IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE S.MANU

TUESDAY, THE 1ST DAY OF APRIL 2025 / 11TH CHAITHRA, 1947

WA NO. 2105 OF 2024

AGAINST THE JUDGMENT DATED 29.11.2024 IN WP(C)

NO.30694 OF 2024 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

THE MUPPATHADAM SERVICE CO-OPERATIVE BANK LTD.NO.E-216, MUPPATHADAM.P.O., ALUVA, REPRESENTED BY ITS SECRETARY, PIN – 683 110

HIGH COURT OF KERALA
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BY ADVS.
APARNA RAJAN
P.RAVINDRAN (SR.)
LAKSHMI RAMADAS
M.R.SABU
P.DEEPAK (SR.)
SREEDHAR RAVINDRAN

RESPONDENTS/RESPONDENTS:

1 **THE STATE CHIEF INFORMATION COMMISSIONER, TC-14, 2071, PUNNEN ROAD, THIRUVANANTHAPURAM, PIN – 695 001**

2 **THE JOINT REGISTRAR (GENERAL), CO-OPERATIVE SOCIETIES & FIRST APPEAL AUTHORITY, 5TH FLOOR, CIVIL STATION, KAKKANAD, ERNAKULAM, PIN – 682 030**

3 THE STATE PUBLIC INFORMATION OFFICER & DEPUTY REGISTRAR (ADMINISTRATION) CO-OPERATIVE SOCIETIES, 5TH FLOOR, CIVIL STATION, KAKKANAD, ERNAKULAM, PIN – 682 030

4 P.R.RAMACHANDRAN, AGED 64 YEARS, S/O.P.K.RAMAN NAIR,729/20, PUKKATTU HOUSE, MUPPATHADAM.P.O., ALUVA, PIN – 683 110

BY ADV P.R.RAMACHANDRAN,(Party-In-Person)
SRI.M. AJAY, SC
SRI.V. TEKCHAND, SR. G.P.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 19.2.2025, THE COURT ON 01.04.2025 DELIVERED THE FOLLOWING:

HIGH COURT OF KERALA
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"C.R."

JUDGMENT

Dated this the 1st day of April 2025

Nitin Jamdar, C.J.

The application made by a member of the Appellant Cooperative Society under the Right to Information Act, 2005, for supplying a copy of a resolution of the Society and details of a construction contract, the State Chief Information Commissioner directed the Appellant Society to furnish the information. The learned Single Judge dismissed the writ petition filed by the Appellant Society challenging this direction. The Appellant Society has now filed this appeal under Section 5 of the Kerala High Court Act, 1958.

2. The Appellant is a Cooperative Society registered under the Kerala Cooperative Societies Act, 1969 (Act of 1969). Respondent No.4 is a member of the Appellant Society. The Appellant Society had given a contract for the construction of a building. Respondent No.4 approached the Appellant Society seeking information in respect of an agreement entered into by the Appellant Society and a Labour Contract Society and also asking for copies of the minutes of the last general body meeting. Since this was not given, Respondent No.4 filed an application on 14 January 2023 before Respondent No.3 / State Public Information Officer, under Section 6 of the Right to Information Act, 2005 (RTI Act). The Public Information Officer, by order dated 15 February 2023, informed Respondent No.4 that the documents cannot be given.

HIGH COURT OF KERALA
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Respondent No. 4 thereafter approached the Appellate Authority under the RTI Act. The Appellate Authority disposed of the appeal on 8 May 2023. Respondent No.4 thereafter filed a second appeal before the State Chief Information Commissioner, which was rejected by order dated 14 September 2023. Respondent No.4 challenged the order of the State Chief Information Commissioner by filing W.P.(C)No.37938 of 2023. The learned Single Judge dismissed the writ petition by order dated 8 April 2024. Respondent No. 4 thereafter filed an appeal before the Division Bench bearing No.729 of 2024. The Division Bench, after considering the statutory provisions, observed that the State Chief Information Commissioner, before rejecting the application of Respondent No. 4, ought to have examined whether the information sought by Respondent No. 4 will come within the scope of information which the Registrar can access in the exercise of his powers under the Act of 1969 and the Rules framed thereunder. Since this aspect was not considered, the Division Bench set aside the orders passed by the learned Single Judge and the order passed by the State Chief Information Commissioner, and the appeal was directed to be reheard.

