IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101+213 **CM-19892-CWP-2024 in/&**
CWP-13580-2015
Date of Decision :09.01.2025

The Punjab State Federation of Cooperative House Building Socieities Limited **...Petitioner**

Versus

The State Information Commission, Punjab and another **....Respondents**

102+213 **CM-50-CWP-2025 in/&**
CWP-20904-2015

The Punjab State Coopearive Bank Limited **...Petitioner**

Versus

State Information Commission, Punjab and others **....Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ashwani Prashar, Advocate for the petitioner in CWP-13580-2015.

Mr. J.S. Toor, Advocate with Mr. Adhiraj Toor, Advocate for the petitioner in CWP-20904-2015.

Ms. Shruti, AAG, Punjab.

* * *

Harsimran Singh Sethi, J. (Oral)

1. In the present petitions, challenge is to orders dated 20.05.2015 (Annexure P/3) and 27.08.2015 (Annexure P/5) passed by the State Information Commission, Punjab. In the impugned order dated 20.05.2015 (Annexure P/3) though, the petitioner-HOUSEFED and Cooperative Bank have been held to be a Cooperative Society but have been treated as public authority within the domain of Right to Information Act, 2005 on the ground that State has persuasive control over the petitioner-HOUSEFED and Cooperative Bank and hence, the petitioner-HOUSEFED and Cooperative Bank are bound by the provision of Right to Information Act, 2005.

2. Learned counsel appearing for the petitioner-HOUSEFED and Cooperative Bank submits that in the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.9017-2013 titled as, Thalappalam Ser. Cooperative Bank Limited and others vs. State of Kerala and others, decided on07.10.2013*** it has been held that the Cooperative Societies are not amenable under the Right to Information Act, 2005 even if, the control of the Registrar, Cooperative Societies appointed by the State is established.

3. Learned counsel for the petitioner-HOUSEFED and Cooperative Bank further submits that the said judgment has been though, noticed in the impugned order but ignored while recording the finding that petitioner-HOUSEFED and Cooperative Bank are public authority as the Government has administrative as well as financial control over the same.

4. Learned counsel for the petitioner-HOUSEFED and

Cooperative Bank further submits that total share of money of the Government is not more than 21% and 1% and the State has only the supervisory control and not the administrative control with regard to the day to day functioning of the petitioner-HOUSEFED and Cooperative Bank.

5. Learned counsel for the petitioner-Cooperative Bank in CWP-20904-2015 submits that the Government is not having even 1% share of money in the petitioner-Cooperative Bank.

6. Learned counsel for the respondent-State submits that State was not party to the present petitions and has no role and the claim of the petitioners be decided on the basis of the pleadings already on record.

7. Respondent No.2 is served but chose not to appear and has already been proceeded ex-parte.

8. I have heard learned counsel for the parties and have gone through the record with their able assistance.

9. The challenge in the preset petition is to the findings recorded by the Punjab State Information Commission that the petitioner-HOUSEFED as well as petitioner-Cooperative Bank are though, Cooperative societies but as the same are being controlled administratively and financially by the State Government, the same will be treated as a Public Authority so as to be amenable to Right to Information Act, 2005.

10. The issue which needs adjudication in the present petitions is whether or not, findings recorded by the Punjab State Information Commission qua the substantial control of the State administratively as

well as financially is to the said extent, which will make the petitioners-societies amenable to the Right to Information Act, 2005.

11. Though, it is a conceded position that under the Punjab State Cooperative Society Act, 1961, the Registrar Cooperative Societies, who is an officer of the State of Punjab has supervisory control in certain matters over the petitioner-Societies. Further, it is also a conceded position that State Government has only invested 21% of the total share capital of the petitioner-HOUSEFED and not more than 1% of the petitioner-Coperative Bank. The question which arises is whether the said administrative or financial control of the State will be good enough to treat the petitioners-Societies as Public authority so as to be amenable to the Right to Information Act, 2005.

