



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE S.MANU

TUESDAY, THE 2ND DAY OF JULY 2024 / 11TH ASHADHA, 1946

WA NO. 729 OF 2024

AGAINST THE JUDGMENT DATED 08.04.2024 IN WP(C) NO.37938 OF
2023 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

P.R.RAMACHANDRAN,
AGED 64 YEARS
S/O P.K. RAMAN NAIR, 729/20, PUKKATTU HOUSE,
MUPPATHADAM P O, ALUVA, PIN - 683110

BY P.R.RAMACHANDRAN, (Party-In-Person)

RESPONDENTS/RESPONDENTS:

- 1 THE STATE CHIEF INFORMATION COMMISSIONER,
TC-14, 2071, PUNNEN ROAD, THIRUVANANTHAPURAM,
PIN - 695001
- 2 THE JOINT REGISTRAR (GENERAL),
COOPERATIVE SOCIETIES & FIRST APPEAL AUTHORITY,
5TH FLOOR, CIVIL STATION, KAKKANAD, ERNAKULAM,
PIN - 682030
- 3 THE ASSISTANT REGISTRAR (GENERAL),
COOPERATIVE SOCIETIES & FIRST APPEAL AUTHORITY,
NORTH PARAVUR, PIN - 683513.
- 4 THE STATE PUBLIC INFORMATION OFFICER &
DY.REGISTRAR (ADMIN),
COOPERATIVE SOCIETIES, 5TH FLOOR, CIVIL STATION,
KAKKANAD, ERNAKULAM, PIN - 682030.
- 5 THE STATE PUBLIC INFORMATION OFFICER & OFFICE
INSPECTOR,
OFFICE OF ASSISTANT REGISTRAR (GENERAL),
COOPERATIVE SOCIETIES, NORTH PARAVUR,



PIN - 683513

- 6 THE MUPPATHADAM SERVICE COOPERATIVE BANK LTD. NO E-216,
MUPPATHADAM P.O, ALUVA, REP BY ITS SECRETARY, NOW SRI. P.H. SABU, AGED ABOUT 53, PIN - 683110.
- 7 THE REGISTRAR OF CO-OPERATIVE SOCIETIES KERALA, O/O REGISTRAR OF CO-OPERATIVE SOCIETIES, JAWAHAR SAHCKARANA BHAVAN, DPI JUNCTION, THYCAUD P.O, THIRUVANANTHAPURAM, PIN - 695014

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 18.06.2024, THE COURT ON 02.07.2024 DELIVERED THE FOLLOWING:



[CR]

A.MUHAMED MUSTAQUE & S.MANU, JJ.

W.A.No.729 of 2024

Dated this the 02nd day of July, 2024

JUDGMENT**S.MANU, J.**

The petitioner in W.P.(C)No.37938/2023 has come up in this appeal aggrieved by the dismissal of the writ petition by learned Single Judge. The appellant sought the following information under the Right to Information Act regarding the 6th respondent Co-operative Society from the State Public Information Officer of the Office of the 2nd respondent by Ext.P1 application:-

- a) Copy of construction agreement between Muppathadam Service Co-operative Bank and the construction agency viz the "Ooralungal Labour Co-operative Society".
- b) Copy of the minutes of last general body meeting of above said Bank.



2. By Ext.P2 he was informed by the Public Information Officer that the copy of the minutes is not available in the office of the Joint Registrar (General). Copy of the reply received from the Bank to the communication issued by the Public Information Officer, as well as the communication to the Bank were also furnished along with Ext.P2. The appellant submitted Ext.P3 appeal under Section 19 of the RTI Act which evoked no response according to him. Therefore, he submitted Ext.P4 second appeal to the 1st respondent. The said appeal was rejected by Ext.P5 order dated 14.9.2023.

3. In the writ petition the petitioner prayed for setting aside Ext.P5 order issued by the 1st respondent and also for a direction to the 1st respondent to re-hear the second appeal. Apart from these, various other reliefs were also sought. Sixth respondent Co-operative Bank filed counter affidavit opposing the writ petition. The learned Single Judge, after hearing the petitioner and the respective learned counsel appearing for the respondents, dismissed the writ petition.



4. Before us the appellant appeared as party in person. Sri.P.Ravindran, learned Senior Counsel appeared for the 6th respondent Co-operative Bank. Learned Standing Counsel Sri.M.Ajay appeared for the 1st respondent. We have heard the appellant and the learned counsel for the respondents extensively.