3. The Chief Information Commissioner, on remand, considered the appeal and concluded that the Registrar has supervisory and administrative control over the Appellant Society. Therefore, the State Public Information Officer can ask the Deputy Registrar of Cooperative Societies/Respondent No.1 (Registrar) to call for the information from the Appellant Society and furnish the same to Respondent No. 4. The

appeal was accordingly allowed by the Chief Information Commissioner by order dated 17 August 2024.

4. The Appellant Society filed W.P.(C)No. 30694 of 2024, challenging the order dated 17 August 2024. The learned Single Judge observed that if the Registrar of Cooperative Societies can access the information sought by him from the Appellant Society, then the information has to be given to Respondent No. 4 under the RTI Act. Accordingly, the learned Single Judge found no reason to interfere with the order passed by the State Chief Information Commissioner and dismissed the writ petition by the impugned judgment dated 29 November 2024. Challenging this order, the present appeal has been filed.

5. We have heard Mr P. Ravindran, learned Senior Advocate for the Appellant, Mr M. Ajay, learned Standing Counsel for the State Information Commission, Mr V. Tekchand, learned Senior Government Pleader for the State and Mr P.R. Ramachandran, party in person.

6. The learned Senior Advocate for the Appellant Society in short submitted as follows. A combined reading of Section 2(f) and Section 2(j) would show that only that information which relates to a private body which can be accessed by a public authority under any other law for the time being in force can be treated as information and supply. The Registrar under the Act of 1969 is a statutory authority, and he can access only those documents that are enumerated under Section 66C of the Act

of 1969. Only those documents which are accessible to the Registrar under Section 66 C of the Act of 1969 are held by him for the purpose of the RTI Act. Rule 24 of the Kerala Cooperative Societies Rules, 1969, pertains to the document and information in the access and control of the Registrar. Section 66C of the Act of 1969 mandates a cooperative society to file returns within six months of the closure of every financial year before the Registrar containing the particulars mentioned in the sub-sections and provide any information the Registrar may require and therefore, only these documents, i.e., under Sections 19B and 66C of the Act of 1969 and Rule 24, would be the documents that can be considered under the RTI Act. The right of a member of a cooperative society to get information in respect of the functioning of the society is provided under Section 19B of the Act of 1969, which only includes up-to-date copies of the bye-laws, register of members, the latest audited balance sheet of the society and the accounts of the society in so far as they relate to the members' transactions. As per Section 4 of the RTI Act, only those documents which are maintained, duly catalogued and indexed can be considered as information under the RTI Act and, therefore, since there are no documents which are with the Registrar of Cooperative Societies in respect of the Appellant Society duly catalogued and indexed, they could not be ordered to be furnished to Respondent No. 4. As regards the other provisions, such as Sections 65 and 66 of the Act of 1969, they are only meant for supervision and inspection of the affairs of the Society. These powers are circumscribed by the condition laid down therein for invoking

the power. There is no enquiry under Section 65(6) of the Act of 1969 against the Appellant Society, and therefore, there is no question of accessing any documents of the Appellant Society by the Registrar or the Joint Registrar. The observations of the Division Bench in W.A.No.729 of 2024, dated 2 July 2024, have been completely misconstrued by Respondent No.1 – Commissioner as a mandate to issue the information when the observations made in the said decision support the contention of the Appellant Society. Under the RTI Act, a direction can be issued to an authority to furnish the documents, but there cannot be any direction from another body to a statutory authority to access the documents that it does not possess and hand them over to the Applicant. The learned Senior Advocate for the Appellant placed reliance on the decisions of the Hon'ble Supreme Court in the case of *Central Board of Secondary Education and Another v. Aditya Bandopadhyay and Others*[1], *Thalappalam Service Cooperative Bank Limited and Others v. State of Kerala and Others*[2] and *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal*[3].

