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BEFORE THE REGISTER OF CO-OPERATVE SOCIETIES-CUM-FIRST APPELLATE AUTHORITY UNDER THE RIGHT TO INFORMATION ACT, 2005

FA/20/2017

PRESENT: **Dr. A.S. SIVAKUMAR**
Registrar of Co-operative Societies-cum-First Appellate - Authority.

Thiru M. Tamilkumaran & Ms.A. Durga
Advocates,
V.M.K.R Complex,
Sudakar Nagar,
Villupuram – 605109 ..... Petitioners

Vs.

The Public Information Officer
The Pondicherry Co-operative Urban Bank Ltd. No. P.14
No. 197, J.N. Street,
Puducherry – 605 001 ...... Respondent

ORDER

(Issued under Section 19 of the Right to Information Act, 2005)

The unsuccessful applicants are the appellants here. Aggrieved by the denial of information by the respondent, invoking Section 2(h) of the Right to Information Act, 2005 (for short' the Act'), the appellants preferred the first appeal under Section 19 of the Act.

2. Few introductory facts essential for disposal of this first appeal may be stated, in brief:

2.1 The applicants, vide their application dated 23.8.2017, sought some information and permission to inspect some records of the Pondicherry Co-operative Urban Bank Ltd., (for brief the bank), the respondent herein. Responding to the application, the respondent informed the appellants that the

DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES PUDUCHERRY bank is a registered co-operative society under the Pondicherry Co-operative Societies Act and would not fall under the definition of 'public authority' as defined under Section 2 (h) of the Act and hence the application was returned on the ground of maintainability.

2.2 Challenging the disposal of the application by the respondents, the appellants contend that the bank would come within the precincts of public authority, as decided by various judgments of the Hon'ble Supreme Court of India and Hon'ble High Courts, essentially in *Thalappalam Service Co-operative Bank Ltd., and others vs. State of Kerala and others, 2013 (12) SCALE 527 : 2013 (6) CTC 98 : (2013) 7 MLJ 407.* The Registrar of Co-operative Societies has appointed the administrative officers of the bank and bank functions under the administration and control of the Reserve Bank of India. Further the Co-operative Department has issued various circulars that the co-operative societies would fall within the definition of 'public authorities'. Vide Circular dated 25.6.2007 the Department has appointed the Managing Director of the bank as the Public Information Officer.

2.3 On the strength of the above submissions, the petitioners submit that the bank answers the definition of 'public authority' and hence the bank may be directed to furnish the information and allow the appellants to inspect the records, as sought for; and impose a penalty of Rs.25,000 on the respondent.

3. The appeal was admitted and the respondent was directed to file his response. A copy of the response filed by the respondents is forwarded to the appellants.

4. Reinforcing its earlier stand that the bank is not a public authority under the Act, the respondent submitted that the bank would not be a public authority in view of the circular No.RCS/CLC/SFCS/2014/172 dated 23.12.2014 in as much as the bank has not received any financial assistance from the Government. The bank relied on the decision of the Hon'ble Apex

DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES
PUDUCHERRY

Court in *Thalappalam Service Co-operative Bank Ltd. [supra].* In the said judgment, the Court ruled that the co-operative societies registered under the Kerala Co-operative Societies Act would not be public authorities in the absence of materials to show that they are owned, controlled or substantially financed by the appropriate Government. The respondent contended that the circular relied on by the appellants were issued much before the judgments of the Hon'ble Supreme Court, cited above. On the above premises, the respondent sought dismissal of the first appeal.

5. I have given my thoughtful consideration on the submissions of the appellants vis-à-vis that of the respondent. The Hon'ble Supreme Court in *Thalappalam Service Co-operative Bank Ltd.,* case has authoritatively settled that the Kerala Co-operative Societies Act would not be public authorities in the absence of materials to show that they are owned, controlled or substantially financed by the appropriate Government. Based on the decision, the Co-operative Department has issued a circular dated 23.12.2014, classifying the societies which are substantially funded by the Government and hence would fall within the definition of the 'public authorities' under Section 2(h) of the Act. In the said judgment, the Hon'ble Court has adverted various contentions now raised by the appellants herein and held what was the meaning of "owned, controlled and substantially funded by the Government." These issues are no more res integra. The appellants cannot give fresh life to the issues well settled by the highest Court of India, which has the force of law. I am unable to reconcile myself how the appellants contend and claim that in the above judgment, Hon'ble Supreme Court has held that co-operative societies fall within the purview of the 'public authorities' while the conclusion reached by the Hon'ble Court was diagonally opposite to their claim. As rightly contended by the respondent, the circulars relied on by the appellants holding that the bank would be public authority were issued much before the judgment of the Hon'ble Supreme Court in *Thalappalam Service Co-operative Bank Ltd.,*

case and the consequential circular dated 23.12.2014, issued by the Department.

6. In the circular dated 23.12.2014, in paragraphs 2 and 3 it was stated that only such societies which are substantially funded by the Government will answer the definition of 'public authority' under the Act and a list of 260 societies listed in the annexure to the circular were declared as public authorities and directed to entertain applications under the Act and dispose in accordance with law. In view of the law declared by the Hon'ble Supreme Court and in pursuance of the circular dated 23.12.2014, the contrary instructions issued by earlier circulars/orders by the Department are impliedly overruled, to the extent indicated above. The reliance of such circulars by the appellants is not sustainable in law.

7. In the light of the above analysis, the appellants have not persuaded me to interfere with the order of the respondent, impugned in this appeal. The appeal lacks merit and stands rejected.

8. Before parting with this order, I must mention that the respondent impugned order 6.9.2017 was very cryptic and non-speaking. When the information is denied, the order should contain reasons. It is not that all co-operative societies registered under the Act would fall outside the definition of 'public authorities'. The bank is not a public authority in as-much-as it has not received substantial funding from the appropriate Government. This should have been highlighted in the impugned order. Further the details required under Section 7(8) of the Act should be part of the order. When the bank does not fall under the provisions of the Act, the signatory cannot sign as "Public Information Officer', but should only indicate his official designation in the bank. These aspects should be borne in mind in future.

BEFORE THE DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES
PUDUCHERRY

9. A second appeal against the decision shall lie with the Central Information Commission, Room No. 305, 2nd Floor, B wing, August Kranthi Bhavan, Bhikaji Cama Place, New Delhi – 110 066, within ninety (90) days, as provided under Section 19(3) of the Act.

Dated, the 2nd day of November, 2017.

2/11

(Dr. A.S. SIVAKUMAR)
REGISTRAR OF CO-OPERATIVE SOCIETIES

BEFORE THE DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES
PUDUCHERRY

To

The parties