5. Sri.P.R.Ramachandran, the appellant made submissions effectively. He relied on the judgment in W.A.No.1484/2022 which was rendered by a Division Bench of this Court in a previous round of litigation wherein he was the appellant and the 6th respondent Society was the contesting respondent. He also made reference to the judgment of the Hon'ble Supreme Court in **Thalappalam Service Co-operative Bank Ltd. v. State of Kerala** [(2013)16 SCC 82]. The appellant also referred to various provisions of the RTI Act and contended that the impugned order is not legally sustainable. He argued that the information he had sought in Ext.P1 is available with the office of the Joint Registrar. He also submitted that even if it



is assumed that the said information was not available with the said authority, the authority was bound to obtain the same from the 6th respondent Society and to provide it to him. Specifically referring to the definition of 'Information' in Section 2(f) of the RTI Act, the appellant submitted that information relating to any private body which can be accessed by a public authority also falls within the definition and therefore the Public Information Officer was expected to access the information and provide the same to him. He further submitted that the provisions of the Kerala Co-operative Societies Act, 1969 render vast powers to the Registrar and other authorities of the Department to exercise control over the societies and to supervise the functioning of the societies. Hence, according to him, seeking information of any nature from the Co-operative Societies is well within the authority of the Registrar and other higher officials. He also contended that the society has wrongly claimed that the judgment of the Division Bench of this Court in W.A.No.1484/2022 has no application



to the present case as the core issue has already been decided in the said judgment. He therefore prayed that the judgment of the learned Single Judge may be set aside and the reliefs sought in the writ petition may be granted.

6. The learned Senior Counsel Sri.P.Ravindran vehemently submitted that contentions raised by the appellant are fallacious. He made extensive references to various provisions of the RTI Act and the Kerala Co-operative Societies Act. The learned Senior Counsel, referring to the definition of 'Information' under the RTI Act submitted that information relating to any private body can fall within the scope of information under the RTI Act only if the same can be accessed by a public authority under any other law for the time being in force. He added that the information sought by the appellant in Ext.P1 application are not matters which are liable to be reported to the authorities under the Co-operative Societies Act by the 6th respondent Society. Referring to different provisions of the Co-operative Societies Act including the provisions of Part-B of the Act the



learned Senior Counsel contended that the higher authorities of the department can seek information regarding the functioning of the Society only when an inquiry as contemplated under Section 65 is being conducted or when inspections under Section 66 are held. It was submitted that the authorities of the department are not vested with the powers to interfere with the regular affairs of a Co-operative Bank. He submitted that the data sought by the petitioner is therefore not coming within the information which can be accessed by the authorities of the department under 'any other law' as mentioned in Section 2(f) of the RTI Act. He also pointed out that the information regarding awarding of a contract will fall within the exemptions under Section 8 of the RTI Act. Regarding the judgment of Division Bench of this Court in W.A.No.1485/2022 he submitted that in paragraph 25 of the said judgment the Hon'ble Division Bench had expressly clarified that the court has not expressed anything on the merits of the matter or legality of the application submitted



by the appellant. He also pointed out that all issues raised in facts and law in the application were left open to be considered by the primary authority by the Division Bench. He therefore asserted that the said judgment cannot be of any help to the appellant. The learned Senior Counsel raised yet another contention that the appellant is a member of the 6th respondent Co-operative Society and in his capacity as a member he can have access to the matters specifically mentioned in Section 19B of the Act. His further contention in this regard is that being a member of the society the rights of the appellant to seek information beyond what is mentioned specifically in Section 19B are curtailed. Hence, he argued that the appellant is not entitled to obtain an information sought in Ext.P1 in any view of the matter and the rejection of his appeal by the 1st respondent is perfectly justified.

7. Sri.M.Ajay, the learned Standing Counsel for the 1st respondent also made submissions. He invited our attention to the judgment of the Hon'ble Supreme Court in



D.A.V. College Trust and Management Society and others v. Director of Public Instructions and Others [2019 (9) SCC 185] and also to a judgment of a Division Bench of this Court in **Kunnathunad Taluk Primary Co-operative Agricultural and Rural Development Bank Ltd. v. Public Information Officer and Others** [2019(1) KLT 857]. He submitted that a Division Bench of this Court in the latter judgment made reference to the law laid down by the Hon'ble Supreme Court in **Thalappalam Service Co-operative Bank's** case and held that the Bench was of the view that powers of Registrar of Co-operative Societies extend beyond providing the information already available with the department. He also submitted that in case this Court issues such a direction to the 1st respondent, the matter will be reconsidered.

8. The definition of 'information' under Section 2(f) of the RTI Act reads thus:-

"(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders,



logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force."

(Emphasis supplied)

9. It is clear from the above definition that information relating to any private body which can be accessed by a public authority under any other law for the time being in force also has been brought within the scope of S.2 (f). The expression "*information relating to any private body which can be accessed by a public authority under any other law for the time being in force*" in the definition is to be noted.

