



W.P(MD)No.22501 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.03.2024

Delivered on : 05.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.22501 of 2021

and

W.M.P(MD)No.19031 of 2021

The General Manager (In-charge)
Sivagangai District Central-
Cooperative Bank Ltd.,
Gandhi Road, Sivagangai,
Sivagangai District.

... Petitioner

Vs.

1.The Tamil Nadu Information Commissioner,
O/o.The Tamil Nadu Information Commission,
Block No.19, Government Farm Village,
Sydhapet, Chennai 600 015.

2.K.Malaichamy

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the first respondent vide case No.SA5309/A/2021, dated 30.09.2021 and quash the same.

For Petitioner : Mr.D.Shanmugaraja Sethupathi



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For Respondents : Mr.K.K.Senthil,
Standing Counsel, for R1
: Mr.K.Vadivelu, for R2.

ORDER

This Writ Petition is directed against the order, dated 30.09.2021 passed by the first respondent in case No.SA5309/A/2021 and direct him to provide information sought for by the second respondent.

2. The petitioner Bank is a Co-operative Society, registered under the provision of Tamil Nadu Co-operative Societies Act. The second respondent has filed an application on 17.09.2020 to the petitioner Bank, seeking certain informations under Section 6 of the Right to Information Act 2005 and the Manager of the Bank has sent a communication, dated 12.10.2020 to the second respondent stating that the petitioner is not a public authority within the meaning of Section 2(h)(d)(ii) of the Right to Information Act and as such, the question of furnishing information does not arise at all. Thereafter, the second respondent has filed an appeal on 17.10.2020 before the Joint Registrar/Managing Director of the petitioner Bank and that the Management



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of the Bank has sent a communication, dated 19.03.2021, stating that the petitioner Bank is not a public authority under the provisions of Right to Information Act.

3. The second respondent has then filed an appeal before the first respondent stating that the petitioner Bank has not furnished the information sought by him. The first respondent has then issued a notice to the Management of the Bank, who in turn submitted a written objection and that after enquiry, the first respondent has passed the impugned order, dated 30.09.2021, directing the Management to furnish the information sought by the second respondent within 15 days from the date of receipt of copy of that order or else, action would be initiated under the provisions of the Right to Information Act. Aggrieved by the order of the first respondent, the above writ petition came to be filed.

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 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



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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 for the petitioner has also referred some of the orders passed by the first respondent, wherein the then Information Commissioner by relying on the judgment of the Hon'ble Supreme Court in ***Thalappalam's case*** above referred and also the judgment of the Division Bench of this Court in ***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***, has held that the Co-operative Bank will not fall within the definition of



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'public authority' under Section 2(h)(d)(ii) of the Right to Information Act, dismissed the cases.

6. The learned counsel for the petitioner has also relied on the *Ilaiyankudi's* case above referred, wherein the Hon'ble Division Bench of this Court has specifically observed that the Societies will not fall within the expression 'State' or 'instrumentally of the State' within the meaning of Article 12 of the Constitution and that they will not fall within the definition of 'Public Authority' as defined under Section 2(h) of the RTI Act.

7. The learned counsel for the first respondent would mainly contend 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 directly or by filing an appeal against the dismissal of the RTI application filed before the Society, they are duty bound to gather the same from the concerned Societies and furnish the same to the applicant. He has also relied on the judgment of the Division Bench of Nagpur Bench of Bombay High Court in the case of *Rajeshwar Majoor Kamgar Sahakari Sanstha Ltd, Pimpri Gawali Vs. State Information Commissioner, Amravati and Others*



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reported in **2011 Lawsuit(Bom) 856**, wherein also the judgment of the

Hon'ble Supreme Court in **Thalappalam's** case was referred and the relevant

paragraphs are extracted hereunder:-

“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 Adminstrator 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



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substantially financed by the State or Central Government or formed, established or constituted by law made by Parliament or State 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. ”

7. The learned counsel for the first respondent has also referred the following passages in ***Thalappalam's case*** above referred and the same are extracted hereunder :



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“ 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 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, tot he 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 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 above decisions are squarely applicable to the case on hand. In the case of **Rajeshwar's** case above referred, the applicant has sought for information from the Cooperative Society itself directly and since the same was rejected, filed an appeal before the Assistant Registrar Co-operative Societies, who in turn directed the Society to supply the information sought for by the applicant and that since the information was not furnished, the applicant has preferred a second appeal before the State Information



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Commission and the Commission has directed the Assistant Registrar of Co-operative Societies to get the relevant information from the Society and to supply the same to the applicant.

9. In the case on hand also, the second respondent has submitted an application under RTI Act before the petitioner Bank and as already pointed out, who in turn rejected the same by stating that their Bank is not a public authority within the meaning of Section 2(h)(d)(ii) of the Right to Information Act and when the appeal was preferred before the Joint Registrar, who is also the Managing Director of the petitioner Bank, has also sent a communication reiterating the rejection order passed by their Manager of the Bank.

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 Society is a Public Authority and he is duty bound to comply with the obligations under RTI Act and furnish information



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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 fall under the exempted category shown in Section 8(j) of the Act.

11. Considering the above, the Joint Registrar/Managing Director is directed to get information from the petitioner Bank and furnish the same to the second respondent subject to the limitations provided under Section 8 of the Right to Information Act and also subject to the satisfaction of the Joint Registrar that the larger public interest justifies the disclosure of the information.

12. With the above direction, the writ petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

05.04.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
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To

The Tamil Nadu Information Commissioner,
O/o.The Tamil Nadu Information Commission,
Block No.19, Government Farm Village,
Sydhapet, Chennai 600 015.



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K.MURALI SHANKAR, J.

das

Pre-delivery Order made in
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and
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Dated : 05.04.2024