SUPREME COURT OF INDIA

Thalappalam Ser. Coop. Bank Ltd.

Vs.

State of Kerala

C.A.No.9017 of 2013

(K.S.Radhakrishnan and A.K. Sikri JJ.)

07.10.2013

JUDGMENT

K.S. RADHAKRISHNAN, J.

1. Leave granted.

2. We are, in these appeals, concerned with the question whether a co- operative society registered under the Kerala Co-operative Societies Act, 1969 (for short "the Societies Act") will fall within the definition of "public authority" under Section 2(h) of the Right to Information Act, 2005 (for short "the RTI Act") and be bound by the obligations to provide information sought for by a citizen under the RTI Act.

3. A Full Bench of the Kerala High Court, in its judgment reported in AIR 2012 Ker 124, answered the question in the affirmative and upheld the Circular No.23 of 2006 dated 01.06.2006, issued by the Registrar of the Co- operative Societies, Kerala stating that all the co-operative institutions coming under the administrative control of the Registrar, are "public authorities" within the meaning of Section 2(h) of the RTI Act and obliged to provide information as sought for. The question was answered by the Full Bench in view of the conflicting views expressed by a Division Bench of the Kerala High Court in Writ Appeal No.1688 of 2009, with an earlier judgment of the Division Bench reported in Thalapalam Service Co-operative Bank Ltd. v. Union of India AIR 2010 Ker 6, wherein the Bench took the view that the question as to whether a co-operative society will fall under Section 2(h) of the RTI Act is a question of fact, which will depend upon the question whether it is substantially financed, directly or indirectly, by the funds provided by

the State Government which, the Court held, has to be decided depending upon the facts situation of each case.

4. Mr. K. Padmanabhan Nair, learned senior counsel appearing for some of the societies submitted that the views expressed by the Division Bench in Thalapalam Service Co-operative Bank Ltd. (supra) is the correct view, which calls for our approval. Learned senior counsel took us through the various provisions of the Societies Act as well as of the RTI Act and submitted that the societies are autonomous bodies and merely because the officers functioning under the Societies Act have got supervisory control over the societies will not make the societies public authorities within the meaning of Section 2(h) of the RTI Act. Learned senior counsel also submitted that these societies are not owned, controlled or substantially financed, directly or indirectly, by the State Government. Learned senior counsel also submitted that the societies are not statutory bodies and are not performing any public functions and will not come within the expression "state" within the meaning under Article 12 of the Constitution of India.

5. Mr. Ramesh Babu MR, learned counsel appearing for the State, supported the reasoning of the impugned judgment and submitted that such a circular was issued by the Registrar taking into consideration the larger public interest so as to promote transparency and accountability in the working of every co-operative society in the State of Kerala. Reference was also made to various provisions of the Societies Act and submitted that those provisions would indicate that the Registrar has got all pervading control over the societies, including audit, enquiry and inspection and the power to initiate surcharge proceedings. Power is also vested on the Registrar under Section 32 of the Societies Act to supersede the management of the society and to appoint an administrator. This would indicate that though societies are body corporates, they are under the statutory control of the Registrar of Co-operative Societies. Learned counsel submitted that in such a situation they fall under the definition of "pubic authority" within the meaning of Section 2(h) of the RTI Act. Shri Ajay, learned counsel appearing for the State Information Commission, stated that the applicability of the RTI Act cannot be excluded in terms of the clear provision of the Act and they are to be interpreted to achieve the object and purpose of the Act. Learned counsel submitted that at any rate having regard to the definition of "information" in Section 2(f) of the Act, the access to information in relation to Societies cannot be denied to a citizen.

Facts:

6. We may, for the disposal of these appeals, refer to the facts pertaining to Mulloor Rural Co-operative Society Ltd. In that case, one Sunil Kumar stated to have filed an application dated 8.5.2007 under the RTI Act seeking particulars relating to the bank accounts of certain members of the society, which the society did not provide. Sunil Kumar then filed a complaint dated 6.8.2007 to the State Information Officer, Kerala who, in turn, addressed a letter dated 14.11.2007 to the Society stating that application filed by Sunil Kumar was left unattended. Society, then, vide letter dated 24.11.2007 informed the applicant that the information sought for is "confidential in nature" and one warranting "commercial confidence". Further, it was also pointed out that the disclosure of the information has no relationship to any "public activity" and held by the society in a "fiduciary capacity". Society was, however, served with an order dated 16.1.2008 by the State Information Commission, Kerala, stating that the Society has violated the mandatory provisions of Section 7(1) of the RTI Act rendering themselves liable to be punished under Section 20 of the Act. State Information Officer is purported to have relied upon a circular No.23/2006 dated 01.06.2006 issued by the Registrar, Co-operative Societies bringing in all societies under the administrative control of the Registrar of Co-operative Societies, as "public authorities" under Section 2(h) of the RTI Act.