10. It is apposite to refer to the definition of "right to information" also. S.2 (j) of the Act reads thus:-

"(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to--

- (i) inspection of work, documents, records;*
- (ii) taking notes, extracts or certified copies of documents or records;*
- (iii) taking certified samples of material;*



(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;”

Definition under S.2(j) brings within its fold “right to information” accessible under the Act which is held by or under the control of any public authority.

11. Combined reading of the definitions under S.2 (f) as well as S.2(j) of the Act makes the following aspects clear as to the applicability of the Act regarding private bodies-

1. There must be a public authority having statutory dominance over the private body.
2. The information sought must have been held by the public authority or must be under its control.
3. The public authority can have access to the information, if it has the power to do so under any law for the time being in force other than the RTI Act.



12. Hence, when information is sought with respect to a private body through a public authority, if the same is held by the public authority or it is under the control of the authority, the authority can furnish the same to the applicant, except when the information is falling within the exempted categories. If the information sought is not available with the authority and nor is in its control, the authority can access the same, provided it enjoys power to do so under the law by which it gets dominance over the private body. Hence in such cases, the essential facet to be considered by the authorities under the Act is as to whether the public authority is vested with the power to seek /gather the particular information from the private body by virtue of the powers conferred by any law other than the RTI Act. Answer to the said issue will depend upon the extent of authority conferred on the public authority by the law which provides the public authority dominance over the private body. Hence, apart from reference to the provisions of the RTI Act, analysis of the provisions of the relevant law



providing control to the public authority over the private body, by the authorities under the RTI Act will also be necessitated to find out the extent of powers conferred on the public authority in each case.

13. Regarding the applicability of the provisions of the RTI Act with respect to Co operative Societies governed by the Kerala Co-operative Societies Act, erudite analysis of the provisions of the relevant laws and lucid conclusions by the Hon'ble Supreme Court in **Thalappalam Service Co-operative Bank's** case provides abundant guidance. The Hon'ble Supreme Court concluded in **Thalappalam Service Co-operative Bank's** case that Co-operative Societies registered under the Kerala Co-operative Societies Act will not fall within the definition of 'public authority' as defined under Section 2(h) of the RTI Act. In the said judgment the Hon'ble Supreme Court held in paragraph 18 (as reported in SCC) as follows:-

"We can, therefore, draw a clear distinction between a body which is created by a Statute and a body which, after having come into existence, is



governed in accordance with the provisions of a Statute. Societies, with which we are concerned, fall under the later category that is governed by the Societies Act and are not statutory bodies, but only body corporate within the meaning of Section 9 of the Kerala Co-operative Societies Act having perpetual succession and common seal and hence have the power to hold property, enter into contract, institute and defend suites and other legal proceedings and to do all things necessary for the purpose, for which it was constituted. Section 27 of the Societies Act categorically states that the final authority of a society vests in the general body of its members and every society is managed by the managing committee constituted in terms of the bye-laws as provided under Section 28 of the Societies Act. Final authority so far as such types of Societies are concerned, as Statute says, is the general body and not the Registrar of Cooperative Societies or State Government."

14. It has been categorically held by the Hon'ble Supreme Court that the final authority so far as the types of societies involved in the case are concerned, is the General Body and not the Registrar of Co-operative Societies or State Government. In paragraph 20 of the judgment Hon'ble



Supreme Court observed that though the societies are subject to the control of the statutory authorities like Registrar, Joint Registrar, the Government, etc. it cannot be said that the State exercises any direct or indirect control over the affairs of the society which is deep and all pervasive. Again in paragraph 44 the Hon'ble Supreme Court observed thus:-

"Powers exercised by the Registrar of Co-operative Societies and others under the Co-operative 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. The Management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Co-operative Societies Act and not on the authorities under the Co-operative Societies Act."

15. The Hon'ble Supreme Court in paragraph 67 of the judgment specifically dealt with the obligation of the Registrar of Co-operative Societies under the RTI Act. It is profitable to extract the relevant paragraph hereunder for ready reference:-



*"52. 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, 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 R.T.I. Act and furnish information to a citizen under the R.T.I. Act. Information which he is expected to provide is the information enumerated in Section 2(f) of the R.T.I. Act subject to the limitations provided under Section 8 of the Act. 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.** 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 Co-operative 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 Co-operative*



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, Registrar, as already indicated, is not legally obliged to provide if those information falls under the exempted category mentioned in Section 8(1) (j) of the Act. Apart from the Registrar of Co-operative Societies, there may be other public authorities who can access information from a Co-operative Bank of a private account maintained by a member of 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."