7. The learned counsel for Respondent No. 1 – Commissioner submitted that the view taken by the learned Single Judge in upholding the direction issued by the Commissioner to supply the information to Respondent No.4 is correct, and since the Registrar can call for information, it can be directed to be supplied.

1 (2011) 8 SCC 497
2 (2013) 16 SCC 82
3 (2020) 5 SCC 481

8. Respondent No.4, who appeared in person, submitted that the information can be accessed by a public body as can be seen from the definition of information under the RTI Act and that under the Act of 1969 and the Kerala Cooperative Societies Rules, 1969, ample power exists with the Registrar to call for information from the society. The Registrar of the Cooperative Societies has access to information on the cooperative society within the parameters of the RTI Act. Such documents can be accessed, copied, and supplied to the Applicants. The documents need not be in the custody of the Registrar as that is not the mandate of the RTI Act. The orders passed by Respondent No. 1 – Commissioner and the learned Single Judge are correct and need not be interfered with.

9. We have considered the rival contentions.

HIGH COURT OF KERALA
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10. The RTI Act was enacted to provide for setting out the practical regime of the right to information for citizens to secure access to information under the control of public authorities to promote transparency and accountability. The RTI Act confers a right to information under Section 3. It places obligations and regulates the public authorities' supply of information under the Act. Section 2(f) of the RTI Act defines 'information' as follows:

> *"(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)

Section 2(j) defines 'right to information' as follows:

"(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."

Section 2(h) defines 'public authority' as follows:

HIGH COURT OF KERALA
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"(h) "public authority" means any authority or body or institution of self-Government established or constituted--

(a) by or under the Constitution;
(b) by any other law made by Parliament;
(c) by any other law made by State Legislature;
(d) by notification issued or order made by the appropriate Government, and includes any--
(i) body owned, controlled or substantially financed;
(ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government."

As far as the cooperative society is concerned, the same is held to be not a

"public authority" as held by the Hon'ble Supreme Court in the case of *Thalappalam Service Cooperative Bank Limited.* The Appellant would be covered by the second part of the definition of "Information". Under Section 3, as per the second part of the definition of 'Information', information relating to any private body can be accessed by a public authority under any other law for the time being in force and can be supplied. There is no debate before us that this is the route through which Respondent No.4 can seek information under the RTI Act. Disputes centre around the meaning of the phrase "can be accessed by the public authority".

11. The first contention of the Appellant is that the information contemplated under the second part of Section 2(f) will have to be accessed by public authority within the parameters of the statute which confers such power, and secondly, it has to be stored and available as per Section 4(1)(a). Section 4(1)(a) of the RTI Act reads thus:

> *"4. Obligations of public authorities.- (1) Every public authority shall--*
>
> > *(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated."*

According to Respondent No. 1- Commissioner and Respondent No. 4, a plain reading of the second part of Section 2(f) will show that it is sufficient if the information is accessible. The foundation of Respondent No.4 is that he can invoke the powers of the Registrar, who can always access the documents which Respondent No.4 has asked for.

12. The Supreme Court in *Thalappalam Service Co-op. Bank Ltd.* had considered the provisions of the Kerala Cooperative Societies Act, 1969 and the RTI Act in the context of the status of the cooperative society. In that case, an application was filed under the RTI Act seeking particulars relating to the bank accounts of certain members of the Society, which the Society did not provide. The learned Single Judge held that all cooperative societies registered under the Act of 1969 are public authorities for the purpose of the RTI Act and amenable to the jurisdiction of the State Information Commission. The cooperative society then preferred a writ appeal. The question as to whether cooperative societies registered under the Act of 1969 are generally covered under the definition of Section 2(h) of the RTI Act was referred to the Full Bench of this Court. The Full Bench answered the question in the affirmative, giving a liberal construction of the definition of public authority. The decision of the Full Bench was examined by the Hon'ble Supreme Court and observed thus:

> *"Registrar of Co-operative Societies*
> *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 Co-operative 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.

(emphasis supplied)

Thus, the information held by the Registrar is the one he can access.

