



W.P.(MD) No.17516 of 2017

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2024

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THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.P.(MD) No.17516 of 2017

N.Subramanian

... Petitioner

/vs./

1.The State Information Commissioner (Tamilnadu),
No.2, Thiagaraja Salai,
Near Aalai Amman Koil,
Teynampet, Chennai 600 018.

2.The Secretary,
N.N.557, Konerikottai Primary Agricultural
Co-operative Credit Society,
Tiruvadanai,
Ramanathapuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 1st respondent in SA.12861/Enquiry/E/2016 dated 15.06.2017 and quash the same and consequently direct the 1st Respondent to furnish the information as sought for by him.



W.P.(MD) No.17516 of 2017

WEB COPY

For Petitioner : Mr.A.S.Vaigunth
For R1 : Mr.K.K.Senthil
For R2 : Mr.P.Thambidurai
Government Advocate

ORDER

The above writ petition has been filed challenging the refusal of the second respondent in replying to the queries raised by the petitioner under the Right to Information Act. The request was rejected on the ground that the Co-operative Society would not come within the term of Public Authority as contemplated under Section 2(h), (d) (ii) of the RTI Act and the said reply has been upheld by the first respondent as well. Challenging the same, the present writ petition has been filed.

2. In the light of the judgment of the Hon'ble Supreme Court reported in ***2013 (6) CTC 98 (Thalappalam Ser. Co-op Bank Ltd and others Vs. State of Kerala and others)***, the application under RTI is not maintainable. In the aforesaid judgment, the Hon'ble Supreme Court while coming down heavily on the judgment passed by the High Court, wherein the High Court had opined that the RTI Act would apply to the Co-operative Societies, has observed as follows:



W.P.(MD) No.17516 of 2017

WEB COPY

"43. We are of the view that the High Court has given a complete go-bye to the above-mentioned statutory principles and gone at a tangent by mis- interpreting the meaning and content of [Section 2\(h\)](#) of the RTI Act. Court has given a liberal construction to expression “public authority” under [Section 2\(h\)](#) of the Act, bearing in mind the “transformation of law” and its “ultimate object” i.e. to achieve “transparency and accountability”, which according to the court could alone advance the objective of the Act. Further, the High Court has also opined that [RTI Act](#) will certainly help as a protection against the mismanagement of the society by the managing committee and the society’s liabilities and that vigilant members of the public body by obtaining information through the [RTI Act](#), will be able to detect and prevent mismanagement in time. In our view, the categories mentioned in [Section 2\(h\)](#) of the Act exhaust themselves, hence, there is no question of adopting a liberal construction to the expression “public authority” to bring in other categories into its fold, which do not satisfy the tests we have laid down. Court cannot, when language is clear and unambiguous, adopt such a construction which, according



W.P.(MD) No.17516 of 2017

WEB COPY

to the Court, would only advance the objective of the Act. We are also aware of the opening part of the definition clause which states “unless the context otherwise requires”. No materials have been made available to show that the cooperative societies, with which we are concerned, in the context of the Act, would fall within the definition of [Section 2\(h\)](#) of the Act.”

3. They have also drawn a distinction between the Right to Information and Right to Privacy in para 47 as follows:

"47. Right to information and Right to privacy are, therefore, not absolute rights, both the rights, one of which falls under [Article 19\(1\)\(a\)](#) and the other under [Article 21](#) of the Constitution of India, can obviously be regulated, restricted and curtailed in the larger public interest. Absolute or uncontrolled individual rights do not and cannot exist in any modern State. Citizens' right to get information is statutorily recognized by the [RTI Act](#), but at the same time limitations are also provided in the Act itself, which is discernible from the Preamble and other provisions of the Act. First of all, the scope and



W.P.(MD) No.17516 of 2017

WEB COPY

ambit of the expression “public authority” has been restricted by a statutory definition under [Section 2\(h\)](#) limiting it to the categories mentioned therein which exhaust itself, unless the context otherwise requires. Citizens, as already indicated by us, have a right to get information, but can have access only to the information “held” and under the “control of public authorities”, with limitations. If the information is not statutorily accessible by a public authority, as defined in [Section 2\(h\)](#) of the Act, evidently, those information will not be under the “control of the public authority”. Resultantly, it will not be possible for the citizens to secure access to those information which are not under the control of the public authority. Citizens, in that event, can always claim a right to privacy, the right of a citizen to access information should be respected, so also a citizen’s right to privacy. ”

4. In the instant case, the petitioner has filed an application seeking the informations as to for how many number of persons the loan has been waived and name and address of the persons and amount of jewel loan and copy of 10 (1)



W.P.(MD) No.17516 of 2017

Gold Loan and the amount allotted to Konerikottai Primary Agricultural Cooperative Credit Society and in respect of non-interest gold loan and the number of persons to whom allotted.

5. The matter, in respect of which the Hon'ble Supreme Court was seized of, was also the case, where the information was sought for from the Co-operative Banks. Ultimately, the learned Judges held as follows:

"53. Consequently, 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.

54. We, therefore, hold that the Cooperative Societies registered under the [Kerala Co-operative Societies Act](#) will not fall within the definition of "public authority" as defined under [Section](#)



W.P.(MD) No.17516 of 2017

WEB COPY

2(h) of the RTI Act and the State Government letter dated 5.5.2006 and the circular dated 01.06.2006 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. Appeals are, therefore, allowed as above, however, with no order as to costs."

6. In the light of the above, the impugned order does not suffer from any infirmity. The Writ Petition stands dismissed, accordingly. No costs.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

28.08.2024

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W.P.(MD) No.17516 of 2017

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To

The Secretary,
N.N.557, Konerikottai Primary Agricultural
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WEB COPY



W.P.(MD) No.17516 of 2017

P.T.ASHA, J.

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W.P.(MD) No.17516 of 2017

28.08.2024