(Emphasis supplied)

We note that the Hon'ble Supreme Court, while pronouncing upon the authority of the Registrar to gather information from the Societies has carefully added a rider that the same shall be to the extent permitted by the Law. Addition of the said rider is apparently in tune with the expression in S.2 (f) of the RTI Act, "*can be accessed by a public authority under any other law*" .



16. The appellant has placed heavy reliance on the judgment in W.A.No.1485/2022. In the said case also the appellant herein sought some information available with the 6th respondent Co-operative Bank which was not furnished by the authorities under the RTI Act. His writ petition was dismissed by the learned Single Judge and in appeal the Division Bench extensively analysed the law laid down in **Thalappalam Service Co-operative Bank's** case. As we have already referred to the law laid down by the Apex Court in **Thalappalam** case which holds the field, it is not prudent to burden this judgment by referring to any other precedents.

17. Ext.P5 order under challenge has been issued by the 1st respondent. The 1st respondent has given his conclusions in paragraph 5 of Ext.P5. He has stated that on an examination of the appeal memorandum and the relevant records it was found that the information sought by the appellant were not in the nature of information available with the office of the Joint Registrar (General). It is further



stated by the 1st respondent that the opposite parties in the appeal had made earnest efforts to provide the information to the appellant. Thereafter, the 1st respondent went on to say that under the provisions of the RTI Act the State Public Information Officer is bound to provide only the information available with him or under his control. Hence, the 1st respondent concluded that no further action is required in the matter and closed the proceedings.

18. The above reasoning of the 1st respondent does not appear to be totally sound and proper in the eye of law in the case on hand. True, the Hon'ble Supreme Court held in **CBSE v. Aditya Bandopadhyay**, [(2011) 8 SCC 497] as follows:

"63. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of Section 3 and the definitions of "information" and "right to information" under clauses (f) and (j) of Section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in Section 8 of the Act. But where the



information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide “advice” or “opinion” to an applicant, nor required to obtain and furnish any “opinion” or “advice” to an applicant. The reference to “opinion” or “advice” in the definition of “information” in Section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act..”

19. However, in the light of the law laid down by the Apex Court in **Thalappalam Service Co-operative Bank's** case as referred above, it is well settled that the Registrar of Co-operative Societies is a public authority who is expected to provide the information enumerated in Section 2(f) of the RTI Act subject to the limitations provided under



Section 8 of the Act. Registrar can also, to the extent the law permits, gather information from a society on which he has supervisory or administrative control under the Co-operative Societies Act. A Division Bench of this Court in **Kunnathunad Taluk Primary Co-operative Agricultural and Rural Development Bank Ltd. v. Public Information Officer and Others** [2019(1) KLT 857] held that the conclusions of the Hon'ble Apex Court in **CBSE's** case (supra) have to be understood in tune with the subsequent judgment in **Thalappalam** case. The latter being an authority regarding the applicability of the RTI Act with regard to the Co-operative Societies under the Kerala Co-operative Societies Act, we are also of the same view.

20. In view of the foregoing discussion, the 1st respondent, in our view, was expected to analyse the issue involved in the appeal deeply and ought to have examined the issue as to whether the information sought by the appellant will come within the scope of information which can be accessed by the Joint Registrar in exercise of his



powers under the Co-operative Societies Act and Rules framed thereunder. So also, the 1st respondent ought to have further examined as to whether the information would fall within the exempted categories under Section 8 of the RTI Act. However, such deeper analysis has not been undertaken by the 1st respondent while issuing Ext.P5 order. The 1st respondent approached the issue without bearing in mind that “information” under the Act includes information relating to any private body which can be accessed by a public authority under any other law. The 1st respondent has not kept in mind the principles laid down by the Hon'ble Supreme Court in **Thalappalam Service Co-operative Society's** case also while passing Ext.P5 order. Therefore, we are of the view that Ext.P5 cannot be sustained for want of proper application of mind. Hence the affirmation of Ext P5 by the learned Single Judge is liable to be interfered with. We therefore set aside the judgment of the learned Single Judge. Ext.P5 shall stand quashed. The 1st respondent shall reconsider the appeal filed by the appellant and pass a fresh



order in accordance with law. Notice shall be issued to the appellant and the 6th respondent. Opportunity of hearing shall be provided to both sides before fresh order is passed. The 1st respondent shall pass fresh orders within a period of two months from the date of receipt of a copy of this judgment.

21. Since we are remitting the matter, contentions raised by the appellant as well as the 6th respondent during the hearing of the writ appeal are left open.

The writ appeal is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

Sd/-
S.MANU, JUDGE

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