

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.Nos.7983 & 7984 of 2012 and
M.P.Nos.1 & 2 of 2012

1.Mr.S.Rajaraman ... petitioner in W.P.No.7983 of 2012
2.Mr.T.A.Seralathan ... petitioner in W.P.No.7984 of 2012

Vs.

1.Tamil Nadu Information Commission,
No.2, Thiagaraya Road, Teynampet,
Chennai 600 018.

2.Thiru.Prakash Kumar,
No.90/26, N.S.C.Bose Road, Patni Plaza I Floor,
Chennai 600 079.

3.The Superintending Engineer,
Tamil nadu Generation & Distribution Corporation Ltd.,
CEDC(Central), Chennai-34.

... Respondents in both W.Ps

Prayer in both W.Ps : Petitions filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the first respondent in case No.7006/Enquiry/C/2011 dated 27.02.2012 and quash the same as illegal, violative of the provisions Section 20 of the Right to Information Act, 2005 and against the principles of Natural justice.

For Petitioners : Mr.A.Chandrasekaran

For Respondents : Mr.Niranjana Rajagopalan for
M/s.G.R Associates for R1

: Mrs.R.Varalakshmi for R3

C O M M O N O R D E R

Heard Mr.A.Chandrasekaran, learned counsel appearing for the petitioners and Mr.Niranjana Rajagopalan and Mrs.R.Varalakshmi, learned counsel appearing for the respondents.

2. Since both the writ petitions are challenging the same impugned order, they are taken up together for disposal.

3. The petitioners have approached this Court for seeking the following relief,

"To issue a Writ of Certiorari, to call for the records on the file of the first respondent in case No.7006/Enquiry/C/2011 dated 27.02.2012 and quash the same as illegal, violative of the provisions of Section 20 of the Right to Information Act, 2005 and against the principles of Natural justice."

4. The case of the petitioners is as follows:

The petitioners were the Public Information Officers, in respect of the office of the SE/CEDC/Central, Tamil Nadu Generation and Distribution Corporation Limited, Chennai-34, the third respondent herein. At the relevant time, the petitioners were working as Executive Engineers and were also acting as Public Information Officers. The second respondent had submitted an application for information under the Right to Information Act vide his letter dated 05.10.2010, addressed to the third respondent which was forwarded to the petitioners, since the petitioners were holding the post of Public Information Officers in the office of the third respondent.

5. The information which was sought by the second respondent was in relation to certain service connections provided by the Electricity Board to the premises of one third party and the name transfer effected thereon during the year 2001. The information which was sought was in relation to period of nine years earlier and the petitioners inspite of their best efforts could not furnish any information, since the records were not readily available and traceable by the petitioners.

6. The second respondent had also in this connection, approached the third respondent. The third respondent was not able to get necessary records for the purpose of furnishing information as sought by the second respondent. In the said circumstances, the second respondent appears to have approached the first respondent-Information Commission. After notice for production of the documents, the petitioners could not comply with the direction, in view of the non-availability of the relevant records.

7. In the said circumstances, the first respondent issued summons to the petitioners to attend the enquiry on 15.11.2011. The petitioners attended the enquiry on the same day and explained to the Commission that the records were not available and traceable due to passage of time. Thereafter, the first respondent-Commission had once again directed the

petitioners to search and make the documents available vide proceedings dated 17.11.2011.

8. While matter stood thus, in response to the direction of the first respondent-Commission, the petitioners have submitted a letter on 22.11.2011, informing the first respondent about the non-availability of information and documents sought by the second respondent, in detail. The copy of the letter was also addressed to the second respondent. However, not satisfied with the explanation, the first respondent-Commission directed the petitioners to attend an enquiry once again on 24.02.2012. Once again the petitioners appeared before the Commission and informed about their inability to trace the records.

9. In view of this non-availability in the office of the petitioners or in the office of the third respondent, on the same day the Commission had passed an order by levying a maximum penalty of Rs.25,000/- on the petitioners under Section 20(1) of Right to Information Act, for not providing required information to the second respondent, within the stipulated time and for not complying with the orders of the Commission dated 08.06.2011 and 15.11.2011. The amount was ordered to be recovered in two instalments as against the petitioners as well as the previous Public Relation Officer. Aggrieved by the levy of maximum penalty under the provisions of Right to Information Act, both the petitioners are before this Court, challenging the levy of penalty.

10. At the outset, the learned counsel appearing for the petitioners would submit that the imposition of penalty that too maximum penalty on the petitioners when the records were not available or traceable cannot be justified under any circumstances and the approach by the first respondent-Commission is without proper application of mind. The learned counsel would draw the Court's attention to the proceedings of the third respondent dated 19.03.2012, wherein a committee was appointed to search for the documents and after a thorough search, it was found that the documents were not available. That being the case, how the petitioners could be blamed for not supplying the effective reply to the information sought by the second respondent, in the absence of availability of records. In the said circumstances, the first respondent-Commission ordered a levy of penalty on the petitioners cannot be countenanced both in law and on facts.