7. Mulloor Co-operative Society then filed Writ Petition No.3351 of 2008 challenging the order dated 16.1.2008, which was heard by a learned Single Judge of the High Court along with other writ petitions. All the petitions were disposed of by a common judgment dated 03.04.2009 holding that all co- operative societies registered under the Societies Act are public authorities for the purpose of the RTI Act and are bound to act in conformity with the obligations in Chapter 11 of the Act and amenable to the jurisdiction of the State Information Commission. The Society then preferred Writ Appeal No.1688 of 2009. While that appeal was pending, few other appeals including WA No.1417 of 2009, filed against the common judgment of the learned Single Judge dated 03.04.2009 came up for consideration before another Division Bench of the High Court which set aside the judgment of the learned Single Judge dated 03.04.2009, the judgment of which is reported in AIR 2010 Ker 6. The Bench held that the obedience to Circular No.23 dated 1.6.2006 is optional in the sense that if the Society feels that it satisfies the definition of Section 2(h), it can appoint an Information Officer under the RTI Act or else the State Information Commissioner will decide when the matter reaches before him, after examining the question whether the Society is substantially financed, directly or indirectly, by the funds provided by the State Government. The Division Bench, therefore, held that the question whether the Society is a

public authority or not under Section 2(h) is a disputed question of fact which has to be resolved by the authorities under the RTI Act.

8. Writ Appeal No.1688 of 2009 later came up before another Division Bench, the Bench expressed some reservations about the views expressed by the earlier Division Bench in Writ Appeal No.1417 of 2009 and vide its order dated 24.3.2011 referred the matter to a Full Bench, to examine the question whether co-operative societies registered under the Societies Act are generally covered under the definition of Section 2(h) of the RTI Act. The Full Bench answered the question in the affirmative giving a liberal construction of the words "public authority", bearing in mind the "transformation of law" which, according to the Full Bench, is to achieve transparency and accountability with regard to affairs of a public body.

9. We notice, the issue raised in these appeals is of considerable importance and may have impact on similar other Societies registered under the various State enactments across the country.

10. The State of Kerala has issued a letter dated 5.5.2006 to the Registrar of Co-operative Societies, Kerala with reference to the RTI Act, which led to the issuance of Circular No.23/2006 dated 01.06.2006, which reads as under:

> "G1/40332/05
>
> Registrar of Co-operative Societies,
>
> Thiruvananthapuram, Dated 01.06.2006
>
> Circular No.23/2006
>
> Sub: Right to Information Act, 2005- Co-operative Institutions included in the definition of "Public Authority"
>
> Ref: Governments Letter No.3159/P.S.1/06
>
> Dated 05.05.2006
>
> According to Right to Information Act, 2005, sub-section (1) and (2) of Section 5 of the Act severy public authority within 100 days of the enactment of this Act designate as many officers as public information

officers as may be necessary to provide information to persons requesting for information under the Act. In this Act Section 2(h) defines institutions which come under the definition of public authority. As per the reference letter the government informed that, according to Section 2(h) of the Act all institutions formed by laws made by state legislature is a "public authority" and therefore all co-operative institutions coming under the administrative control of The Registrar of co-operative societies are also public authorities.

In the above circumstance the following directions are issued:

1. All co-operative institutions coming under the administrative control of the Registrar of co-operative societies are "public authorities" under the Right to Information Act, 2005 (central law No.22 of 2005). Co- operative institutions are bound to give all information to applications under the RTI Act, if not given they will be subjected to punishment under the Act. For this all co-operative societies should appoint public information/assistant public information officers immediately and this should be published in the government website.

2. For giving information for applicants government order No.8026/05/government administration department act and rule can be applicable and 10 rupees can be charged as fees for each application. Also as per GAD Act and rule and the government Order No.2383/06 dated 01.04.2006.

3. Details of Right to Information Act are available in the government website (www.kerala.gov.in.....) or right to information gov.in) other details regarding the Act are also available in the government website.

4. Hereafter application for information from co-operative institutions need not be accepted by the information officers of this department. But if they get such applications it should be given back showing the reasons or should be forwarded to the respective co-operative institutions with necessary directions and the applicant should be informed about this. In this case it is directed to follow the time limit strictly.

5. It is directed that all joint registrars/assistant registrars should take immediate steps to bring this to the urgent notice of all co- operative institutions. They should inform to this office the steps taken within one

week. The Government Order No.2389/06 dated 01.04.2006 is also enclosed.

Sd/-

V. Reghunath

Registrar of co-operative societies (in charge)"

11. The State Government, it is seen, vide its letter dated 5.5.2006 has informed the Registrar of Co-operative Societies that, as per Section 2(h) of the Act, all institutions formed by laws made by State Legislature is a "public authority" and, therefore, all co-operative institutions coming under the administrative control of the Registrar of Co-operative Societies are also public authorities.

