

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

WP(C).No. 10086 of 2013 (I)

PETITIONER(S) :

**LOUIS MATHEW, AGED 44 YEARS,
S/O.LATE L.MATHEW, KALLUVILAYATHIL VEEDU, MANNADI P.O.,
PATHANAMTHITTA DISTRICT.**

BY ADV. SRI.JACOB PALEX

RESPONDENT(S) :

- 1. STATE INFORMATION COMMISSIONER,
OFFICE OF THE KERALA STATE INFORMATION COMMISSION,
THIRUVANANTHAPURAM , PIN- 695 001.**
- 2. DIRECTOR OF AGRICULTURE,
DIRECTORATE OF AGRICULTURE, VIKAS BHAVAN,
THIRUVANANTHAPURAM, PIN- 695 001.**
- 3. PRINCIPAL AGRICULTURAL OFFICER,
PRINCIPAL AGRICULTURAL OFFICE, MINI CIVIL STATION,
PATHANAMTHITTA , PIN- 689 645.**
- 4. LALAN.N.,
'KRISHNALAYAM', PARAKKARA P.O, THATTAYIL, ADOOR,
PATHANAMTHITTA DISTRICT.**

**R1 BY ADV. SRI.M.AJAY, S.C,
R2 & R3 BY SR.GOVERNMENT PLEADER SRI.R.PADMARAJ**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29-10-2015, THE COURT ON 10-12-2015 DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT P1:** TRUE COPY OF THE AFORESAID APPLICATION DATED 22/03/2010 UNDER THE RIGHT TO INFORMATION ACT SUBMITTED BY THE 4TH RESPONDENT HEREIN BEFORE THE 3RD RESPONDENT.
- EXHIBIT P2:** TRUE COPY OF THE SAID LETTER DATED 05/04/2010 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.
- EXHIBIT P3:** TRUE COPY OF THE REPORT DATED 24/04/2010 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXHIBIT P4:** TRUE COPY OF THE REPLY LETTER DATED 25/06/2009 ISSUED BY THE 3RD RESPONDENT TO THE 4TH RESPONDENT.
- EXHIBIT P5:** TRUE COPY OF THE LETTER DATED 01/06/2009 ISSUED BY THE VILLAGE OFFICER, PANDALAM THEKKEKARA.
- EXHIBIT P6:** TRUE COPY OF THE LETTER DATED 12/03/2009 ISSUED BY THE SECRETARY PANADALM TEHEKKEKARA GRAMA PANCHAYATH.
- EXHIBIT P7:** TRUE COPY OF THE APPEAL DATED 10/05/2010 SUBMITTED BY THE 4TH RESPONDENT BEFORE THE 3RD RESPONDENT.
- EXHIBIT P8:** TRUE COPY OF THE LETTER DATED 13/05/2010 ISSUED TO THE PETITIONER TO BY 3RD RESPONDENT.
- EXHIBIT P9:** TRUE COPY OF THE LETTER DATED 27/05/2010 SUBMITTED BY THE PETITIONER BEFORE 3RD RESPONDENT.
- EXHIBIT P10:** TRUE COPY OF THE LETTER DATED 10/06/2010 ISSUED BY THE 3RD RESPONDENT TO THE 4TH RESPONDENT.
- EXHIBIT P11:** TRUE COPY OF THE REPORT DATED 16/09/2010 SUBMITTED BEFORE 3RD RESPONDENT.
- EXHIBIT P12:** TRUE COPY OF THE REPORT DATED 09/06/2011 SUBMITTED BY THE 3RD RESPONDENT BEFORE 2ND RESPONDENT.
- EXHIBIT P13:** TRUE COPY OF THE ORDER DATED 20/12/2012 ISSUER BY THE 1ST RESPONDENT IN AP NO.786(5) /2010/SIC.
- EXHIBIT P14:** TRUE COPY OF THE REPLY DATED 01/01/2013 SUBMITTED IN RESPONSE TO THE NOTICE ISSUED BY 1ST RESPONDENT.
- EXHIBIT P15:** TRUE COPY OF THE ORDER DATED 28/02/2013 PASSED BY THE 1ST RESPONDENT.