11. The learned counsel for the petitioner would also draw the attention of this Court to the order passed by the learned Single Judge of this Court in W.P.No.14702 of 2009 dated 20.07.2011, in which the learned Judge had referred to the decision of the Hon'ble Division Bench of this Court reported in 2010 (2) MLJ 140 and extracted the relevant portion of the observations made by this Court and allowed the writ petition in identical circumstances. The reliance placed

by this Court as held in the said decision that the imposition of levy without issuing a proper notice to the Public Information Officer was held to be invalid. Moreover, he would submit that in the instant case, the information which was sought by the second respondent cannot be sustained which is beyond the control of the petitioners who are acting as Information Officers at the relevant time.

12. Upon notice, the learned counsel appearing for the respondents entered appearance and made his submissions as regards the absence of prior notice to the petitioners while being imposed the levy of penalty. He would not dispute the said fact. However, he would submit that the first respondent-Commission is empowered to impose such levy in terms of provisions of the Right to Information Act.

13. This Court has considered the rival submissions of the learned counsels and also perused the relevant materials and pleadings placed on record. This Court is fully in agreement with the submissions made by the learned counsel appearing for the petitioners that the imposition of penalty on the petitioners cannot be sustained at all under law for more than one reason. Firstly, as rightly contended by the learned counsel appearing for the petitioners that no notice was issued to the petitioners and explanation called for before levying the penalty on the petitioners. This action on the part of the first respondent-Commission is contrary to the legal principles enunciated by this Court as afore mentioned.

14. Moreover, this Court does not appreciate the manner in which the penalty came to be passed on the petitioners is completely without any factual and legal justification and the same cannot be allowed to stand. In view of the above, this Court has no hesitation in setting aside the impugned order in Case No.7006/Enquiry/C/2011 dated 27.02.2012 of the first respondent-Commission, in so far as the levy of penalty of Rs.25,000/- on the petitioners.

15. With the above ruling, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsk

To

1.Tamil Nadu Information Commission,
No.2, Thiagaraya Road, Teynampet,
Chennai 600 018.

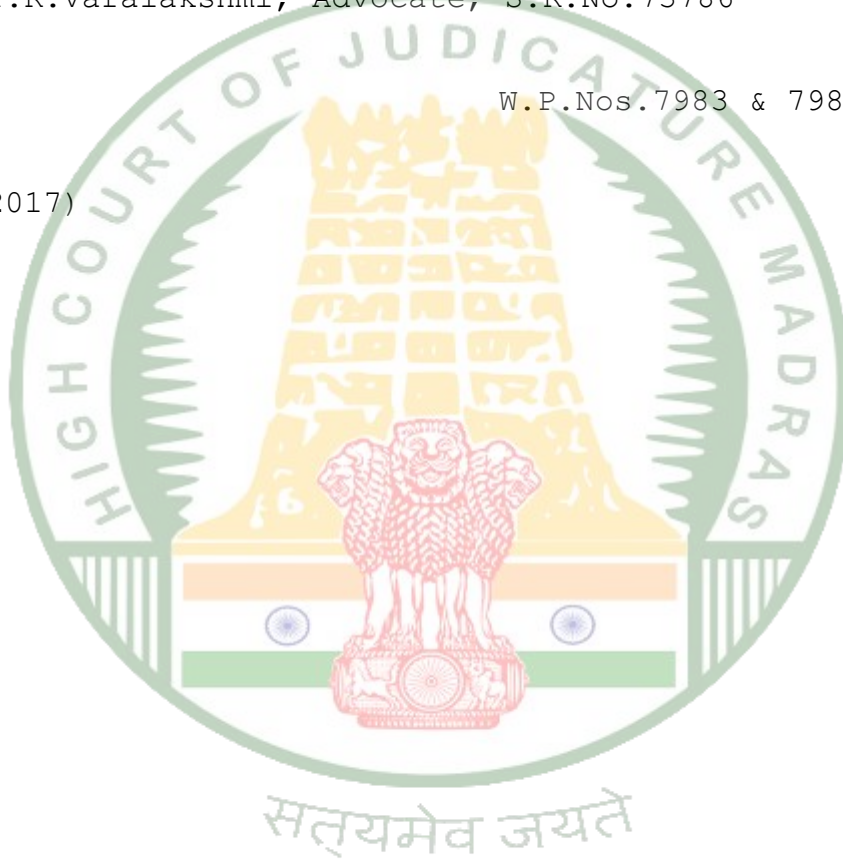
2.The Superintending Engineer,
Tamil nadu Generation & Distribution Corporation Ltd.,
CEDC(Central), Chennai-34.

+2cc to Mr.G.R.Associates, Advocate, S.R.No.73424,73423

+1cc to Mr.R.Varalakshmi, Advocate, S.R.No.73786

W.P.Nos.7983 & 7984 of 2012

RK(CO)
GN(21/11/2017)



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