)No.868 of 2016

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JUDGMENT MADE IN

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