

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

WP(C).No. 21355 of 2008 (P)

PETITIONER:

PROFESSOR SREEVARAHOM BALAKRISHNAN,
PUBLIC RELATIONS OFFICER, KERALA RAJ BHAVAN,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.E.M.ABDUL KHADER

RESPONDENTS:

1. STATE INFORMATION COMMISSION,
KERALA, REPRESENTED BY ITS SECRETARY, PUNNEN ROAD
THIRUVANANTHAPURAM.

2. ADV.D.B.BINU,
M/S.COCHIN CHAMBER OF LAWYERS, PROVIDENCE ROAD
KOCHI-18.

R1 BY ADV. SRI.M.AJAY, SC, STATE INFORMATION COMMN
R2 BY ADV. SRI.P.K.IBRAHIM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-09-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 21355 of 2008 (P)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE REQUEST DATED 5.7.2007 FILED BY 2ND RESPONDENT UNDER THE RIGHT TO INFORMATION ACT.

EXT.P2: TRUE COPY OF THE COMPLAINT DATED 24.08.2007 FILED BY 2ND RESPONDENT BEFORE THE COMMISSION.

EXT.P3: TRUE COPY OF THE COMMUNICATION DATED 21.12.2007 SENT BY THE COMMISSION TO THE PETITIONER.

EXT.P4: TRUE COPY OF THE ORDER DATED 10.03.2008 PASSED BY THE COMMISSION DISPOSING EXT.P2 COMPLAINT.

EXT.P5: TRUE COPY OF THE NOTICE DATED 17.03.2008 SENT BY THE COMMISSION TO THE PETITIONER.

EXT.P6: TRUE COPY OF THE EXPLANATION DATED 28.03.2008 SUBMITTED BY THE PETITIONER BEFORE THE COMMISSION.

EXT.P7: TRUE COPY OF THE ORDER DT.17.06.2008 PASSED BY THE COMMISSION IMPOSING PENALTY ON THE PETITIONER.

RESPONDENTS EXHIBIT: NIL

TRUE COPY

P.A.TO JUDGE

ANU SIVARAMAN, J.
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W.P.(C).No.21355 of 2008
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Dated this the 3rd day of September, 2015

JUDGMENT

The petitioner who was the Public Relations Officer, Kerala Raj Bhavan, has filed this writ petition challenging Ext.P7 order issued by the State Information Commission, Kerala. The order of the State Information Commission, finding that the petitioner had caused inordinate delay in providing information under the Act, is under challenge on the ground that it is unsustainable and lacking in jurisdiction. By the impugned order, the petitioner was directed to pay penalty of Rs.25,000/-, failing which it would be recovered from his salary. When the writ petition was admitted, an order of interim stay of operation and implementation of Ext.P7 order was granted by this Court on condition that the petitioner pays an amount of Rs.5,000/- out of the penalty within two weeks.

2. Heard learned Government Pleader appearing for the petitioner and Sri.M.Ajay learned Standing Counsel appearing for the first respondent and Smt.Shiby, learned counsel appearing for the second respondent. It was contended by the learned Government Pleader that the order of penalty is dated 17.06.2008 and is among one of the first orders of this nature issued by the State Information

Commission. It is the contention of the petitioner that he is a senior citizen aged 81 and that at the time of issuance of the order in question, the machinery under the Right to Information Act was in its infancy and the petitioner did not fathom the extent of the powers of the authorities under the Act. It is further submitted that it was only when a complaint was submitted before the 1st respondent under Section 18 of the Act that the petitioner became aware of the seriousness of the situation and immediately thereafter he had provided the information as sought for by the 2nd respondent. It is also submitted that the petitioner had preferred Ext.P6 reply before the 1st respondent pointing out the reasons for the delay which ought to have been considered favourably by the 1st respondent. Further it is urged that the amount of Rs.25,000/- is the maximum amount of fine imposable for an offence of the nature committed by the petitioner and the imposition of the maximum amount was not warranted in the facts and circumstances of the case.

3. Learned counsel appearing for the 1st respondent would submit that Ext.P7 is an order passed in strict compliance with all procedural formalities, after hearing the petitioner and considering each and everyone of his objections. It is perfectly within jurisdiction and suffers no legal infirmities whatever, it is submitted. It is also

urged that unless orders in the nature of Ext.P7 were issued by the first respondent the machinery under the Right to Information Act would not have attained the efficiency that it has today. Learned counsel for the 2nd respondent would submit that there was absolutely no justification for the petitioner to have withheld the information and the conduct of the petitioner amounted to clear defiance of the powers and authority conferred under the Act. The attempt of the petitioner was only to defeat the implementation of the provisions of the Act, it is submitted.

4. After having heard the learned counsel appearing in the case and after considering the pleadings and the materials on record, I am not inclined to interfere with Ext.P7 order, in so far as it does not suffer from any legal infirmity. However, taking note of the contention of the petitioner with regard to the circumstances under which the information happened to be withheld as also considering the fact that in respect of the enactment of the R.T.I.Act it was early days yet and the penalisation of the petitioner to the extent of the maximum amount of penalty available under the Act does not appear to be justified. In any event, since the petitioner had been directed to pay an amount of Rs.5000/- out of the penalty imposed in Ext.P7, I deem it appropriate to uphold Ext.P7 but with a modification that the

penalty shall be limited to the amount of Rs.5000/- already paid by the petitioner. If the amount of Rs.5,000/- has not actually been paid by the petitioner, the same shall be paid within a period two weeks from the date of receipt of a copy of the judgment.

The writ petition is disposed of as above.

Anu Sivaraman, Judge

sj