



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.22789 of 2017

S.A.S.Alaudeen

... Petitioner

Vs.

1. The Chairperson,
Tamil Nadu Information Commission,
Kamadhenu Co-operative Supermarket Building,
1st Floor, Teynampet (Near Vanavil),
New No.378, Anna Salai,
Chennai – 600 018.
2. The Appellate Authority-cum-
Inspector General of Police,
O/o.The Inspector General of Police(IGP),
Crime Branch Crime Investigation Department(CBCID),
Chennai – 600 008.
3. The Public Information Officer-cum-
Superintendent of Police SIU i/c SID, CBCID,
O/o.The Additional Director General of Police(ADGP),
Crime Branch Crime Investigation Department(CBCID),
No.220, Pantheon Road,
Egmore, Chennai – 600 008.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records, order passed by the first respondent vide proceedings in case No.SA-7851/SCIC/2017 dated 10.05.2023 and quash the same as illegal and



consequently direct the first respondent to furnish the information sought on the application dated 20.07.2017.

(Prayer is amended vide order dated 26.07.2023 in W.M.P.(MD) No.13389 of 2023)

For Petitioner : Mr.Henri Tiphagne,
for Mr.C.M.Arumugam.

For R-1 : Mr.K.K.Senthil

For R-2 & R-3 : Shri.R.Baskaran,
Additional Advocate General,
assisted by,
Mrs.K.Christy Theboral,
Additional Government Pleader.

* * *

ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Advocate General assisted by the learned Additional Government Pleader appearing for respondents 2 and 3 and the learned counsel appearing for the first respondent.

2. The petitioner is a practising lawyer. He participated in an event organised by the Popular Front of India on 17.02.2014 at Ramanathapuram. PFI was not a banned organisation then. The allegation of the petitioner is that



gross human right violations were perpetrated by the police while dealing with those who had gathered. According to him, a number of persons suffered grievous injuries. In this regard, one M.Mohamed Abbas filed W.P.(MD)No.2705 of 2014 seeking judicial enquiry and for awarding compensation to the victims. The writ petition was disposed of on 26.02.2014 in the following terms:-

“12. Accordingly, the Director General of Police and Home Secretary to Government of Tamil Nadu are directed to nominate an Inspector General of Police, for taking up enquiry to submit a report and for appropriate follow-up action. The enquiry shall be taken up forthwith.

13. The investigation in this case shall continue and the officer concerned is entitled to pursue the proceedings in accordance with law against any of the offenders, for which criminal law has been set in motion. It shall continue and shall not be disturbed by the enquiry. The proceedings consequent to investigation and remand will be dealt with by the competent Court in accordance



with criminal law. We do not restrain the Investigating Officer or any other superior officer from proceeding with that enquiry and the criminal proceedings initiated.”

3. Pursuant to the direction given by the Hon'ble Division Bench, an enquiry was conducted by the then Inspector General of Police, SID, CB CID. Enquiry report was submitted to the Director General of Police. The petitioner wants copy of the same. He applied to the third respondent under the provisions of The Right to Information Act 2005. His request was denied. Aggrieved by the same, the petitioner moved the appellate authority / second respondent herein. The appellate authority also endorsed the stand taken by the original authority. Aggrieved by the same, the petitioner filed second appeal before the Information Commission. The petitioner's appeal was not disposed of. That led to the filing of this writ petition.

4. During the pendency of this writ petition, the Information Commission disposed of the petitioner's second appeal on 10.05.2023. Paragraph Nos.8, 9 and 10 of the said



order read as follows:-

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“ 8. விசாரணையின் போது, பொதுத் தகவல் அலுவலர் மற்றும் மேல்முறையீட்டு அலுவலர் ஆகியோர் அளித்த பதில்களில் அரசாணை நிலை எண்.1043, பொது (நிர்வாகம்) துறை, நாள் 14.10.2005-ன்படி குற்றப்பிரிவு, குற்றப் புலனாய்வுத் துறை (IG-CBCID), தகவல் பெறும் உரிமைச் சட்டத்தின் கீழ் தகவல் வழங்குவதிலிருந்து விலக்களிக்கப்பட்ட நிறுவனம் என்று ஏற்கனவே பதிலளித்துள்ளதாக பொதுத் தகவல் அலுவலர் தெரிவித்தார்.

9. விசாரணையின் போது மனுதாரர், காவல் துறையின் மனித உரிமை மீறல்களால் நேரடியாக தான் பாதிக்கப்பட்டுள்ளதாகவும், தகவல் பெறும் உரிமைச் சட்டம் பிரிவு 24-ல் வரம்புரையாக ஊழல் மற்றும் மனித உரிமை மீறல்கள் தொடர்பான தகவல்களை வழங்காமல் மறுக்கப் கூடாது என்று உள்ளதையும் குறிப்பிட்டு, எனவே தான் கோரிய தகவல்களை தனக்கு வழங்குமாறு கோரினார்.

10. இருதரப்பு வாதங்களையும் பதிவு செய்த ஆணையம் கீழ்க்கண்டவாறு முடிவு செய்கிறது.

