



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE D. K. SINGH

FRIDAY, THE 29TH DAY OF NOVEMBER 2024 / 8TH AGRAHAYANA, 1946

WP(C) NO. 30694 OF 2024

PETITIONER/S:

THE MUPPATHADAM SERVICE CO-OPERATIVE BANK LTD. NO.E-216,
MUPPATHADAM.P.O., ALUVA, REPRESENTED BY ITS SECRETARY, PIN - 683110

BY ADVS. M.R.SABU, P.RAVINDRAN (SR.), LAKSHMI RAMADAS
APARNA RAJAN, SREEDHAR RAVINDRAN, P.DEEPAK (SR.)

RESPONDENT/S:

- 1 THE STATE CHIEF INFORMATION COMMISSIONER,
TC-14, 2071, PUNNEN ROAD, THIRUVANANTHAPURAM, PIN - 695001
- 2 THE JOINT REGISTRAR (GENERAL),
CO-OPERATIVE SOCIETIES & FIRST APPEAL AUTHORITY, 5TH FLOOR, CIVIL STATION,
KAKKANAD, ERNAKULAM, PIN - 682030
- 3 THE STATE PUBLIC INFORMATION OFFICER & DEPUTY REGISTRAR (ADMINISTRATION)
CO-OPERATIVE SOCIETIES,
5TH FLOOR, CIVIL STATION, KAKKANAD, ERNAKULAM, PIN - 682030
- 4 P.R.RAMACHANDRAN, AGED 64 YEARS, S/O.P.K.RAMAN NAIR,729/20, PUKKATTU
HOUSE, MUPPATHADAM.P.O., ALUVA, PIN - 683110

BY ADVS. M. AJAY, SRI V S SREEJITH GP
P.R.RAMACHANDRAN,(Party-In-Person)

THIS WRIT PETITION (CIVIL) HAVING FINALLY HEARD ON 29.11.2024, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:



JUDGMENT

“C.R.”

Heard Mr P Deepak, learned Senior Counsel, assisted by Mr Sabu M R learned Counsel for the petitioner, Mr M Ajay, learned Standing Counsel for the State Chief Information Commissioner, Mr V S Sreejith, learned Government Pleader for 2nd and 3rd respondents and Mr P R Ramachandran Party-in-Person, the fourth respondent.

Facts:

2. The challenge in this writ petition is the order dated 17.08.2024 passed by the State Information Commission, Kerala, in Ext.P5 whereby the State Information Commission has directed the State Public Information Officer and Deputy Registrar (Administration), Office of the Joint Registrar Co-operative Societies, Kakkanad to give information sought by Mr P R Ramachandran, the applicant for which he made an application before the first respondent in respect of the Petitioner Co-operative Bank.

3. The petitioner is a Co-operative Society registered under the



provisions of the Co-operative Societies Act 1969. Mr P R Ramachandran, the fourth respondent, is a member of the Petitioner-Co-operative Society who submitted an application dated 14.01.2023 seeking information in respect of an agreement entered into between the Petitioner-Society and a Labour Contract Society involved in the construction business. The Petitioner-Society had given a contract for the construction of a building for the Petitioner-Society. The fourth respondent also sought a copy of the minutes of the last General Body Meeting of the Society. The Information Officer, *vide* order dated 15.02.2023, informed the fourth respondent that as the documents were not in their possession, it was not possible to provide copies of those documents.

3.1 The fourth respondent filed an appeal before the second respondent against the said order of the Public Information Officer. The second respondent *vide* order dated 08.05.2023 affirmed the order passed by the Public Information Officer and rejected the appeal. The fourth



respondent thereafter approached this Court by filing W.P.(C) No.37938/2023 challenging the order dated 08.05.2023 passed by the Appellate Authority in Ext.P2. The said writ petition came to be dismissed *vide* judgment dated 08.04.2024. It was held that the petitioner is a Co-operative Bank functioning under the provisions of the Kerala Co-operative Societies Act and is not an Institution under the control of the Registrar of Co-operative Societies.

3.2 The said judgment dated 08.04.2024 was carried in appeal before the Division Bench of this Court in W.A. No.729/2024. The Division Bench *vide* judgment dated 02.07.2024 disposed of the appeal directing the State Chief Information Commissioner to reconsider the appeal. On remand, the first respondent, the State Chief Information Commissioner has passed the impugned order.