WP(C).No. 10086 of 2013 (I)

EXHIBIT P16: TRUE COPY OF THE ORDER DATED 22/11/2012.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.M.SHAFIQUE, J

“CR”

W.P.C.No.10086 of 2013

Dated this the 10th day of December 2015

J U D G M E N T

This writ petition is filed challenging Exts.P13 and P15. Ext.P13 is an order passed by the State Information Commissioner in an appeal filed by the 4th respondent by which decision has been taken to initiate proceedings against the petitioner under Section 20(1)(2) of the Right to Information Act, 2005 (hereinafter referred to as 'the Act') alleging that false information had been given to the 4th respondent. Ext.P15 is the order dated 28/02/2013 issued by the State Information Commissioner directing to take disciplinary action against the petitioner under Section 20(2) of the Act.

2. The short facts involved in the writ petition would disclose that the petitioner, while working as Agricultural Officer at Pandalam Thekkekkara, was called upon to send a detailed report in respect of an application submitted by the 4th respondent, Ext.P1 dated 22/03/2010 under the Act. According to the petitioner, the information sought therein is to assess and

report the alleged damage said to have been suffered by the 4th respondent, an explanation was sought under what circumstances the land owned by the 4th respondent was converted as a thodu and to ascertain the area of land owned by the 4th respondent which has been allegedly converted as thodu, with reference to the survey plan submitted by the 4th respondent. According to the petitioner, the said work was executed during the year 2009, at an approximate length of about 1585 metres, a depth of 30 Cms and an approximate width of 4 Meters. The work was executed by a beneficiary committee and the duty of the petitioner as Agricultural Officer was to verify the bills submitted by the beneficiary committee and to issue cheques in that regard. The petitioner verified the relevant files and gave the particulars available with the petitioner. It is indicated that no damage was caused to the property of the 4th respondent and that no person was eligible for compensation. The 4th respondent preferred an appeal (Ext.P7) before the Principal Agricultural Officer, Pathanamthitta demanding satisfactory response to Ext.P1 application. On receipt of Ext.P7 appeal, the 3rd respondent directed the petitioner to give a clear and satisfactory report on

the subject. Petitioner submitted a report on 27/05/2010 (Ext.P9) to the 3rd respondent, pursuant to which the 3rd respondent closed the appeal proceedings by forwarding Ext.P9 to the 4th respondent. 4th respondent, dissatisfied with the above information, approached the State Information Commission. The 3rd respondent again sought for a report from the Agricultural Officer, who submitted a report dated 16/09/2010, produced as Ext.P11. Subsequently, 4th respondent submitted a complaint before the 2nd respondent, who again sought for a report and the 3rd respondent gave a report before the 2nd respondent on 09/06/2011 (Ext.P12).

3. In Ext.P12 report it was observed that loss if any could be ascertained only by the revenue authorities as they alone can verify the exact area converted from the registered property of the 4th respondent. Hence it was observed that a joint enquiry by the officers of the Revenue and Agricultural Department is necessary. In the meantime, 1st respondent passed Ext.P13 order to which the petitioner submitted a reply dated 02/01/2013. However, the 1st respondent passed Ext.P15 order directing disciplinary action to be taken against the petitioner. It is inter

alia contended that there is no reason for the 1st respondent to have taken any action against the petitioner under the facts and circumstances involved in the case. It is contended that the information sought for in Ext.P1 is not at all an information provided under the Act, which aspect has not been considered by the 1st respondent before initiating steps against the petitioner. It is also contended that the petitioner was not responsible for the alleged loss of the 4th respondent and he was only asked to give information in relation to a work which is done prior to his joining the said office. That apart, the duty of the Information Officer is only to provide information in material form and he has no obligation to answer any questions sought by the applicant.

4. Heard the learned counsel for the petitioner, the learned Standing Counsel appearing for the 1st respondent and the learned Government Pleader.