13. Further, Respondent No. 4 has pointed out from paragraph 20 of the decision in *Subhash Chandra Agarwal* that there is a distinction between the information to be held by the public authority and the private body. Paragraph 20 reads thus:

> *"20. 'Information' as per the definition clause is broad and wide, as it is defined to mean "material in any form" with amplifying words including records (a term again defined in widest terms vide clause (i) to S.2 of the RTI Act), documents, emails, memos, advices, logbooks, contracts, reports, papers, samples, models, data material held in electronic form, etc. The last portion of the definition clause which states that the term 'information' would include 'information relating to any private body which can be accessed by a public authority under any other law for the time being in force' has to be read as reference to 'information' not presently available or held by the public authority but which can be accessed by the public authority from a private body under any other law for the time being in force. The term - 'private body' in the clause has been used to distinguish and is in contradistinction to the term - 'public authority' as defined in S.2(h) of the RTI Act. It follows that any requirement in the nature of precondition and restrictions prescribed by any other law would continue to apply and are to be satisfied before information can be accessed and asked to be furnished by a private body."* (emphasis supplied)

Therefore, the Supreme Court has made a clear distinction between the holding of information by a private body and the public authority. In the context of a private body, Information is the one not presently available or held by a public authority but can be accessed by a public authority. Therefore, the contention of the Appellant that only the information which the Registrar holds and actually possesses in respect of a private

body under Rule 66 and Rule 24 cannot be accepted.

14. Therefore, the question that arises for consideration is whether the information sought by Respondent No.4 can be 'accessed' by the Registrar and whether the learned Single Judge and the Information Commissioner were right in holding so.

15. Respondent No.4 had sought information as to the agreement entered into by the Appellant Society and a Labour Contract Society regarding construction and copies of the minutes of the last general body meeting. In different fact situations, various other legal issues may arise. The discussion in the judgment is only in the context of the correctness of the view taken by the Information Commissioner and the learned Single Judge in respect of the information sought by Respondent No.4 from the Appellant Society.

HIGH COURT OF KERALA

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16. Section 2(f) of the Act of 1969 defines a cooperative society as a cooperative society registered or deemed to be registered under the said Act. Registration is provided under Section 9 of the Act of 1969, and upon registration, it becomes a corporate body. The Government and the Registrar shall have the power to regulate the workings of society for the economic and social betterment of its members and the general public. The Appellant Society has pointed out that the words ‘and control’ have been omitted by way of the Act of 2013. However, the Government and the Registrar shall have the power to regulate the workings of a society for the economic and social betterment of its members and the general

public.

17. The Registrar is defined under Section 2(p) of the Act of 1969 to mean the Registrar of Cooperative Societies appointed under Section 3(1) of the Act. Section 3 of the Act of 1969 empowers the Government to appoint a person as the Registrar of Cooperative Societies. Under Section 32 of the Act of 1969, if the Registrar is satisfied that a committee of any society makes persistent default or is negligent, he may, by order in writing, remove the committee and appoint an Administrator. Under Section 33(1) of the Act of 1969, when contingencies specified therein exist, the Registrar, either suo motu or on the application, can appoint an Administrator. As per Section 33(1A), the Government may permit the Registrar to extend the term of the Administrator. Under sub-section (2), the Administrator appointed under sub-section (1) and (1A), subject to the control of the Registrar, has the power to exercise all or any of the powers and functions of the committee and take all such action as may be required in the interest of the society. As per Section 34(1) of the Act of 1969, if the outgoing members of the committee refuse to hand over charge of the records and property of the society to the Administrator, the Administrator can, with the previous sanction of the Registrar, apply to the Magistrate within whose jurisdiction the Cooperative Society functions, for securing the records and properties of the Society.

18. Under Sections 65 and 66 of the Act of 1969, the Registrar may hold an enquiry, and the parameters of the same are specified therein.