Petitioner's submission:

4. Mr P Deepak, learned Senior Counsel appearing for the petitioner, has submitted that under the provisions of the Co-operative



Societies Act, the Joint Registrar or any Enquiry Officer deputed by him can have access to the documents of the Society while conducting an enquiry. The enquiry conducted would culminate in a report to be submitted to the Joint Registrar when the enquiry conducted is by an Officer other than the Joint Registrar and, in other cases, by the Joint Registrar himself. In all these cases, the documents, if any, are accessed for the purpose of preparing an enquiry report, the information accessed is in a fiduciary capacity, and the information gathered is not 'held' by the Joint Registrar as a public authority. It is further submitted that the documents sought are neither accessible nor held by the Joint Registrar.

4.1 It is further submitted that there was no enquiry under Section 65 or 66 of the Co-operative Societies Act against the functioning of the Petitioner-Society. Therefore, there was no question of accessing any documents of the Petitioner-Society by the Registrar or Joint Registrar. No enquiry whatsoever was conducted regarding the



agreement entered by Petitioner-Society with another Society.

4.2 The Right of a member to get information with respect to the functioning of the Society is provided under Section 19B of the Co-operative Societies Act, which *inter alia* includes an up-to-date copy of the by-laws of the Society, a register of members, the latest audited balance sheet of the Society and the accounts of the Society insofar as they relate to its member's transaction.

4.3 Rule 24 of the Co-operative Societies Rules provides for the right to obtain documents from the Registrar's Office. The learned Senior Counsel placed reliance on Rule 24, the documents and information in the access and control of the Registrar if the Registrar is satisfied that the person seeking information requires it to redress in any matter in which the person is aggrieved or for any lawful purpose.

4.4 Section 66C of the Co-operative Societies Act mandates a Co-operative Society to file returns within six months of the closure of every Financial Year before the Registrar containing the particulars as



mentioned in the sub-section and provide any other information which the Registrar may require in pursuance of any of the provisions of the Act or the Rules made thereunder.

5. The learned Senior Counsel for the petitioner, therefore, placing reliance on Section 19B, Section 66C and Rule 24 would submit that the documents required by the fourth respondent under the Right to Information Act are not the documents which the Joint Registrar as a public authority would be in possession of or accessible to him. Furthermore, he has submitted that the documents sought for by the fourth respondent would not come within the purview of Section 66C. Therefore, the said documents cannot be provided under the provisions of the Right to Information Act to the fourth respondent.

5.1 Furthermore, it is submitted that Section 8(1) of the Right to Information Act lays down the exemption from disclosure of information in respect of the matters enumerated therein. Clause (j) of sub-section (1) of Section 8 of the Right to Information Act exempts



information to be provided under the provisions of the Right to Information Act which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the Appellate Authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.

5.2 The submission of the learned Senior Counsel for the petitioner is that the agreement sought has been entered into between the two private parties, and if it is disclosed, it would have a harmful effect on trade secret or competency, and such information is not desired to be furnished under the Right to Information Act. Further, it is submitted that the building contract entered between the Labour Construction Society and the petitioner would come within the exemption clause (d) of subsection (1) of Section 8 of the Right to Information Act. Therefore, the 4th respondent would not be entitled to



such documents.

Respondent's submissions:

6. On the other hand, Mr M Ajay, learned Standing Counsel appearing for the State Information Commission, the first respondent, has supported the impugned order.

7. The fourth respondent, Party-in-Person has submitted that the powers exercised by the Registrar of Co-operative Societies are regulatory and supervisory in nature. These powers would not amount to interfering with the management or affairs of the Society to have control over the affairs of the Society. The management and control of the affairs of the Society is on the Management Committee or Board of Directors of the Society.

7.1 The fourth respondent sought information from the notified 'public authority' in respect of the information of the documents which are accessible by the public authority under the Kerala Co-operative Societies Act and the Rules. Further, it is submitted that the Public



Information Officer intimated the minutes of the last General Body Meeting of the Bank were not available in their Office, which was sought from the petitioner. It is also submitted that the minutes of the General Body Meeting will be within the access of the public authority.

7.2 Furthermore, Section 2(f) of the Right to Information Act provides for giving information under the Right to Information Act relating to any private body which can be accessed by public authority under any law for the time being in force. Thus, the information which is held with the public authority or to which the public authority has access in respect of the affairs of the private party can be provided under the Right to Information Act. The public authority has the obligation under the Right to Information Act to provide the information to an applicant under the Right to Information Act.