12. We are in these 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.

Co-operative Societies and Article 12 of the Constitution:

13. We may first examine, whether the Co-operative Societies, with which we are concerned, will fall within the expression "State" within the meaning of Article 12 of the Constitution of India and, hence subject to all constitutional limitations as enshrined in Part III of the Constitution. This Court in U.P. State Co-operative Land Development Bank Limited v. Chandra Bhan Dubey and others (1999) 1 SCC 741, while dealing with the question of the maintainability of the writ petition against the U.P. State Co-operative Development Bank Limited held the same as an instrumentality of the State and an authority mentioned in Article 12 of the Constitution. On facts, the Court noticed that the control of the State Government on the Bank is all pervasive and that the affairs of the Bank are controlled by the State Government though it is functioning as a co-operative society, it is an extended arm of the State and thus an instrumentality of the State or authority as mentioned under Article 12 of the Constitution. In All India Sainik Schools employees' Association v. Defence Minister-cum-Chairman Board of Governors, Sainik Schools Society, New Delhi and others (1989) Supplement 1 SCC 205, this Court held that the Sainik School society is "State" within the meaning of Article 12 of the Constitution after having found that the entire funding is by the State

Government and by the Central Government and the overall control vests in the governmental authority and the main object of the society is to run schools and prepare students for the purpose feeding the National Defence Academy.

14. This Court in Executive Committee of Vaish Degree College, Shamli and Others v. Lakshmi Narain and Others (1976) 2 SCC 58, while dealing with the status of the Executive Committee of a Degree College registered under the Co-operative Societies Act, held as follows:

> "10……It seems to us that before an institution can be a statutory body it must be created by or under the statute and owe its existence to a statute. This must be the primary thing which has got to be established. Here a distinction must be made between an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution. There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself is not, in our opinion, sufficient to clothe the institution with a statutory character……."

15. 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.

16. This Court in Federal Bank Ltd. v. Sagar Thomas and Others (2003) 10 SCC 733, held as follows:

> "32. Merely because Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors

> etc. as provided under Section 5(c)(a) of the Banking Regulation Act does not mean that the private companies carrying on the business or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. As to the provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now a judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for the acquiring authority".

17. Societies are, of course, subject to the control of the statutory authorities like Registrar, Joint Registrar, the Government, etc. but cannot be said that the State exercises any direct or indirect control over the affairs of the society which is deep and all pervasive. Supervisory or general regulation under the statute over the co-operative societies, which are body corporate does not render activities of the body so regulated as subject to such control of the State so as to bring it within the meaning of the "State" or instrumentality of the State. Above principle has been approved by this Court in S.S. Rana v. Registrar, Co-operative Societies and another (2006) 11 SCC 634. In that case this Court was dealing with the maintainability of the writ petition against the Kangra Central Co- operative Society Bank Limited, a society registered under the provisions of the Himachal Pradesh Co-operative Societies Act, 1968. After examining various provisions of the H.P. Co-operative Societies Act this Court held as follows:

> "9. It is not in dispute that the Society has not been constituted under an Act. Its functions like any other cooperative society are mainly regulated in terms of the provisions of the Act, except as provided in the bye-laws of the Society. The State has no say in the functions of the Society. Membership, acquisition of shares and all other matters are governed by the bye-laws framed under the Act. The terms and conditions of an officer of the cooperative society, indisputably, are governed by the Rules. Rule 56, to which reference has been made by Mr Vijay Kumar, does not contain any provision in terms whereof any legal right as such is conferred upon an officer of the Society.

10. It has not been shown before us that the State exercises any direct or indirect control over the affairs of the Society for deep and pervasive control. The State furthermore is not the majority shareholder. The State has the power only to nominate one Director. It cannot, thus, be said that the State exercises any functional control over the affairs of the Society in the sense that the majority Directors are nominated by the State. For arriving at the conclusion that the State has a deep and pervasive control over the Society, several other relevant questions are required to be considered, namely, (1) How was the Society created? (2) Whether it enjoys any monopoly character? (3) Do the functions of the Society partake to statutory functions or public functions? and (4) Can it be characterised as public authority?

11. Respondent 2, the Society does not answer any of the aforementioned tests. In the case of a non-statutory society, the control thereover would mean that the same satisfies the tests laid down by this Court in Ajay Hasia v. Khalid Mujib Sehravardi. [See Zoroastrian Coop. Housing Society Ltd. v. Distt. Registrar, Coop. Societies (Urban).]

12. It is well settled that general regulations under an Act, like the Companies Act or the Cooperative Societies Act, would not render the activities of a company or a society as subject to control of the State. Such control in terms of the provisions of the Act are meant to ensure proper functioning of the society and the State or statutory authorities would have nothing to do with its day-to-day functions."

18. We have, on facts, found that the Co-operative Societies, with which we are concerned in these appeals, will not fall within the expression "State" or "instrumentalities of the State" within the meaning of Article 12 of the Constitution and hence not subject to all constitutional limitations as enshrined in Part III of the Constitution. We may, however, come across situations where a body or organization though not a State or instrumentality of the State, may still satisfy the definition of public authority within the meaning of Section 2(h) of the Act, an aspect which we may discuss in the later part of this Judgment.