அரசாணை நிலை எண்.1043, பொது (நிர்வாகம்) துறை, நாள் 14.10.2005-ல் விலக்களிக்கப்பட்ட நிறுவனம்



என்று தெளிவாகக் குறிப்பிடப்பட்டுள்ளதால் பொதுத் தகவல் அலுவலரின் வாதம் சரியே என்று ஆணையம் ஏற்றுக் கொள்கிறது.

மனுதாரர் கோரும் தகவல் மனித உரிமை மீறல்கள் தொடர்பான தகவல் எனில், அவர் மனித உரிமை ஆணையத்தை அணுகுமாறு அறிவுறுத்தப்படுகிறார். மனுதாரர் மனித உரிமை ஆணையத்தில் உரிய உத்தரவு பெற்று, மீண்டும் தகவல் ஆணையத்தில் மனு செய்தால், அம்மனு மீது உரிய உத்தரவு பிறப்பிக்கப்படும். இத்துடன் இவ்வழக்கு முற்றாக்கி ஆணையிடப்படுகிறது.”

Thereupon, the petitioner with the leave of this Court amended the writ prayer.

5. The learned counsel appearing for the petitioner submitted that the impugned order passed by the Commission as well as the stand taken by the department are unsustainable. He drew my attention to the first and second Proviso to sub section (4) of Section 24 of The Right to Information Act. He relied on a catena of case laws and called upon this Court to set aside the impugned order and allow the



writ petition as prayed for.

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6. The third respondent filed counter-affidavit and the learned Additional Advocate General took me through its contents. He drew my attention to G.O.Ms.No.1043 Public (ESTT.I & LEG) Department dated 14.10.2005 which was issued in exercise of powers conferred by sub-section (4) of Section 24 of the Act exempting as many as 18 organisations from the purview of the Act. Crime Branch CID is figuring at serial No.1 in the said notification. The learned Additional Advocate General submitted that the impugned orders are very much sustainable in view of the said G.O. He also contended that the enquiry report filed by the Inspector General of Police contains sensitive information and that disclosure of the same would seriously harm public interest. He pressed for dismissal of the writ petition.

7. I carefully considered the rival contentions and went through the materials on record.

8. The first question that calls for consideration is



whether the department could have taken shelter behind the notification issued under Section 24(4) of the Act. Section 24 of the Act is as follows:-

“ Act not to apply to certain organisations.-

(1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.



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(2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule.

(3) Every notification issued under sub-section (2) shall be laid before each House of Parliament.

(4) Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of



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human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.

(5) Every notification issued under sub-section

(4) shall be laid before the State Legislature.”

This provision had been considered both by the Hon'ble Supreme Court as well as the Madras High Court. In **(2019) 6 SCC 1 (Yashwant Sinha and Others V. Central Bureau of Investigation)**, it was held as follows:-

“ 37. ... The first proviso to Section 24 indeed marks a paradigm shift, in the perspective of the body polity through its elected representatives that corruption and human rights violations are completely incompatible and hence anathema to the very basic principles of democracy, the Rule of law and constitutional morality. The proviso declares that even though information available with intelligence and security organisations are generally outside the purview of the open



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disclosure regime contemplated under the Act, if the information pertains to allegations of corruption or human rights violations such information is very much available to be sought for under the Act. ... “

In ***S.Vijayalakshmi V. Union of India ((2011) 5 CTC 376) (DB)***, inclusion of CBI within the ambit of the second schedule to the Act was questioned. The Hon'ble Division Bench held as follows:-

“ 37. The apprehension that the CBI by virtue of its inclusion in the Second Schedule has got a blanket exemption, cannot be countenanced for the simple reason that what has been contemplated under Section 24 is no such blanket exemption. The Act was intended among other things to contain corruption and to hold Governments and their Instrumentalities accountable to the Government. This purpose and intent of the Act is sufficiently provided for in the two provisos to Section 24(1) of the Act. The information pertaining to allegation of corruption and human



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rights violation are not excluded under Sub-section (1) of Section 24. Therefore, the exemption by virtue of inclusion of CBI in the Second Schedule to a RTI Act is not a wholesale or a blanket exemption as contended by the Petitioner. After taking note of the facts placed before this Court and the law discussed above, it cannot be stated that every Police Thana is an intelligence Agency and should be treated on par with the CBI for the benefit of the exemption under Section 24 of the Act.

38. The Government of Tamil Nadu by a Government Order in G.O. Ms. No. 158, Personnel and Administrative Reforms Department dated 26.8.2008, in exercise of its powers under Section 24(4) of the RTI Act ordered that the Act shall not apply to two organisations viz. Tamil Nadu State Vigilance Commission and Directorate of Vigilance and Anti Corruption. The said Government Order was challenged before this Court in a public interest writ petition in W.P. No. 4907 of 2009 and



was heard by the Hon'ble First Bench of this Court presided over by the then Hon'ble Chief, Hon'ble Mr. Justice H.L. Gokhale. In the said Writ Petition it was contended that to qualify for exemption under Section 24(4), such organisation must be both intelligence as well as Security Organisations. The Hon'ble First Bench after analysing the language employed in Subsection (4) of Section 24 by judgment dated 30.3.2009, held thus:

“5. As can be seen from the language used in the main part of Sub-Section 4, it states that nothing contained in this Act shall apply to such intelligence and security organisation. Thus, in the first part, two entities are mentioned in singular as organisation. Subsequently, they are referred as 'organisations' established by the State Government. If intelligence and security organisation was only one, there was no need to use the plural term 'organisations' subsequently. It clearly indicates that such an organisation can be for intelligence purpose or for security purpose.