7.3 Mr P R Ramachandran has placed reliance on the judgment of the Supreme Court in the case of ***Central Board of Secondary Education***



v. Adithya Bandopadhyay¹ It is submitted that Section 66(1) of the Kerala Co-operative Societies Act provides the power of the Registrar to supervise the workings of every Society, and supervision would include inspecting the Society's books. The supervisory power of the Registrar of Co-operative Societies under the provisions of the Kerala Co-operative Societies Act, read with Section 2(f) of the Right to Information Act would entitle the petitioner to get information under the Right to Information Act as sought by him in his application.

7.4 Furthermore, it is submitted that the contention of the petitioner that the information sought by the petitioner would come within the purview of Clause (d) of sub-section (1) of Section 8 of the Right to Information Act, is completely untenable. Protection is only in respect of the competitive position of a third party. Once the work was awarded to the party and an agreement was entered into between the parties, there would be no confidentiality or danger to the competitive

¹ (2011) 8 SCC 497



position.

7.5 The Party-in-Person has also submitted that the Government of Kerala has issued an order dated 17.06.2013, in which the said construction agency has been approved for taking works from all establishments of the Co-operative Department without any tendering processes. The construction agreement in question is one such document in which the rates of items are not competitive, being a single tender, in terms of the Government Order. The fourth respondent has supported the order passed by the State Information Commissioner.

Discussion:

8. I have considered the submissions advanced on behalf of the parties and perused the record.

9. The provisions of the Right to Information Act have overriding effect as provided in Section 22 of the Right to Information Act, which reads as under:

“22. Act to have an overriding effect

The provisions of this Act shall have effect notwithstanding anything



inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

Therefore, the provisions of the Co-operative Societies Act will not come in the way of seeking information in respect of Co-operative Society if the information is otherwise not barred under Section 8 of the Right to Information Act.

10. Section 3 of the Right to Information Act confers a right on the citizens of this Country to have information. Therefore, unless the information is specifically barred, the statutory right has to be given effect to. The Right to Information Act has been enacted to ensure that citizens have the right to have information and access to information under the control of public authorities with the aim of promoting transparency and accountability in the working of every public authority. A Co-operative Bank or Society may or may not be a public authority depending on the control and financial assistance exercised and provided by the State.



Thalappalam Service Co-operative Bank Limited v. State of Kerala²

11. The Supreme Court, in the case of *Thalappalam Service Co-operative Bank Limited* (supra), has held that the Co-operative Society is essentially an association or an association of persons who have come together for a common purpose of economic development or for mutual help. If the Society is not controlled or substantially financed, directly or indirectly, by the funds provided by the appropriate Government, it will not be amenable to the Right to Information Act.

11.1 It has been further held that 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 Right to Information Act and to the extent law permits, can gather information from a Society, on which he has supervisory or administrative control under the Co-operative Societies Act. The information can be sought from the Office of the Registrar of Co-operative Societies in respect of a Society

² (2013) 16 SCC 82



registered under the Co-operative Societies Act to which the Registrar has access. The Registrar of Co-operative Societies is a public authority, and he should provide the ‘*information*’ enumerated in Section 2(f) of the Right to Information Act, subject to the limitations provided under Section 8 of the Right to Information Act.

11.2 Paragraphs 67 to 69 of ***Thalappalam Service Co-operative Bank Limited*** are extracted hereunder:

“67. The Registrar of Cooperative Societies functioning under the Cooperative Societies Act is a "public authority" within the meaning of Section 2(h) of the Act. As a public authority, the Registrar of Cooperative 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, to the 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.

69. We, therefore, hold that the Cooperative Societies registered under



the Kerala Cooperative Societies Act will not fall within the definition of "public authority" as defined under Section 2(h) of the RTI Act and the State Government Letter dated 5-5-2006 and the Circular dated 1-6-2006 issued by the Registrar of Cooperative Societies, Kerala, to the extent, made applicable to societies registered under the Kerala Cooperative Societies Act would stand quashed in the absence of materials to show that they are owned, controlled or substantially financed by the appropriate Government. The appeals are, therefore, allowed as above, however, with no order as to costs.”

11.3 Thus, if the Registrar of Co-operative Societies can access the information sought from him from the petitioner Society, the said information has to be given to the applicant under the Right to Information Act. It cannot be disputed that the Registrar has the power to gather information from the Petitioner-Society over which he has supervisory control under the Co-operative Societies Act.