Constitutional provisions and Co-operative autonomy:

19. Rights of the citizens to form co-operative societies voluntarily, is now raised to the level of a fundamental right and State shall endeavour to promote their autonomous functioning. The Parliament, with a view to enhance public faith in

the co-operative institutions and to insulate them to avoidable political or bureaucratic interference brought in Constitutional (97th Amendment) Act, 2011, which received the assent of the President on 12.01.2012, notified in the Gazette of India on 13.01.2012 and came into force on 15.02.2012.

20. Constitutional amendment has been effected to encourage economic activities of co-operatives which in turn help progress of rural India. Societies are expected not only to ensure autonomous and democratic functioning of co-operatives, but also accountability of the management to the members and other share stake-holders. Article 19 protects certain rights regarding freedom of speech. By virtue of above amendment under Article 19(1)(c) the words "co-operative societies" are added. Article 19(1)(c) reads as under:

> "19(1)(c) – All citizens shall have the right to form associations or unions or co-operative societies".
>
> Article 19(1)(c), therefore, guarantees the freedom to form an association, unions and co-operative societies. Right to form a co-operative society is, therefore, raised to the level of a fundamental right, guaranteed under the Constitution of India. Constitutional 97th Amendment Act also inserted a new Article 43B with reads as follows :-
>
> "the State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies".

21. By virtue of the above-mentioned amendment, Part IX-B was also inserted containing Articles 243ZH to 243ZT. Cooperative Societies are, however, not treated as units of self-government, like Panchayats and Municipalities.

22. Article 243(ZL) dealing with the supersession and suspension of board and interim management states that notwithstanding anything contained in any law for the time being in force, no board shall be superseded or kept under suspension for a period exceeding six months. It provided further that the Board of any such co-operative society shall not be superseded or kept under suspension where there is no government shareholding or loan or financial assistance or any guarantee by the Government. Such a constitutional restriction has been placed after recognizing the fact that there are co-operative societies with no government share holding or loan or financial assistance or any guarantee by the government.

23. Co-operative society is a state subject under Entry 32 List I Seventh Schedule to the Constitution of India. Most of the States in India enacted their own Co-operative Societies Act with a view to provide for their orderly development of the cooperative sector in the state to achieve the objects of equity, social justice and economic development, as envisaged in the Directive Principles of State Policy, enunciated in the Constitution of India. For co-operative societies working in more than one State, The Multi State Co-operative Societies Act, 1984 was enacted by the Parliament under Entry 44 List I of the Seventh Schedule of the Constitution. 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.

Right to Information Act

24. The RTI Act is an Act enacted to provide for citizens to secure, access to information under the control of public authorities and to promote transparency and accountability in the working of every public authority. The preamble of the Act reads as follows:

> "An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.
>
> WHEREAS the Constitution of India has established democratic Republic;
>
> AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;
>
> AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;
> AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it."

25. Every public authority is also obliged to maintain all its record 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 computerized are, within a reasonable time and subject to availability of resources, computerized and connected through a network all over the country on different systems so that access to such record is facilitated. Public authority has also to carry out certain other functions also, as provided under the Act.

26. The expression "public authority" is defined under Section 2(h) of the RTI Act, which reads as follows:

"2. Definitions._ In this Act, unless the context otherwise requires:

(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"

27. Legislature, in its wisdom, while defining the expression "public authority" under Section 2(h), intended to embrace only those categories, which are specifically included, unless the context of the Act otherwise requires. Section 2(h) has used the expressions 'means' and includes'. When a word is defined to 'mean' something, the definition is prima facie restrictive and where the word is defined to 'include' some other thing, the definition is prima facie extensive. But when both the expressions "means" and "includes" are used, the categories mentioned there

would exhaust themselves. Meanings of the expressions 'means' and 'includes' have been explained by this Court in Delhi Development Authority v. Bhola Nath Sharma (Dead) by LRs and others (2011) 2 SCC 54, (in paras 25 to 28). When such expressions are used, they may afford an exhaustive explanation of the meaning which for the purpose of the Act, must invariably be attached to those words and expressions.

28. Section 2(h) exhausts the categories mentioned therein. The former part of 2(h) deals with:

> (1) an authority or body of self-government established by or under the Constitution,
>
> (2) an authority or body or institution of self- government established or constituted by any other law made by the Parliament, (3) an authority or body or institution of self-government established or constituted by any other law made by the State legislature, and (4) an authority or body or institution of self-government established or constituted by notification issued or order made by the appropriate government.

29. Societies, with which we are concerned, admittedly, do not fall in the above mentioned categories, because none of them is either a body or institution of self-government, established or constituted under the Constitution, by law made by the Parliament, by law made by the State Legislature or by way of a notification issued or made by the appropriate government. Let us now examine whether they fall in the later part of Section 2(h) of the Act, which embraces within its fold: (5) a body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate government, (6) non-governmental organizations substantially financed directly or indirectly by funds provided by the appropriate government.

