

Reserved on : 20.06.2017

Delivered on : 04.07.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2017

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.39767 of 2016

V.Vidya

... Petitioner

Vs.

1. The State Information Commissioner,
Tamil Nadu Information Commission,
Teynampet, Chennai - 600 018.

2. The Public Information Officer CBCID,
Pantheon Road, Egmore, Chennai - 600 008. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records made in the impugned order in Case No.SA 5407/F/2016 & SA 5408/F/2016 (CP173/2015 & MP15086/2015) dated 19.08.2016 passed by the 1st respondent herein and quash the same as illegal and direct the 2nd respondent to supply necessary copies of all information sought for by the petitioner in the petition to the PIO (Public Information Officer), CBCID.

Petitioner : Ms.V.Vidya - party in person

For Respondents : Mr.Niranjan Rajagopal (R1)
Mr.A.N.Thambidurai,
Special Government Pleader (R2)

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O R D E R

The petitioner has filed the Writ Petition to issue a writ of certiorarified mandamus to call for the records made in the impugned order dated 19.08.2016 passed by the 1st respondent and to quash the same and direct the 2nd respondent to supply necessary copies of all information sought for by the petitioner in her petition to the PIO, CBCID.

2.The brief case of the petitioner is as follows:

(i) According to the petitioner, she is a business-woman, engaged in Real Estate business and during the course of the business, she was introduced to one K.C.Bose, Venkatakrishnan and Venkateswaran pertaining to a land transaction in Orathur Village. The area of land transacted was 125 grounds in the said village and that she was informed that it belonged to the said K.C.Bose. According to the petitioner, she parted Rs.25,00,000/- for completing the documentation. It was then she realized that the property does not belong to the said Bose, therefore, she instituted a criminal complaint against the said K.C.Bose and others. However, the Police closed the complaint on the ground that it is purely a civil dispute.

(ii) According to the petitioner, it is only then, she became aware that the then Additional Commissioner of Police, Greater Chennai, ensured that her complaint is not taken on file to safeguard his close associate K.C.Bose and preempt to symbolically threaten that false cases would be filed against her in order to deter in proceeding legally against the said K.C.Bose on the issue that she had got cheated in making payment of Rs.25,00,000/- to K.C.Bose for completion of registration of 125 grounds, wherein there was no plot in existence as per the revenue records certified by the VAO of Orathur Village. She gave a complaint to the Chief Minister of Tamil Nadu on 12.06.2015 to conduct a detailed enquiry and to suspend the then Sub Urban Commissioner and others. Pursuant to the directions, investigation was conducted by the Additional Director General of Police, CBCID and after recording the statements of the witnesses, he also filed a report. The petitioner preferred a RTI petition to the PIO, CBCID dated 18.12.2014. The petitioner had preferred two petitions dated 01.12.2014 to the Home Secretary of Tamil Nadu for want of police protection at the cost of the Government and to register FIR in Crime No.310 of 2009 for the malafide acts, resulting in prosecution against her.

(iii) According to the petitioner, inspite of enumerating the entire episode in detail, the State Information Commissioner, who had taken cognizance of the case, had also admitted in his order that he had perused the typed set of papers, had finally concluded that the police officials have acted according to law as provided under the Criminal Procedure Code and hence, there is no sufficient materials to establish that the police have violated the human rights of the petitioner and indulged in corrupt activities. Challenging the order passed by the 1st respondent viz., the State Information Commissioner, the petitioner has filed the above Writ Petition.

3. Heard Ms.V.Vidya, petitioner appearing in person, Mr.Niranjan Rajagopal, learned counsel appearing for the 1st respondent and Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the 2nd respondent.

4. The petitioner submitted that under proviso to Section 24 (4) of the Right to Information Act, 2005, she is entitled to the information sought for by her from the PIO, CBCID. In support of her contention, the petitioner relied upon the following judgments:

(i) An un-reported judgment dated 07.01.2014 made in Criminal Appeal No.1485 of 2008 wherein the Hon'ble Supreme Court held as follows:

"...

