

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

W.A.No. 2195 of 2007 (E) IN WP(C).20602/2007

AGAINST THE ORDER IN WP(C) 20602/2007 of HIGH COURT OF KERALA DATED 06-08-2007

APPELLANTS/RESPONDENTS:

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1. DIRECTOR (MIS)
AND STATE PUBLIC INFORMATION OFFICER
KERALA STATE ELECTRICITY BOARD, VYDHUTHI BHAVAN
THIRUVANANTHAPURAM.
 2. CHIEF ENGINEER (CORPORATE PLG)
APPELLATE AUTHORITY, RIT ACT
KERALA STATE ELECTRICITY BOARD, VYDHUTHI BHAVAN
THIRUVANANTHAPURAM.

BY ADVS.SRI.C.K.KARUNAKARAN, SC FOR KSEB
SRI.P.SANTHALINGAM (SR.)
SRI.S.SHARAN,SC,K.S.E.BOARD

RESPONDENT/PETITIONER:

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1. G.KRISHNAN
'ASHIANA', PADUVAPURAM, ERNAKULAM.
 2. STATE INFORMATION COMMISSION,
PUNNAN ROAD, THIRUVANANTHAPURAM.
REP. CHIEF INFORMATION COMMISSIONER.

R, R2 BY ADV. SRI.M.AJAY, SC, STATE INFORMATION COMMN.
R BY SMT.DAISY A.PHILIPOSE
BY SR. G.P. SRI.SHYSON P MANGUZHA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 31-07-2015, ALONG WITH
WPC. 26561/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

**Writ Appeal No.2195 of 2007 &
W.P.(C)No.26561 of 2007**

Dated this the 31st day of July, 2015

JUDGMENT

Antony Dominic, J.

The issues raised in both these cases are connected and therefore these cases are disposed of by this common judgment.

2. The party respondent in these cases, filed Ext.P4 application in W.P.(C)No.26561/07 before the Information Officer of the Kerala State Electricity Board seeking disclosure of information on the following nine issues:

"1. Copy of the Detailed Project Report and detailed Cost Estimate of the proposed Athirappilly HEP.

2. Copy of letter issued by the KSEB entrusting SNC-LAVALIN for preparing the 'Athirappilly Start-up Document' (Document 360-02/98 of August 1998) and amount paid for the same.

3. A copy of the above mentioned document.

4. Item wise and year wise statement of expenditure incurred by the KSEB on the proposed Atirappilly HEP upto June 2006. (Feasibility Studies, Detailed Project Reports, Environmental Impact Assessment Studies, Litigations, Publicity, Salaries, Maintenance of Project Office, etc.)

5. Possible monthly power generation as per the revised firm power capacity of 233 MU from the Athirappilly, HEP.

6. Reasons for the reduction of firm power generation capacity from 292 MU to 233 by CWC/CEA.

7. Copy of the letter from CWC regarding water availability for Athirappilly HEP.

8. Map of the proposed transmission line route of the Athirappilly HEP.

9. Total land required for laying the said transmission line, list of people whose land will be required for the purpose (with the extent of land specified) and the compensation package proposed for the same."

3. By Ext.P5 reply, the Information Officer furnished information on Item Nos.8 and 9. In Ext.P5, it was also stated that information sought on the remaining items are not readily available and that action has been taken to collect the same and to examine whether or not they would come under the purview of Sections 8 and 9 of the Right to Information Act, 2005. An appeal was filed before the Appellate Authority, who by communication dated 26.9.2006 informed the respondent that the information requested can be passed on only after getting concurrence of the Board, since the matter was under the purview of the Board.

4. Thereupon, the party respondent approached the Kerala State Information Commission and the Commission disposed of the appeal by Ext.P1 order. Before the Commission, insofar as the request at Sl.No.2 of Ext.P4 is concerned, explanation offered by the Board was that the letter was not traceable and, therefore, could not be furnished. In Ext.P1 order, the Commission accepted that explanation. Insofar as the remaining items on which information was sought are concerned, contention raised by the Board was that the project report of Athirappilly Hidro Electric Project and the other information sought, were an 'Intellectual Property' of the Board and that the State had strategic and economic interest. On this basis, the Board contended that the remaining information sought was exempted from disclosure by Section 8 of the Right to Information Act.