30 The expression 'Appropriate Government' has also been defined under Section 2(a) of the RTI Act, which reads as follows:

> "2(a). "appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly-
>
> i) by the Central Government or the Union territory administration, the Central Government;

ii) by the State Government, the State Government."

31. The RTI Act, therefore, deals with bodies which are owned, controlled or substantially financed, directly or indirectly, by funds provided by the appropriate government and also non-government organizations substantially financed, directly or indirectly, by funds provided by the appropriate government, in the event of which they may fall within the definition of Section 2(h)(d)(i) or (ii) respectively. As already pointed out, a body, institution or an organization, which is neither a State within the meaning of Article 12 of the Constitution or instrumentalities, may still answer the definition of public authority under Section 2(h)d (i) or (ii). (a) Body owned by the appropriate government – A body owned by the appropriate government clearly falls under Section 2(h)(d)(i) of the Act. A body owned, means to have a good legal title to it having the ultimate control over the affairs of that body, ownership takes in its fold control, finance etc. Further discussion of this concept is unnecessary because, admittedly, the societies in question are not owned by the appropriate government.

(b) Body Controlled by the Appropriate Government

A body which is controlled by the appropriate government can fall under the definition of public authority under Section 2h(d)(i). Let us examine the meaning of the expression "controlled" in the context of RTI Act and not in the context of the expression "controlled" judicially interpreted while examining the scope of the expression "State" under Article 12 of the Constitution or in the context of maintainability of a writ against a body or authority under Article 226 of the Constitution of India. The word "control" or "controlled" has not been defined in the RTI Act, and hence, we have to understand the scope of the expression 'controlled' in the context of the words which exist prior and subsequent i.e. "body owned" and "substantially financed" respectively. The meaning of the word "control" has come up for consideration in several cases before this Court in different contexts. In State of West Bengal and another v. Nripendra Nath Bagchi, AIR 1966 SC 447 while interpreting the scope of Article 235 of the Constitution of India, which confers control by the High Court over District Courts, this Court held that the word "control" includes the power to take disciplinary action and all other incidental or consequential steps to effectuate this end and made the following observations:

> "The word 'control', as we have seen, was used for the first time in the Constitution and it is accompanied by the word 'vest' which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding Judge.... In our judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal, ..."

32. The above position has been reiterated by this Court in Chief Justice of Andhra Pradesh and others v. L.V.A. Dixitulu and others (1979) 2 SCC 34. In Corporation of the City of Nagpur Civil Lines, Nagpur and another v. Ramchandra and others (1981) 2 SCC 714, while interpreting the provisions of Section 59(3) of the City of Nagpur Corporation Act, 1948, this Court held as follows:

> "4. It is thus now settled by this Court that the term "control" is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers- vested in the authority concerned……."

33. The word "control" is also sometimes used synonyms with superintendence, management or authority to direct, restrict or regulate by a superior authority in exercise of its supervisory power. This Court in The Shamrao Vithal Co-operative Bank Ltd. v. Kasargode Pandhuranga Mallya (1972) 4 SCC 600, held that the word "control" does not comprehend within itself the adjudication of a claim made by a co-operative society against its members. The meaning of the word "control" has also been considered by this Court in State of Mysore v. Allum Karibasappa & Ors. (1974) 2 SCC 498, while interpreting Section 54 of the Mysore Cooperative Societies Act, 1959 and Court held that the word "control" suggests check, restraint or influence and intended to regulate and hold in check and restraint from action. The expression "control" again came up for consideration before this Court in Madan Mohan Choudhary v. State of Bihar & Ors. (1999) 3 SCC 396, in the context of Article 235 of the Constitution and the Court held that the expression "control" includes disciplinary control, transfer, promotion, confirmation, including transfer of a District Judge or recall of a District Judge posted on ex-cadre post or on deputation or on administrative post etc. so also premature and compulsory retirement. Reference may also be made to few other judgments of this

Court reported in Gauhati High Court and another v. Kuladhar Phukan and another (2002) 4 SCC 524, State of Haryana v. Inder Prakash Anand HCS and others (1976) 2 SCC 977, High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal and Another (1998) 3 SCC 72, Kanhaiya Lal Omar v. R.K. Trivedi and others (1985) 4 SCC 628, TMA Pai Foundation and others v. State of Karnataka (2002) 8 SCC 481, Ram Singh and others v. Union Territory, Chandigarh and others(2004) 1 SCC 126, etc.

34. We are of the opinion that when we test the meaning of expression "controlled" which figures in between the words "body owned" and "substantially financed", the control by the appropriate government must be a control of a substantial nature. The mere 'supervision' or 'regulation' as such by a statute or otherwise of a body would not make that body a "public authority" within the meaning of Section 2(h)(d)(i) of the RTI Act. In other words just like a body owned or body substantially financed by the appropriate government, the control of the body by the appropriate government would also be substantial and not merely supervisory or regulatory. Powers exercised by the Registrar of Cooperative Societies and others under the Cooperative 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. Management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Cooperative Societies Act and not on the authorities under the Co-operative Societies Act.