HIGH COURT OF KERALA
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Under Section 65, apart from other modes, the Registrar may, on his own motion, call for documents for the purpose of an enquiry as stated in Section 65(2). Section 65(2) reads thus:

> *"(2) The Registrar or the person authorised by him under sub-section (1) shall, for the purpose of an inquiry under this section have the following powers, namely:--*
>
> > *(a) he shall, at all reasonable times, have free access to the books, accounts, documents, securities, cash and other properties belonging to, or in the custody of, the society and may summon any person in possession of or responsible for the custody of any such books, accounts, documents, securities, cash or other properties, to produce the same at any place at the headquarters of the society or at 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;*
> >
> > *(b) he may summon any person who, he has reason to believe, has knowledge of any of the affairs of the society to appear before him at any place at the headquarters of the society or any branch thereof and may examine such person on oath; and*
> >
> > *(c)(i) he may, notwithstanding any rule or bye-law specifying the period of notice for a general body meeting of the society himself call a general body meeting or require the president or secretary of the society to call a general body meeting at such time and place at the headquarters of the society or any branch thereof, to determine such matters as may be directed by him;*
> >
> > *(ii) any meeting called under sub-clause (i) shall have all the powers of a general body meeting called under the bye-*

laws of the society.

(d) The person/persons related to or involved in the inquiry shall be issued a notice, indicating the matter of inquiry and he/they shall be provided an opportunity of being heard, with proper notice by registered post or in person.

(2A) xxxxx
(3) xxxxx
(4) xxxxx
(5) xxxxx
(6) xxxxx
(7) xxxxx

*****

Under Section 66, Supervision and inspection of the Registrar is provided. Under Section 66(1), the Registrar shall supervise or cause to be supervised the working of every society as frequently as he may consider necessary. The supervision includes an inspection of the books of the society. Under Section 66(2), the Registrar can, on his own motion and other modes, inspect the books of the society issued. Section 66 then provides for the methodology as follows:

"(2A) The Registrar may authorize special team of officers under his control for the inspection of apex, central and federal co-operative societies and all other primary co-operative societies.

(2B) The report of such inspections shall be communicated in writing to the apex, central and federal societies and all primary co-operative societies concerned, within a period of thirty days and the Committee and the chief executive of the society

concerned shall be under an obligation to file a para-wise satisfactory compliance report before the Registrar within a period of forty five days from the date of such communication.

(3) Where the inspection under sub-section (2) is made on the application of the creditor, the Registrar shall communicate the result of such inspection to such creditor.

(4) The Registrar or any person authorised by him under sub-section (l) or sub-section (2) shall at all reasonable time have free access to and have 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.

(4A) It shall be the duty of every officer and employee of the society to co-operate with and assist in such supervision or inspection, to furnish any information that may be required for the purpose and to produce the books, records, cash balance etc. referred to in sub-section (4), on demand by such officer, failing which it shall be treated as an offence under sub-section (4) of section 94.

(5) within the time that may be mentioned in such order.

[x x x x]

(7) x x x x

(8) x x x x

(9) x x x x

(10) x x x x

(11) Notwithstanding anything contained in sub-sections (1) and (2) above, the Registrar or his subordinate officers authorized by him under sub-section (1), shall have power to hold an enquiry with necessary records of a society, on any petition received, and to inspect the affairs of a society periodically, in such cases, the inspecting officers shall have the same powers as specified in sub-section (4).

Explanation 1:--The "affairs of a society" for the purpose of this subsection includes, among other things, matters relating to administration, management and the business of a society.

Explanation 2:--The duty of the officers and chief executive of a society and the nature of offences and penalties mentioned in sub-section (4A) shall be applicable to this sub-section also."

19. The procedure for conducting enquiry and inspection by the Registrar under Section 65 is provided under Rule 66 of the Kerala Cooperative Societies Rules, 1969, which reads thus:

"66. Procedure for the conduct of inquiry and inspection:- (1) (i) An order, authorising inquiry under Section 65 or inspection under Section 66 shall among other things, contain the following:

(a) the name of the society whose affairs are to be inquired into or whose books of accounts which are kept either in digital or in physical form are to be inspected:

(b) the name of the person/persons authorised to conduct the inquiry or inspection;

(c) in specific point or points on which the inquiry or inspection is to be made, the period within which the inquiry or inspection is to be completed and report submitted to the Registrar;

(d) costs of inquiry or inspection;

(e) any other matter relating or pertaining to the inquiry or inspection.