D.A.V. College Trust and Management Society v. Director of Public Instructions³

³ 2019 (9) SCC 185



12. The Supreme Court in *D.A.V. College Trust and Management Society* (supra) held that an NGO/Society/Institution not owned or controlled by the Government, not having been created by an Act or notification, would still fall under the ambit of ‘public authority’ if it is substantially financed directly or indirectly by the Government. Whether a body is substantially financed directly or indirectly by the Government would depend upon the facts of each case and the purpose of the Act.

12.1 It is further held that the Right to Information Act, 2005 intends to bring transparency in public dealings and probity in public life. If NGOs or other bodies get substantial finance from the Government, there is no reason why any citizen cannot ask for information to find out whether his/her money which has been given to an NGO or any other body is being used for the requisite purpose or not.

12.2 Paragraphs 17, 18, 20, 22 to 24 of the said judgment are extracted hereunder:



“17. We have no doubt in our mind that the bodies and NGOs mentioned in sub-clauses (i) and (ii) in the second part of the definition are in addition to the four categories mentioned in clauses (a) to (d). Clauses (a) to (d) cover only those bodies, etc., which have been established or constituted in the four manners prescribed therein. By adding an inclusive clause in the definition, Parliament intended to add two more categories, the first being in sub-clause (i), which relates to bodies which are owned, controlled or substantially financed by the appropriate Government. These can be bodies which may not have been constituted by or under the Constitution, by an Act of Parliament or State Legislature or by a notification. Any body which is owned, controlled or substantially financed by the Government, would be a public authority.

18. As far as sub-clause (ii) is concerned it deals with NGOs substantially financed by the appropriate Government. Obviously, such an NGO cannot be owned or controlled by the Government. Therefore, it is only the question of financing which is relevant.

20. The principle of purposive construction of a statute is a well-recognised principle which has been incorporated in our jurisprudence. While giving a purposive interpretation, a court is required to place itself in the chair of the legislature or author of the statute. The provision should be construed in such a manner as to ensure that the object of the Act is fulfilled. Obviously, if the language of the Act is clear then the language has to be followed, and the court cannot give its own interpretation. However, if the language admits of two meanings then



the court can refer to the Objects and Reasons, and find out the true meaning of the provisions as intended by the authors of the enactment. S.B. Sinha, J. in *New India Assurance Co. Ltd. v. Nusli Neville Wadia* held as follows: (SCC pp. 296-97, para 51)

"51.... to interpret a statute in a reasonable manner, the Court must place itself in the chair of a reasonable legislator/author. So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act is fulfilled; which in turn would lead the beneficiary under the statutory scheme to fulfil its constitutional obligations as held by the Court inter alia in *Ashoka Mktg. Ltd.*"

Sinha, J. quoted with approval the following passage from Barak's treatise on Purposive Interpretation in Law, 11 which reads as follows: (New India Assurance Co. Ltd. case, SCC p. 297, para 52)

"52. 'Hart and Sachs also appear to treat "purpose" as a subjective concept. I say "appear" because, although Hart and Sachs claim that the interpreter should imagine himself or herself in the legislator's shoes, they introduce two elements of objectivity: First, the interpreter should assume that the legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and second, the interpreter should accept the non-rebuttable presumption that members of the legislative body sought to fulfil their constitutional duties in good faith. This formulation allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted reasonably.' "



22. Therefore, in our view, Section 2(h) deals with six different categories and the two additional categories are mentioned in sub-clauses (i) and (ii). Any other interpretation would make sub-clauses (i) and (ii) totally redundant because then an NGO could never be covered. By specifically bringing NGOs it is obvious that the intention of Parliament was to include these two categories mentioned in sub-clauses (i) and (ii) in addition to the four categories mentioned in clauses (a) to (d). Therefore, we have no hesitation in holding that an NGO substantially financed, directly or indirectly, by funds provided by the appropriate Government would be a public authority amenable to the provisions of the Act.

23. NGO is not defined under the Act or any other statute as far as we are concerned. In fact, the term NGO appears to have been used for the first time describing an international body which is legally constituted but non-governmental in nature. It is created by natural or legal entities with no participation or representation by the Government. Even NGOs which are funded totally or partially by the Governments essentially maintain the NGO status by excluding Government representations in all their organisations. In some jurisprudence, they are also referred to as civil society organisations.

24. A society which may not be owned or controlled by the Government, may be an NGO but if it is substantially financed directly or indirectly by the Government it would fall within the ambit of sub-clause (ii).”