5. In Ext.P1 order, the Commission held that to be an Intellectual Property, it should fall under one of the legally recognized species of 'Intellectual Property', namely; patent, industrial design, copy right, trade mark, know how or confidential information. The Commission held that the matters at item Nos.1, 3, 5, 6 and 7 in Ext.P4 did not fall in

any one of the recognized species of 'Intellectual Property' and, therefore, were not exempt under Section 8 of the Act. Accordingly, the Commission ordered that the information sought for should be furnished.

6. Complaining that, despite the order passed by the Commission, the information was not furnished and that, therefore, penal action should be initiated against the Board and that the Board should be compelled to disclose the information, the party respondent filed Writ Petition No.20602/07. In that Writ Petition, a learned Single Judge of this Court passed interim order dated 6.8.2007 requiring the Board to comply with the order of the Commission. It was challenging that interim order in W.P(C)No.20602/07, that the Information Officer of the Board and its Appellate Authority filed W.A.2195/07. In the writ appeal, this Court by order dated 6.9.2007 stayed the interim order passed by the learned Single Judge.

7. On 5.9.2007, the Kerala State Electricity Board filed W.P.(C) 26561/07, seeking to quash the order passed by the State Commission which is marked therein as Ext.P1.

8. Considering the connected nature of the issues, the writ petition was ordered to be posted along with the writ appeal. It is accordingly that these matters are coming up for hearing before us.

9. We heard the Senior Counsel for the Board and considered the submissions made.

10. From facts we have narrated above, it is obvious that the primary issue to be considered is the validity of the order passed by the State Information Commission in the appeal filed by the party respondent, which is marked as Ext.P1 in W.P.(C)26561/07. As already stated, the defence that was urged before the Commission was that the project report and other documents concerning the Athirappilly Hydro Electric Project was an 'Intellectual Property' of the Board and that the State had strategic and economic interest in it and hence exempted from disclosure. Though the Commission did not deal with the defence of strategic and economic interest traceable to Section 8(1)(a) of the Right to Information Act, the Commission overruled the objection of the Board that it is an 'Intellectual Property' of the Board falling under Section 8(1)(d). The reason stated by the Commission is that to be an

'Intellectual Property', the information sought for should fall within anyone of the legally recognized species of 'Intellectual Property' namely; patent, industrial design, copy right, trade mark, know how or confidential information.

11. Insofar as the above finding of the Information Commission is concerned, learned Senior Counsel appearing for the Board invited our attention to Section 8(1)(d) and reiterated his contention that the information sought for are exempted. According to him, as per Section 13(a) of the Copy Right Act, 1957 artistic works is a work in which copy right subsists. He also invited our attention to 2(c) defining 'artistic work' which includes a diagram, map, chart or plan. On this basis, it was argued that the project report and the plan that was got prepared by the Board, is a work in which the Board has copy right and that, therefore, is an 'Intellectual Property' of the Board exempted under Section 8 of the Right to Information Act.

12. Yet another contention, though noted by the State Commission but was not dealt with in the order is the strategic and economic interest of the State that was not pressed into service by the

Board. This clearly is a contention traceable to Section 8(1)(a) of the Right to Information Act. In other words, the State Commission has not examined the contention of the Board that the information sought was in respect of a matter which is an 'Intellectual Property' of the Board, in the light of the provisions of the Copy Right Act. Similarly, Commission has not even adverted to the contention of the Board relying on Section 8(1)(a) which also, having regard to the nature of the information in relation to which the controversy arose, is prima facie a contention with substance. In view of these inadequacies in the order passed by the Commission, we are inclined to set aside the order passed by the Commission in A.P.136/06/SIC dated 7th February, 2007, which is produced as Ext.P1 in W.P.(C)26561/07 and direct the Commission to reconsider the matter with notice to the parties and pass orders thereon duly adverting to the contentions and the materials produced by both sides.

13. Insofar as W.A.2195/07 is concerned, the interim order dated 6.8.2007 in W.P.(C)20602/07 was passed by the learned Single Judge mainly relying on Ext.P1 order in W.P.(C)26561/07 which has been set

aside by us. In such circumstances, the interim order impugned in this appeal is untenable. Therefore, the order dated 6.8.2007 passed by the learned Single Judge in W.P(C)20602/07 is set aside and the appeal is allowed.

The writ petition and the writ appeal are disposed of accordingly.

SD/-
ANTONY DOMINIC
JUDGE

SD/-
SHAJI P. CHALY
JUDGE

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