(2) A copy of every order authorising inquiry under Section 65 or inspection under Section 66 shall be issued to the President or the Secretary of the Society concerned by registered post with acknowledgment due. A copy of the order shall also be made available to the Central Society or societies, to which the society in respect of which the order is issued, is affiliated;

(3) If the inquiry or inspection cannot be completed within the time specified in the order referred to in sub-rule (1)(c), the person conducting the inquiry or inspection shall submit an interim report stating the reasons for failure to complete the inquiry or inspection, and the Registrar, it he is satisfied, may grant such extension of time as he may deem necessary or he may withdraw the inquiry or Inspection from the officer to whom it is entrusted and hold the inquiry or inspection himself or entrust to such other person as he deems fit.

(4) On receipt of the orders referred to in sub-rule (1) the person /persons authorised to conduct the inquiry or inspection shall proceed to examine the relevant books of accounts [which are kept either in digital or in physical form] and other documents in the possession of the society or any of its officers, members, agents or servants and obtain such information or explanation from any such officer, members, agents or servants of the society in regard to the transaction and working of the society as he deems necessary for the conduct of such inquiry or inspection.

(5) The person authorised to conduct the inquiry or inspection shall submit his report to the Registrar on all points mentioned in the order referred to in clause (c) to sub-rule (1). The report

shall invariably contain a latest balance sheet of the society and the last known addresses of the members of the Committee and of the Secretary. The report shall also contain his findings and the reason therefore; supported by such documentary or other evidence as recorded by him during the course of the inquiry or inspection. He shall also specify in his report the costs of the inquiry or inspection together with reasons and recommend to the Registrar the manner in which the entire cost or a part thereof may be apportioned amongst the parties specified in Section 32. The Registrar shall pass such orders thereon as may be considered just after giving a reasonable opportunity of being heard to the society, person or persons concerned.

(6) The Registrar, if he is satisfied that action under section 66B of the Act is warranted, shall issue a direction to the committee of a society to suspend the officer or officers responsible for the offence. The reason for the proposed suspension shall be specified in the direction. The direction shall be sent by registered post with acknowledgement due.

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(7)(i) The order in writing for an inquiry under sub-section (1) of Section 68 of the Act shall among other things contain the following:

(a) name of the society whose affairs are to be inquired into or whose books of accounts are to be inspected;

(b) name of the person authorised to conduct the inquiry;

(c) the specific point or points on which the inquiry is to be made;

(d) the period of three months from the date of order] within which the inquiry is to be completed and report submitted to the Registrar;

(e) costs of inquiry or inspection;

(f) any other matter relating or pertaining to the inquiry.

(ii) Within one month from the date of receipt of inquiry report, the Registrar shall give the person or persons concerned an opportunity of being heard before issuing an order for surcharge. The order for surcharge shall be in writing and shall be sent under registered post with acknowledgement due. The order shall among other things contain the following:-

(a) name of society;

(b) name/names of person/persons responsible or repay or restore the money or any property or any part thereof, by mentioning clearly the total amount, involved due from each;

(c) the rate of interest if any, to be clearly specified;

(d) the amount of cost or compensation to be specified;

(e) the period within which the amount is to be realised;

(f) in case the person responsible is not remitting the amount within the time-limit so fixed, the society shall report the matter to the Registrar forthwith and the Registrar shall realise the amount as per the Revenue Recovery Act.

(8) While conducting an inquiry under section 65 or an inspection under section 66, the inquiry/inspection officer be transferred or promoted to another post, the officer conducting inquiry/inspection shall hand over a report of all the work done till the period of transfer/promotion with supporting documents to the new inquiry/inspection officer as appointed. The former inquiry/inspection officer be held answerable for the work done

HIGH COURT OF KERALA
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with regard to the inquiry/inspection till his period. The newly appointed inquiry/inspection officer should start the work in continuation of the report handed over by the former inquiry/inspection officer and should submit the final inquiry/inspection report in time."

