In the State Information Commission Kerala at Thiruvananthapuram

Present

The Honourable Mr. Commissioner Somanathan Pillai S.

Wednesday, the 21st Day of April 2021

C.P. No. 168(1) of 2019

(File No. 4218/SIC-G4/2019)

Appellant :

Sri. S. T. Antony,
Sathyavilasam Bungalow,
Undappara, Poovachal P. O.,
Thiruvananthapuram.

Respondents:

The State Public Information Officer,
Kerala State Co-operative Bank Ltd.,
P. B. No. 6515,
Co-bank Towers, Palayam,
Thiruvananthapuram - 695 033.

Date of application u/s 6(1)	31.01.2019
Date of reply from the SPIO	02.02.2019
Date of filing complaint	15.03.2019
Date of receipt of complaint	15.03.2019

This complaint petition having come up for final disposal on 21st day of April 2021 the Commission, after careful consideration of the report submitted by the Registrar of Co-operative Societies and accompanied by-law of State Co-operative Bank, dispose it off on the same day with the following orders.

ORDER

1) Shri. S. T. Antony preferred this Complaint Petition against denial of information by the State Co-operative Bank on the defence that State Co-operative Bank being an organization registered under the Co-operative Societies Act would not fall within the ambit of RTI Act. The Bank relied upon the strength of the judgement of the Hon'ble Supreme Court in Thalappalam Service Co-operative Bank Ltd. & Others Vs. State of Kerala & Others in Civil appeal no. 9017/2013 in which the Hon'ble Supreme Court has held that Co-operative Societies registered under the Kerala Co-operative Societies Act would not fall within the definition of "Public Authority" as defined under Section 2(h) of the RTI Act.

2) In Thalappalam case the Hon'ble Court has considered appeals concerned only with the Co-operative Societies registered or deemed to be registered under the Co-operative Societies Act, which are not owned, controlled or substantially financed by the State or Central Government or formed, established or constituted by law made by Parliament or State Legislature. The Hon'ble Court therefore, while exempting the above categories of Co-operative institutions from the ambit of RTI Act, has ordered that, in case of any dispute on facts as to whether a particular society, is a public authority or not, the State Information Commission can examine and find out whether the society in question satisfies the test laid down in the judgment. It was for that examination that the Hon'ble Chief Information Commissioner, through the interim order dated 24.06.2019, had sought the report of the Registrar of Co-operative Societies on the Governmental control and financing of State Co-operative Bank.

3) Sub-clauses (i) and (ii) of Section 2(h)(d) of the RTI Act deals with ownership, control and substantial financing, either directly or indirectly by the Government. From the By Law of the State Co-operative Bank it is found that the control being exercised by the government through the Registrar of Co-operative Societies on the State Co-operative Bank is only regulatory in nature when the overall control rest with the Board of Directors, which is dominated by elected members, and ultimate control vest with the General Body of the Bank. As per the judgement of the Hon'ble Supreme Court, the control of the government should be effective, all pervasive and of the nature of interfering with the day-today administration of the organization for that organization to be considered as falling within the ambit of section 2(h)(d)(i). The test of control, as defined in the Act, fails in the case of State Co-operative Bank.

4) As per the provision regarding financing, directly or indirectly, by the Government, it is limited to 29.99% in the share capital of the Bank. Nothing has been brought to the notice of the Commission regarding direct or indirect financing by government, without which the existence of the Bank would be in peril or the day-to-day function affected, which were the standards pointed out by the Hon'ble Court for bringing an organization within the meaning of the term substantial financing as figures under Section 2(h)(d) of the RTI Act.

5) The State Co-operative Bank fails to satisfy the test laid down by the Hon'ble Supreme Court for being treated as a public authority as defined under Section 2(h) of the RTI Act. I therefore find the decision of the Bank in refusing the disclosure of information through RTI route in order and no scope to interfere with the decision. But the complainant can approach the Registrar of Co-operative Societies, who is a public authority as defined under the Section 2(h) of the RTI Act, with an application for information under section 6(1) of the said

Act, in which case the registrar is bound to gather the information from the State Co-operative Bank which he is otherwise empowered to collect under Kerala Co-operative Societies Act and can furnish it to the applicant, subject to the limitations and restrictions under the RTI Act. This follows from the dictum laid down by the Hon'ble Supreme Court in Thalappalam Case supra, wherein the Apex Court has held that the Registrar can gather information from Co-operative Societies, to the extent permitted by-law, and furnish to the applicant. The complaint petition is ordered accordingly.

Dated this, the 21st day of April, 2021.

(Sd/-)
S. Somanathan Pillai
State Information Commissioner

Authenticated Copy

Joint Secretary

SFV