35. We are, therefore, of the view that the word "controlled" used in Section 2(h)(d)(i) of the Act has to be understood in the context in which it has been used vis-a-vis a body owned or substantially financed by the appropriate government, that is the control of the body is of such a degree which amounts to substantial control over the management and affairs of the body.

SUBSTANTIALLY FINANCED

36. The words "substantially financed" have been used in Sections 2(h)(d)(i) & (ii), while defining the expression public authority as well as in Section 2(a) of the Act, while defining the expression "appropriate Government". A body can be substantially financed, directly or indirectly by funds provided by the appropriate Government. The expression "substantially financed", as such, has not been defined under the Act. "Substantial" means "in a substantial manner so as to be substantial". In Palser v. Grimling (1948) 1 All ER 1, 11 (HL), while interpreting the provisions of Section 10(1) of the Rent and Mortgage Interest Restrictions Act,

1923, the House of Lords held that “substantial” is not the same as “not unsubstantial” i.e. just enough to avoid the de minimis principle. The word “substantial” literally means solid, massive etc. Legislature has used the expression “substantially financed” in Sections 2(h)(d)(i) and (ii) indicating that the degree of financing must be actual, existing, positive and real to a substantial extent, not moderate, ordinary, tolerable etc.

37. We often use the expressions “questions of law” and “substantial questions of law” and explain that any question of law affecting the right of parties would not by itself be a substantial question of law. In Black's Law Dictionary (6th Edn.), the word 'substantial' is defined as 'of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real: not seeming or imaginary; not illusive; solid; true; veritable. Something worthwhile as distinguished from something without value or merely nominal. Synonymous with material.' The word 'substantially' has been defined to mean 'essentially; without material qualification; in the main; in substance; materially.' In the Shorter Oxford English Dictionary (5th Edn.), the word 'substantial' means 'of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; sold; weighty; important, worthwhile; of an act, measure etc. having force or effect, effective, thorough.' The word 'substantially' has been defined to mean 'in substance; as a substantial thing or being; essentially, intrinsically.' Therefore the word 'substantial' is not synonymous with 'dominant' or 'majority'. It is closer to 'material' or 'important' or 'of considerable value.' 'Substantially' is closer to 'essentially'. Both words can signify varying degrees depending on the context.

38. Merely providing subsidiaries, grants, exemptions, privileges etc., as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist. The State may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD etc., but those facilities or assistance cannot be termed as “substantially financed” by the State Government to bring the body within the fold of “public authority” under Section 2(h)(d)(i) of the Act. But, there are instances, where private educational institutions getting ninety five per cent grant-in-aid from the appropriate government, may answer the definition of public authority under Section 2(h)(d)(i).

NON-GOVERNMENT ORGANISATIONS:

39. The term "Non-Government Organizations" (NGO), as such, is not defined under the Act. But, over a period of time, the expression has got its own meaning and, it has to be seen in that context, when used in the Act. Government used to finance substantially, several non-government organizations, which carry on various social and welfare activities, since those organizations sometimes carry on functions which are otherwise governmental. Now, the question, whether an NGO has been substantially financed or not by the appropriate Government, may be a question of fact, to be examined by the authorities concerned under the RTI Act. Such organization can be substantially financed either directly or indirectly by funds provided by the appropriate Government. Government may not have any statutory control over the NGOs, as such, still it can be established that a particular NGO has been substantially financed directly or indirectly by the funds provided by the appropriate Government, in such an event, that organization will fall within the scope of Section 2(h)(d)(ii) of the RTI Act. Consequently, even private organizations which are, though not owned or controlled but substantially financed by the appropriate Government will also fall within the definition of "public authority" under Section 2(h)(d)(ii) of the Act.

BURDEN TO SHOW:

40. The burden to show that a body is owned, controlled or substantially financed or that a non-government organization is substantially financed directly or indirectly by the funds provided by the appropriate Government is on the applicant who seeks information or the appropriate Government and can be examined by the State Public Information Officer, State Chief Information Officer, State Chief Information Commission, Central Public Information Officer etc., when the question comes up for consideration. A body or NGO is also free to establish that it is not owned, controlled or substantially financed directly or indirectly by the appropriate Government.

41. Powers have been conferred on the Central Information Commissioner or the State Information Commissioner under Section 18 of the Act to inquire into any complaint received from any person and the reason for the refusal to access to any information requested from a body owned, controlled or substantially financed, or a non-government organization substantially financed directly or indirectly by the funds provided by the appropriate Government. Section 19 of the Act provides for an appeal against the decision of the Central Information Officer or the State Information Officer to such officer who is senior in rank to the Central Information Officer or the State Information Officer, as the case may be, in each public

authority. Therefore, there is inbuilt mechanism in the Act itself to examine whether a body is owned, controlled or substantially financed or an NGO is substantially financed, directly or indirectly, by funds provided by the appropriate authority.