Kunnathunad Taluk Primary Co-operative Agricultural and Rural Development Bank Limited v. Public Information Officer⁴

⁴ 2019 (1) KLT 857



13. A Division Bench of this Court in ***Kunnathunad Taluk Primary Co-operative Agricultural and Rural Development Bank Limited*** held the Registrar can gather information from a Society to the extent permitted by law, but he is not obliged to disclose the information which is exempted from disclosure under Section 8 of the Act. Therefore, the Registrar can collect such information from the Society, which he is otherwise empowered to collect under the Kerala Cooperative Societies Act and furnish to the applicant that information, of course, subject to the limitations and restrictions under the Act.

Analysis:

14. Section 66(4) of the Co-operative Societies Act empowers the Registrar or any person authorized by him under subsection (1) or subsection (2) to have free access to and have the power to inspect the books, records, accounts, documents, securities, cash balance and other properties belonging to the Society and may summon any person in possession of or responsible for the custody of such books, records,



accounts, documents, securities, cash balance and other properties to produce the same for inspection at any place at the Headquarters of the Society or any branch thereof or where there is no working office for the Society, at the Office of the Registrar or at the Office of any of his subordinate Officers. Thus, the Registrar exercises wide power so far as the functioning of the Society is concerned and has access to any documents in respect of the functioning of the Society for inspection.

14.1 Sub-clauses (i) and (ii) of Section 2(h)(d) of the Right to Information Act deal with ownership, control and substantial financing, either directly or indirectly by the Government. The control exercised by the Government through the Registrar of Co-operative Societies is only regulatory in nature when the overall control rests with the Board of Directors, which is dominated by elected members, and ultimate control vests with the General Body of the Society. As per the judgement of the Hon'ble Supreme Court in *Thalappalam Service Co-operative Bank Limited* (supra), the control of the Government should be effective, all-



pervasive and of the nature of interfering with the day-to-day administration of the Society for that Society to be considered as falling within the ambit of section 2(h)(d)(i).

15. The question which needs to be considered is whether the Registrar of the Co-operative Society would have access to the documents/information of the Petitioner-Society, which have been sought for by the fourth respondent. If the documents and information are accessible to the Registrar of the Co-operative Society and are not exempted from disclosure under Section 8 of the Right to Information Act, the Registrar can collect such information from the Society, which he is otherwise empowered to collect under the Kerala Co-operative Societies Act and furnish that information to the applicant.

15.1 In the present case, two pieces of information have been sought by the applicant in respect of the petitioner Society:

(i) The copy of the construction agreement between Muppathadam Service Co-operative Bank and the construction agency viz the



Ooralungal Labour Co-operative Society, and

(ii) The copy of the minutes of the last General Body Meeting of the Petitioner-Society.

15.2 There is no confidentiality involved in either the construction agreement or the copy of the minutes of the General Body Meeting of the Petitioner-Society to deny the information. The Registrar of the Societies would have access to these documents. The minutes of the meeting would not come under any of the exceptions as enumerated in Section 8 of the Right to Information Act. Neither the agreement nor the minutes of the meeting sought by the fourth respondent would breach any commercial secret relating to confidentiality.

Conclusion:

16. In view of the aforementioned, it can certainly be held that the information sought by the applicant is accessible by the Registrar of the Co-operative Societies and the information desired by the applicant is not barred under Section 8 of the Right to Information Act.



Result:

This Court finds no error in the impugned order passed by the State Information Commission. Thus, the writ petition fails, which is hereby dismissed.

All Interlocutory Applications regarding interim matters stand closed.

Sd/-

D K SINGH

JUDGE



APPENDIX OF WP(C) 30694/2024

PETITIONER EXHIBITS

- Exhibit-P1 TRUE COPY OF THE ORDER ISSUED BY THE INFORMATION OFFICER DATED 15.02.2023 NO.ST.270/2023 ALONG WITH TRANSLATION
- Exhibit-P2 TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT DATED 08.05.2023 NO.263/23/01 ALONG WITH TRANSLATION
- Exhibit-P3 : TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.37938/2023 DATED 08.04.2024
- Exhibit-P4 TRUE COPY OF THE JUDGMENT IN W..A.NO.729/2024 DATED 02.07.2024
- Exhibit-P5 TRUE COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT DATED 17.08.2024 (PROCEEDINGS OF THE APPEAL PETITION NO.1148(1)/2023/SIC (FILE NO.7784/SIC-GEN4/2023)
- Exhibit-R4(a) TRUE COPY OF THE STATE GOVERNMENT ORDER DATED 17.06.2013