20. Under Rule 176, the Registrar has the power to rescind the resolution. Rule 176 reads as follows:

> *"176. Registrar's power to rescind resolution:- Notwithstanding anything contained in the bye-laws of a registered society, it shall be competent for the Registrar to rescind any resolution of any meeting of any society or the committee of any society, if it appears to him that such resolution is ultra vires of the objects of the society, or is against the provisions of the Act, Rules, Bye-laws or of any direction or instructions issued by the Department, or calculated to disturb the peaceful and orderly working of the society or is contrary to the better interest of the society."*

HIGH COURT OF KERALA
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21. The Scheme of the Act of 1969 from these provisions would thus show that the Registrar may conduct an inquiry into the conduct, functioning, and financial condition of a cooperative society if he deems it necessary. The Registrar can supervise the functioning of cooperative societies as he deems necessary. It includes an inspection of books and records. He may conduct such an inspection on his own motion. The Registrar or any person authorised by him shall have the power to access and inspect all relevant records of the society. The Registrar may summon any person responsible for their custody and require them to produce these records for inspection. Failure to produce information shall be treated as an offence under Section 94(4) of the Act of 1969. The

Registrar also has the authority to rescind any resolution passed by any meeting of the society or its committee if he determines that such resolution is ultra vires to the objects of the society, violates provisions of the Act, Rules, Bye-laws, or any direction or instructions issued by the Department, disrupts the peaceful and orderly functioning of the society, or is contrary to the best interests of the society. Therefore, it is amply clear that under the above provisions, the Registrar of the Cooperative Societies has access to the documents of a cooperative society.

22. The Appellant Society relied on the decision of the Hon'ble Supreme Court in the case of *Aditya Bandopadhyay,* more particularly, on the observations of the Hon'ble Supreme Court in paragraphs 63 and 65. In this case, the Respondent student had applied for inspection and revaluation of his answer book. The Central Board of Secondary Education rejected the application. The High Court allowed the writ and held that the examinees have a right under the RTI Act to examine their answer books. The Supreme Court upheld the said right and, in that context, made the observations in paragraphs 63 and 65, which the Appellant seeks to rely upon. However, these observations are in the context of information in the first part of the definition of Section 2(f), i.e., the information available with a public body as defined under Section 2(h). In the case of *Aditya Bandopadhyay,* the Supreme Court was considering the information as available with the public authority and, therefore, was concerned with the definition of information in the first part of Section 2(f) and therefore the Supreme Court made an

observation that it is only available and existing information that is to be supplied and the public authority is not required to take steps to secure compliance of the provisions of the Act or issue directions beyond the Act. This decision, therefore, is of no relevance to the facts of the present case.

23. Similarly, the reliance of the Appellant on paragraph 21 of the decision of the Constitution Bench in *Subhash Chandra Agarwal* will not assist the Appellant. In this case, an application was made under the RTI Act relating to the appointment of Judges of the Supreme Court and High Courts. Various facets of the RTI Act were discussed and settled in the said decision. As regards the case at hand, the Appellant relies on paragraph 21, in which it was observed that though information relating to the private body can be accessed by public authority, it is subject to pre-imposed conditions and restrictions as applicable to access the information and when access to information by public authority itself is prohibited or is accessible subject to certain conditions, then the prohibition is not obliterated, and the preconditions are not erased. The Appellant submits that Section 2(f) cannot be used to eradicate prohibition and limitation on the rights of the public authority to access the information. Based on this observation, the Appellant contends that unless the power to access the records is formally invoked, the Registrar does not obtain possession of the society's documents, and consequently, such documents cannot be disclosed under the RTI Act unless they are in the Registrar's possession as contemplated under Section 4 of the Act.

HIGH COURT OF KERALA
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The Appellant further contends that, in the present case, the Registrar has not exercised this power by instituting an inquiry into the affairs of the Appellant Society. However, the reliance on this observation is misplaced for the present case. The aforementioned provisions of the Act of 1969 will show that there is no prohibition on the access of the documents by the Registrar, which Respondent No. 4 seeks from the Appellant Society.