42. Legislative intention is clear and is discernible from Section 2(h) that intends to include various categories, discussed earlier. It is trite law that the primarily language employed is the determinative factor of the legislative intention and the intention of the legislature must be found in the words used by the legislature itself. In Magor and St. Mellons Rural District Council v. New Port Corporation (1951) 2 All ER 839(HL) stated that the courts are warned that they are not entitled to usurp the legislative function under the guise of interpretation. This Court in D.A. Venkatachalam and others v. Dy. Transport Commissioner and others (1977) 2 SCC 273, Union of India v. Elphinstone Spinning and Weaving Co. Ltd. and others (2001) 4 SCC 139, District Mining Officer and others v. Tata Iron & Steel Co. and another (2001) 7 SCC 358, Padma Sundara Rao (Dead) and others v. State of Tamil Nadu and others (2002) 3 SCC 533, Maulvi Hussain Haji Abraham Umarji v. State of Gujarat and another (2004) 6 SCC 672 held that the court must avoid the danger of an apriori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provisions to be interpreted is somehow fitted. It is trite law that words of a statute are clear, plain and unambiguous i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of the consequences, meaning thereby when the language is clear and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the statute speaks for itself. This Court in Kanai Lal Sur v. Paramnidhi Sadhukhan AIR 1957 SC 907 held that "if the words used are capable of one construction only then it would not be open to courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

43. We are of the view that the High Court has given a complete go-bye to the above-mentioned statutory principles and gone at a tangent by mis- interpreting the meaning and content of Section 2(h) of the RTI Act. Court has given a liberal construction to expression "public authority" under Section 2(h) of the Act, bearing in mind the "transformation of law" and its "ultimate object" i.e. to achieve "transparency and accountability", which according to the court could alone advance the objective of the Act. Further, the High Court has also opined that RTI Act will certainly help as a protection against the mismanagement of the society by the managing committee and the society's liabilities and that vigilant members of

the public body by obtaining information through the RTI Act, will be able to detect and prevent mismanagement in time. In our view, the categories mentioned in Section 2(h) of the Act exhaust themselves, hence, there is no question of adopting a liberal construction to the expression "public authority" to bring in other categories into its fold, which do not satisfy the tests we have laid down. Court cannot, when language is clear and unambiguous, adopt such a construction which, according to the Court, would only advance the objective of the Act. We are also aware of the opening part of the definition clause which states "unless the context otherwise requires". No materials have been made available to show that the cooperative societies, with which we are concerned, in the context of the Act, would fall within the definition of Section 2(h) of the Act.

Right to Information and the Right to Privacy

44. People's right to have access to an official information finds place in Resolution 59(1) of the UN General Assembly held in 1946. It states that freedom of information is a fundamental human right and the touchstone to all the freedoms to which the United Nations is consecrated. India is a party to the International Covenant on Civil and Political Rights and hence India is under an obligation to effectively guarantee the right to information. Article 19 of the Universal Declaration of Human Rights also recognizes right to information. Right to information also emanates from the fundamental right guaranteed to citizens under Article 19(1)(a) of the Constitution of India. Constitution of India does not explicitly grant a right to information. In Bennet Coleman & Co. and others Vs. Union of India and others (1972) 2 SCC 788, this Court observed that it is indisputable that by "Freedom of Press" meant the right of all citizens to speak, publish and express their views and freedom of speech and expression includes within its compass the right of all citizens to read and be informed. In Union of India Vs. Association of Democratic Reforms and another (2002) 5 SCC 294, this Court held that the right to know about the antecedents including criminal past of the candidates contesting the election for Parliament and State Assembly is a very important and basic facets for survival of democracy and for this purpose, information about the candidates to be selected must be disclosed. In State of U.P. Vs. Raj Narain and others (1975) 4 SCC 428, this Court recognized that the right to know is the right that flows from the right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. In People's Union for Civil Liberties (PUCL) and others Vs. Union of India and another (2003) 4 SCC 399, this Court observed that the right to information is a facet of freedom of speech and expression contained in Article 19(1)(a) of the Constitution of India. Right to

information thus indisputably is a fundamental right, so held in several judgments of this Court, which calls for no further elucidation.

45. The Right to Information Act, 2005 is an Act which provides for setting up the practical regime of right to information for citizens to secure access to information under the control of public authorities in order to promote transparency and accountability in the working of every public authority. Preamble of the Act also states that the democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed. Citizens have, however, the right to secure access to information of only those matters which are "under the control of public authorities", the purpose is to hold "Government and its instrumentalities" accountable to the governed. Consequently, though right to get information is a fundamental right guaranteed under Article 19(1)(a) of the Constitution, limits are being prescribed under the Act itself, which are reasonable restrictions within the meaning of Article 19(2) of the Constitution of India.