12. With regard to the supervisory control of the Registrar-Cooperative societies, the said aspect has already been dealt by the Hon'ble Supreme Court of India in ***Thalappam (supra)*** wherein after noticing the fact that Registrar, Cooperative Societies has supervisory control over the Cooperative societies still held that same is not good enough to hold that the Cooperative Societies are public authority so as to be amenable to the writ jurisdiction and also to the provisions of RTI Act. Once, the findings have been recorded by the Hon'ble Supreme Court of India that the Cooperative Societies are not amenable to the writ jurisdiction, making the said authority amenable to the RTI by treating the same as Public authority, is contrary to the judgment of the Hon'ble Supreme Court of India in

Thalappam (supra). Relevant paragraph of the said judgment is as under:-

> "34. We are of the opinion that when we test the meaning of expression "controlled" which figures in between the words "body owned" and "substantially financed", the control by the appropriate government must be a control of a substantial nature. The mere 'supervision' or 'regulation' as such by a statute or otherwise of a body would not make that body a "public authority" within the meaning of Section 2(h)(d)(i) of the RTI Act. In other words just like a body owned or body substantially financed by the appropriate government, the control of the body by the appropriate government would also be substantial and not merely supervisory or regulatory. Powers exercised by the Registrar of Cooperative Societies and others under the Cooperative Societies Act are only regulatory or supervisory in nature, which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled. Management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Cooperative Societies Act and not on the authorities under the Co-operative Societies Act."

13. Hence, the findings recorded by the State Information Commission, Punjab that as the Registrar has a supervisory control over the petitioners-Societies, the petitioners-Societies are to be treated as public authorities amenable to the provisions of RTI Act is contrary to the settled principle of law hence, the said finding cannot be upheld.

14. With regard to the aspect of financial control of State so as to treat petitioner-Societies as Public Authority, it may be noticed that said aspect qua the Cooperative Societies has already been dealt by the Hon'ble

Supreme Court of India in Civil Appeal No.5466-2002 titled as ***General Manager, The Kisan Sahkari Chini Mills Limited Sultanpur, U.P. vs. Satrughan Nishad and others, decided on 08.10.2003***, wherein, the Hon'ble Supreme Court of India has held that even where the financial investment of the Government in a Cooperative Society is more than 50%, still the same cannot be treated as a financial control of the Government so as to treat the Cooperative Society as public authority to be amenable to the writ jurisdiction. Relevant paragraph of the judgment is as under:-

> "8.From the decisions referred to above, it would be clear that the form in which the body is constituted, namely, whether it is a society or co-operative society or a company, is not decisive. The real status of the body with respect to the control of government would have to be looked into. The various tests, as indicated above, would have to be applied and considered cumulatively. There can be no hard and fast formula and in different facts/situations, different factors may be found to be overwhelming and indicating that the body is an authority under Article 12 of the Constitution. In this context, Bye Laws of the Mill would have to be seen. In the instant case, in one of the writ applications filed before the High Court, it was asserted that the Government of Uttar Pradesh held 50% shares in the Mill which fact was denied in the counter affidavit filed on behalf of the State and it was averred that majority of the shares were held by cane growers. Of course, it was not said that the Government of Uttar Pradesh did not hold any share. Before this Court, it was stated on behalf of the contesting respondents in the counter affidavit that the Government of Uttar Pradesh held 50% shares in the