24. Under section 65(1), the Registrar can, on his own motion, hold an enquiry by himself or by a person or persons authorised by order in writing into the constitution, working and financial condition of the society if he is satisfied that it is necessary so to do. Under Section 66, the Registrar may, on his own motion, inspect the books of the society. Once the documents that Respondent No. 4 seeks can be accessed by the Registrar under Section 65 read with Rule 66, then it becomes information for the purpose of the RTI Act. Further, there is a difference between the existence of the power of the Registrar to access the document and the actual use of that power by the Registrar. As far as the RTI Act is concerned, the second part of the definition of 'Information' would show that it postulates the 'existence' of power to access the documents and not 'its actual' exercise by the Registrar. Correctness and validity of the actual exercise of power by the Registrar to access the document would be a different subject matter. The information sought by the Respondent - Member under Section 2(f), read with Section 3, is accessible by the Registrar within the ambit of the RTI Act.

HIGH COURT OF KERALA
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25. The Appellant argues that under Section 66 of the Act of 1969, Cooperative Societies are required to submit certain documents to the Registrar, and only these specific documents, which are in the custody of the Registrar, can be accessed under the RTI Act. While these documents are indeed available with the Registrar and can be disclosed under the RTI Act, this does not mean they are the only documents that can be accessed. Section 2(f) of the RTI Act defines "information" not as any material held by or under the control of a public authority but which can be accessed. The arguments of the Appellant are against the plain reading of Section 2(c), which declares a position that information with a Cooperative Society which "can" be accessed by a public authority under the law is information for the purpose of Section 3. It is a well-settled principle of statutory interpretation that the first attempt must be to read the statute as it is unless it leads to an absurdity. Reading of Section 2(f) of the RTI Act makes it clear that Parliament has deliberately employed the phrase "can access" to emphasise the legal entitlement of a Registrar to obtain certain documents. Had Parliament intended to restrict the scope of access solely to documents that had already been physically obtained by the Registrar, it would have employed different language, such as "has accessed" or "is in possession of." The deliberate choice of "can access" signifies that the right to seek information extends beyond mere physical custody of the documents with the Registrar and includes those documents that a Registrar has the statutory power to access. This phrase does not imply that the Registrar can only ask for documents when an

inquiry is already in progress. Without these documents, the Registrar may be unable to determine whether an inquiry is necessary in the first place. Therefore, imposing a requirement that an inquiry must already be underway before documents can be accessed would be contrary to the intent and purpose of the statute. Thus, the phrase "subject to the limitations of the statute" should be understood as a guiding principle that ensures the Registrar's powers are exercised within legal bounds rather than as a restriction that would prevent access to documents unless an inquiry has already been initiated. This interpretation is in consonance with the broader objective of the RTI Act, which is to ensure transparency and accountability in the governance of the cooperative society as well.

26. Respondent No. 1 – the Commissioner has held that the Registrar is empowered to gather information from the society or over which he has supervisory control under the Act of 1969, and the Registrar has supervisory and administrative control to access the information. This view taken by Respondent No. 1 – the Commissioner is in consonance with the scheme of the Act which we have discussed above.

27. Even otherwise all documents could not be furnished to Respondent No.4 under the RTI Act. Certain documents are exempted from the purview of the RTI Act under Section 8 of the RTI Act. There is no obligation to give information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court. Secondly, information including

commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party unless the competent authority is satisfied that larger public interest warrants the disclosure of such information. Also, the information available to a person in his fiduciary relationship cannot be given unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information. The information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes, also cannot be given. The information that would impede the investigation, apprehension or prosecution of offenders can be withheld. Information which relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause an unwarranted invasion of the privacy of the individual, can be refused unless the authority under the RTI Act can supply the same. In the case at hand, Respondent No.4 has asked for a construction agreement and copies of the last General Body meeting. Both these documents do not fall within the exemption of Section 8 of the RTI Act. There may be cases where a cooperative society may argue that a member is not entitled to any relief as proceedings are initiated to remove him as a member of the society, etc. However, no such case is made out in the present case.

28. The learned Single Judge has considered the challenge of the Appellant to the order passed by Respondent No. 1 – the Commissioner

in detail, has analysed the relevant provisions and decisions of this Court and the Supreme Court, and has concluded that the information sought by the Applicant is accessible by the Registrar and has rightly dismissed the Writ Petition. No case is made out to interfere with the impugned order in appeal.

29. The Appeal is dismissed.

Sd/-

Nitin Jamdar
Chief Justice

Sd/-

S. Manu
Judge

vpv

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