46. Right to privacy is also not expressly guaranteed under the Constitution of India. However, the Privacy Bill, 2011 to provide for the right to privacy to citizens of India and to regulate the collection, maintenance and dissemination of their personal information and for penalization for violation of such rights and matters connected therewith, is pending. In several judgments including Kharak Singh Vs. State of U.P. and others AIR 1963 SC 1295, R. Rajagopal alias R.R. Gopal and another Vs. State of Tamil Nadu and others (1994) 6 SCC 632, People's Union for Civil Liberties (PUCL) Vs. Union of India and another (1997) 1 SCC 301 and State of Maharashtra Vs. Bharat Shanti Lal Shah and others (2008) 13 SCC 5, this Court has recognized the right to privacy as a fundamental right emanating from Article 21 of the Constitution of India. Right to privacy is also recognized as a basic human right under Article 12 of the Universal Declaration of Human Rights Act, 1948, which states as follows: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, not to attack upon his honour and reputation. Everyone has the right to the protection of law against such interference or attacks."

Article 17 of the International Covenant on Civil and Political Rights Act, 1966, to which India is a party also protects that right and states as follows:

"No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence nor to unlawful attacks on his honour and reputation…."

This Court in R. Rajagopal (supra) held as follows :-

"The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters."

Restrictions and Limitations:

47. Right to information and Right to privacy are, therefore, not absolute rights, both the rights, one of which falls under Article 19(1)(a) and the other under Article 21 of the Constitution of India, can obviously be regulated, restricted and curtailed in the larger public interest. Absolute or uncontrolled individual rights do not and cannot exist in any modern State. Citizens' right to get information is statutorily recognized by the RTI Act, but at the same time limitations are also provided in the Act itself, which is discernible from the Preamble and other provisions of the Act. First of all, the scope and ambit of the expression "public authority" has been restricted by a statutory definition under Section 2(h) limiting it to the categories mentioned therein which exhaust itself, unless the context otherwise requires. Citizens, as already indicated by us, have a right to get information, but can have access only to the information "held" and under the "control of public authorities", with limitations. If the information is not statutorily accessible by a public authority, as defined in Section 2(h) of the Act, evidently, those information will not be under the "control of the public authority". Resultantly, it will not be possible for the citizens to secure access to those information which are not under the control of the public authority. Citizens, in that event, can always claim a right to privacy, the right of a citizen to access information should be respected, so also a citizen's right to privacy.

48. Public authority also is not legally obliged to give or provide information even if it is held, or under its control, if that information falls under clause (j) of Sub-section (1) of Section 8. Section 8(1)(j) is of considerable importance so far as this case is concerned, hence given below, for ready reference:-

"8. Exemption from disclosure of information – (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen –

(a) to (i) xxx xxx xxx

(j) information which 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 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: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

49. Section 8 begins with a non obstante clause, which gives that Section an overriding effect, in case of conflict, over the other provisions of the Act. Even if, there is any indication to the contrary, still there is no obligation on the public authority to give information to any citizen of what has been mentioned in clauses (a) to (j). Public authority, as already indicated, cannot access all the information from a private individual, but only those information which he is legally obliged to pass on to a public authority by law, and also only those information to which the public authority can have access in accordance with law. Even those information, if personal in nature, can be made available only subject to the limitations provided in Section 8(j) of the RTI Act. Right to be left alone, as propounded in Olmstead v. The United States reported in 1927 (277) US 438 is the most comprehensive of the rights and most valued by civilized man.

50. Recognizing the fact that the right to privacy is a sacrosanct facet of Article 21 of the Constitution, the legislation has put a lot of safeguards to protect the rights under Section 8(j), as already indicated. If the information sought for is personal and has no relationship with any public activity or interest or it will not sub-serve larger public interest, the public authority or the officer concerned is not legally obliged to provide those information. Reference may be made to a recent judgment of this Court in Girish Ramchandra Deshpande v. Central Information Commissioner and others (2013) 1 SCC 212, wherein this Court held that since there is no bona fide public interest in seeking information, the disclosure of said information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the Act. Further, if the authority finds that information sought for can be made available in the larger public interest, then the officer should record

his reasons in writing before providing the information, because the person from whom information is sought for, has also a right to privacy guaranteed under Article 21 of the Constitution.

51. We have found, on facts, that the Societies, in these appeals, are not public authorities and, hence, not legally obliged to furnish any information sought for by a citizen under the RTI Act. All the same, if there is any dispute on facts as to whether a particular Society is a public authority or not, the State Information Officer can examine the same and find out whether the Society in question satisfies the test laid in this judgment. Now, the next question is whether a citizen can have access to any information of these Societies through the Registrar of Cooperative Societies, who is a public authority within the meaning of Section 2(h) of the Act.

Registrar of Cooperative Societies

52. 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, 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 RTI Act and furnish information to a citizen under the RTI Act. 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. 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 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, 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 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.

53. Consequently, 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.

54. We, therefore, hold that the Cooperative 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 and the State Government letter dated 5.5.2006 and the circular dated 01.06.2006 issued by the Registrar of Co-operative Societies, Kerala, to the extent, made applicable to societies registered under the Kerala Co-operative Societies Act would stand quashed in the absence of materials to show that they are owned, controlled or substantially financed by the appropriate Government. Appeals are, therefore, allowed as above, however, with no order as to costs.