5. Learned counsel for the petitioner relied upon the judgment of the Supreme Court in **Central Board of Secondary Education and Another v. Aditya Bandopadhyay and Others** [(2011) 8 SCC 497], especially paragraph 63, which reads as under:

“63. *At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of Section 3 and the definitions of “information” and “right to information” under clauses (f) and (j) of Section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in Section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide “advice” or “opinion” to an applicant, nor required to obtain and furnish any “opinion” or “advice” to an applicant. The reference to “opinion” or “advice”*

in the definition of “information” in Section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.

6. A perusal of Ext.P1 clearly indicates that the information sought for was not an information as defined under Section 2(f) and 2(j) of the Act. Sections 2(f), 2(j) and 3 read as under:

“2. (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;”*

“2. (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;”*

“3. Right to Information.- *Subject to the provisions of this Act, all citizens shall have the right to information.”*

7. It is clear from the judgment of the Supreme Court that when the information sought for is not part of the record of the public authority and is not required to be maintained under any law or the rules or regulation of the authority, the Act does not cast an obligation upon the public authority to collect such non-available information and furnish to the applicant. It is therefore clear that the information sought for should be some record that is available and required to be maintained by a public authority.

In Ext.P1, the information sought for is to assess the damage for the loss of improvements and a question is asked, under what circumstances his property was trespassed into for maintaining a thodu. In the answer given to Ext.P1, it was stated that with reference to the said work, that the property of the 4th respondent has not been trespassed upon and no damage has been caused to his improvements and therefore no one is entitled for any compensation.

8. When Ext.P1 is the basis of the appeal before the State Commission, it is clear that the Commission has not gone into the basic aspects involved in the matter. In Ext.P13, the 1st respondent relied upon a report in which it is stated that for reconstructing the thodu, certain improvements in the property had been cut and removed and about 2 cents of the petitioner's property has been taken over. The question is whether such an information was available as on the date of Ext.P1 and it was not provided by the petitioner. Ext.P1 is dated 22/03/2010 and the reply given was on 24/04/2010. The report which is relied upon by the State Information Commission referred in Ext.P13 is dated 09/06/2011. At the relevant time when the petitioner has

submitted answer to the query, which under law, he is not liable to answer other than by stating that there is no such record, he cannot be made responsible for giving an incorrect answer. If the applicant had asked for certain materials or reports available in the office and which were not provided, then the issue would have been different. That is not the situation here. Here the question asked was whether the Department has trespassed into the property of the petitioner and to assess the value of improvements. In so far as Ext.P1 application does not amount to a proper application in terms of the Statute, I do not think that the State Information Commissioner was justified in directing disciplinary action to be taken against the petitioner.

9. Section 20 of the Act reads as under:

“20:Penalties

(1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has without any reasonable cause, refused to receive an application for information or has not

furnished information within the time specified under sub-sec. (1) of Sec. 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public

Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-sec. (1) of Sec. 7 or mala fide denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him."

The scope and effect of Section 20 is dealt in **Manohar v. State of Maharashtra and Another** [(2012) 13 SCC 14], paragraph 28 of which reads as under:

"28. Now, we would deal with the other contention on behalf of the appellant that the order itself does not satisfy the requirements of Section 20(2) and, thus, is unsustainable in law. For this purpose, it is necessary for the Court to analyse the requirement and scope of Section 20(2) of the Act. Section 20(2) empowers a

Central Information Commission or the State Information Commission:

28.1 (i) *At the time of deciding any complaint or appeal;*

28.2 (ii) *If it is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of Section 7 (i.e. 30 days);*

28.3 (iii) *Mala fide denied the request for information or intentionally given incorrect, incomplete or misleading information; or*

28.4 (iv) *Destroyed information which was the subject of the request or obstructed in any manner in furnishing the information;*

28.5 (v) *Then it shall recommend for disciplinary action against the stated persons under the relevant service rules."*

11. It is evident from the facts brought on record that an eventuality as contemplated under Section 20 of the Act has not arisen in the case.

Having regard to the aforesaid findings, this writ petition is to be allowed. Accordingly the writ petition is allowed. Exts.P13 and P15 are quashed.

(sd/-)

(A.M.SHAFIQUE, JUDGE)

jsr