Mill which was not denied on behalf of the Mill. Therefore, even if it is taken to be admitted due to non traverse, the share of the State Government would be only 50% and not entire. Thus, the first test laid down is not fulfilled by the Mill. It has been stated on behalf of the contesting respondents that the Mill used to receive some financial assistance from the Government. According to the Mill, the Government had advanced some loans to the Mill. It has no where been stated that the State used to meet any expenditure of the Mill much less almost the entire one, but, as a matter of fact, it operates on the basis of self generated finances. There is nothing to show that the Mill enjoys monopoly status in the matter of production of sugar. A perusal of Bye-Laws of the Mill would show that its membership is open to cane growers, other societies, Gram Sabha, State Government, etc. and under Bye-Law 52, a committee of management consisting of 15 members is constituted, out of whom, 5 members are required to be elected by the representatives of individual members, 3 out of co-operative society and other institutions and 2 representatives of financial institutions besides 5 members who are required to be nominated by the State Government which shall be inclusive of the Chairman and Administrator. Thus, the ratio of the nominees of State Government in the committee is only 1/3rd and the management of the committee is dominated by 2/3rd non-government members. Under the Bye-Laws, the State Government can neither issue any direction to the Mill nor determine its policy as it is an autonomous body. The State has no control at all in the functioning of the Mill much less deep and pervasive one. The role of the Federation, which is the apex body and whose ex-officio Chairman-cum-Managing Director is Secretary, Department of Sugar Industry and Cane, Government of Uttar Pradesh, is only advisory and to guide its members. The letter sent by Managing Director of the Federation on 22nd November, 1999 was merely by way of an advice and was in the nature of a suggestion to the Mill in view of its deteriorating financial condition. From the said letter, which is in the advisory capacity, it cannot be inferred that the State had any deep and pervasive control over the Mill. Thus, we find none of the indicia exists in the case of Mill, as such the same being neither instrumentality nor agency of government cannot be said to be an authority and, therefore, it is not State within the meaning of Article 12 of the Constitution.

9. Learned counsel appearing on behalf of the contesting respondents submitted that even if the Mill is not an authority within the meaning of Article 12 of the Constitution, writ application can be entertained as mandamus can be issued under Article 226 of the Constitution against any person or authority which would include any private person or body. Learned counsel appearing on behalf of the appellant, on the other hand, submitted that mandamus can be issued against private person or body only if infraction alleged is in performance of public duty. Reference in this connection may be made to the decisions of this Court in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Samarak Trust and others v. V.R.Rudani and others (1989) 2 SCC 691 in which this Court examined the various aspects and distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty that Article 226 of the

> Constitution can be invoked. In the cases of K.Krishnamacharyulu and others v. Sri Venkateswara Hindu College of Engineering and another (1997) 3 SCC 571 and VST Industries Ltd. v.VST Industries Workers' Union and another, (2001) 1 SCC 298, the same principle has been reiterated. Further, in the case of VST Industries Ltd. (supra), it was observed that manufacture and sale of cigarettes by a private person will not involve any public function. This being the position in that case, this Court held that the High Court had no jurisdiction to entertain an application under Article 226 of the Constitution. In the present case, the Mill is engaged in the manufacture and sale of sugar which, on the same analogy, would not involve any public function. Thus, we have no difficulty in holding that jurisdiction of the High Court under Article 226 of the Constitution could not have been invoked."

15. A bare perusal of the above reproduction would show that keeping in view the judgment in ***General Manager, The Kisan Sahkari Chini Mills (supra),*** qua the petitioner-HOUSEFED, the State has only 21% share and qua petitioner-Cooperative Bank, State has not more than 1% of share, which is not good enough to treat the petitioners as Public Authority so as to be amenable to the Right to Information Act, 2005. Once, the Cooperative Societies have been kept apart from the definition of Public Authority and law has already been settled on the said issue by the Hon'ble Supreme Court of India, ignorance of said settled principle of law by the State Information Commission, Punjab in the impugned orders cannot be upheld.

16. Once, the writ petition is not maintainable against the Cooperative societies, making the petitioners amenable to the right to Information Act, 2005 will be contrary to the settled principle of law by treating it as a Public Authority.

17. The State has a power to pass appropriate amendment so as to include the Cooperative Societies under the jurisdiction of RTI, Act.

18. At this stage, learned counsel for the State has submitted that to her knowledge, no such amendment has been undertaken so far by the State so as to bring the petitioners under the jurisdiction of Right to Information Act, 2005.

19. Till the date any such amendment is made by the State, keeping in view the settled principle of law and the facts qua the petitioners noticed hereinbefore, orders dated 20.05.2015 (Annexure P/3) and 27.08.2015 (Annexure P/5) passed by the State Information Commission, Punjab are contrary to the settled principle of law and cannot be sustained and are set aside.

20. Writ petitions are allowed in above terms.

21. A photocopy of this order be placed on the file of connected cases.

January 09, 2025 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No