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The word "and' between the two words intelligence and security organisation will have to be read as "or". Therefore, the second submission of Mr. Radhakrishnan cannot be accepted." "

A recent decision reported in **(2023) 3 MLJ 420 (V.Vidya V. State Chief Commissioner)** is on the same lines. It was held that the exemption granted under Section 24 of the Act is circumscribed by excluding information relating to corruption and human right violations, placing such situations on a higher pedestal.

9. In the case on hand, the public information officer / Superintendent of Police, SID, CB CID, Chennai summarily rejected the petitioner's RTI petition by citing the exemption granted to CB CID by virtue of G.O.Ms.No.1043 Public (ESTT.I & LEG.) Department dated 14.10.2005. The appellate authority also took the same stand. Both the orders are liable to be set aside because the first proviso to Section 24 of the Act was not even taken note of. The Commission has fared only slightly better. Instead of undertaking the exercise if the



information sought by the petitioner would fall within the scope of the first proviso to Section 24 of the Act, the State Information Commission chose to abdicate its responsibility. It relegated the petitioner to move the Human Rights Commission. It took the stand that appropriate order will be passed on the petitioner's application after he obtains an appropriate order from the Human Rights Commission. When the Parliament has passed a special law with regard to the right to information, it is the statutory body created under the special law that must discharge the statutory function. It cannot be delegated to or passed on to some other agency. On this ground, the order passed by the first respondent has to be set aside.

10. The next question that arises is whether the petitioner has brought his case within the scope of the first proviso. The proviso employs the expression “pertaining to the allegations of corruption and human rights violations”. The word “and” has been interpreted as “or”. In ***P.Ramanatha Aiyar's "Advanced Law Lexicon"***, the expression “pertaining to” has been defined as follows:-



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“The expression 'Pertaining to' presupposes another subject-matter and it means to bring into association or connection with.”

In ***AIR 2011 P&H 168 (First Appellate Authority-cum-Additional Director General of Police V. Chief Information Commissioner, Haryana)***, it was held as follows:-

“7. The expression "pertaining to allegation of corruption" is not defined in the Act. Even, the Prevention of Corruption Act, 1988 does not define what are the allegations pertaining to corruption? In the absence of any statutory definition in the Act, the ordinary meaning to the expression used in the Act has to be applied. The expression "pertaining to allegation of corruption" cannot be defined. It includes within its meaning many colours and shades of corruption. ... ”

Gulab Singh Rana V. CPIO (2021) SCC OnLine Mad 16171 is another decision in which several decisions on the subject have been dealt with.



11. The information sought for by the petitioner obviously, pertains to the allegations of human rights violations. According to him, the police used excessive force and caused injuries while dealing with the members of a group who had assembled on 17.02.2014 at Ramanathapuram. The High Court had ordered an enquiry to be conducted by an officer in the rank of IG of Police. The enquiry report had been submitted. Copy of the said report is sought by the petitioner. The information which the petitioner seeks clearly comes within the scope of the first proviso.

12. When an application seeking information is made to the public information officer of an organisation exempted under Section 24(4) of the Act, it shall not be rejected straightaway. The officer must see if the subject matter relates to allegations of corruption or human rights violations. If the case relates to allegations of corruption, an order on merits has to be passed by the PIO. If the case pertains to allegations of human rights violations, then the application has to be straightaway forwarded to the State Information Commission with a note along with a copy of the information. After getting



approval from the Commission, the information shall be provided to the applicant. The entire exercise must be completed within 45 days from the date of receipt of the request.

13. In the case on hand, such an approach was not adopted. The first appellate authority could not have been involved at all. The original authority must have got in touch with the Commission and thereafter, furnished the petitioner with a copy of the report. As already noticed, the Commission also misdirected itself in law. The impugned orders are set aside.

14. The police were dealing with the members and sympathizers of Popular Front of India. It is now a banned organisation. It is quite possible that the report of the IG contains sensitive information that do not deal with the human rights violations. Such portions of the report can be redacted while furnishing the petitioner with a copy. Section 10 of the Act provides for such severability.

15. The third respondent is directed to furnish the petitioner with a copy of the report on or before 02.08.2023.



This writ petition is allowed. No costs.

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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Note : Issue order copy on 28.07.2023.

To:

1. The Chairperson,
Tamil Nadu Information Commission,
Kamadhenu Co-operative Supermarket Building,
1st Floor, Teynampet (Near Vanavil),
New No.378, Anna Salai,
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