21. On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months."

(ii) (1980) 2 Supreme Court Cases 559 [Niranjan Singh and another Vs. Prabhakar Rajaram Kharote and others] wherein the Hon'ble Supreme Court held as follows:

"...

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" is a part of the Universal Declaration of Human

Rights. The content of Article 21 of our Constitution, read in the light of Article 19, is similarly elevating. But romance about human rights and rhetoric about constitutional mandates lose credibility if, in practice, the protectors of law and minions of the State become engines of terror and panic people into fear. We are constrained to make these observations as our conscience is in consternation when we read the facts of the case which have given rise to the order challenged before us in this petition for special leave.

...

12. We conclude this order on a note of anguish. The complainant has been protesting against the State's bias and police threats. We must remember that a democratic State is the custodian of people's interests and not only police interests. Then how come that the team of ten policemen against whom a magistrate, after due enquiry, found a case to be proceeded with and grave charges, including for murder, were framed continue on duty without so much as being suspended from service until disposal of the pending sessions trial? On whose side is the State? The rule of law is not a one-way traffic and the authority of the State is not for the police and against the people. A responsible Government responsive to appearances of justice, would have placed police officers against whom serious charges had been framed by a criminal Court, under suspension unless exceptional circumstances suggesting a contrary course exist. After all a gesture of justice to courts of justice is the least that a government owes to the governed. We are confident that this inadvertence will be made good and the State of Maharashtra will disprove by deeds Henry Clay's famous censure :

The arts of power and its minions are the same in all countries and in all ages. It marks its victim, denounces it, and excites the public odium and the public hatred, to conceal its own abuses and encroachments."

5. Countering the submissions made by the petitioner, Mr. Niranjan Rajagopal appearing for the 1st respondent submitted that under Section 24 of the Right to Information Act, 2005, the petitioner is not entitled to get the details from the PIO, CBCID for the reason that the cases put up by the petitioner is not a case of corruption and human rights violation.

6. In order to establish that the prosecution was malicious, the petitioner has narrated her entire case. The petitioner has stated that on the wrongful and unlawful act of the prosecution, in connivance with the complainants, case was conducted with malicious intention to lower her reputation in the eye of the public and before her friends and relatives and has also stated that for obvious reasons to threaten and to deter further proceedings by her on K.C.Bose, false cases were foisted against her.

7. It is pertinent to note that the petitioner had sought for the status of the complaint dated 01.12.2014 pending before the Public Information Officer. The said complaint was forwarded by the Joint Secretary, Tamil Nadu to the Additional Director General of Police, CBCID for taking necessary action. Since the PIO failed to furnish the information within the stipulated time, she filed an appeal under Section 19(1) of the Right to Information Act before the Appellate Authority. Even after filing the First Appeal, since the petitioner was not supplied with the information, she had filed a complaint under Section 18 (1) of the Right to Information Act to the Commission in C.P.No.173 of 2015. During the course of enquiry on 10.02.2016, the Commission passed an order by adjourning the hearing for having joint trial with another complaint No.MP.15086 of 2015. During the course of enquiry, the petitioner pressed for getting information under the RTI application without filing Second Appeals under Section 19(3) of the RTI Act. On 09.06.2016, the Commission passed an order directing the petitioner to file Second Appeals under Section 19(3) of the RTI Act for getting information from the concerned PIO on her RTI petitions dated 18.12.2014 and 24.08.2015 before the Commission within 15 days. On the basis of the order dated 09.06.2016, the petitioner filed Second Appeal under Section 19(3) of the RTI Act based on the RTI petition dated 18.12.2014. The same was taken on file by the Commission in SA 5407/F/2016.

8. The petitioner filed a petition under Section 6(1) of the RTI Act to the Public Information Officer, CBCID seeking for the following information:

(a) On the basis of her complaint dated 01.12.2014, 22.12.2014 and 23.12.2014, enquiries were conducted by the DSP Mr.Balu and ADGP Mr.Karan Singha on 08.07.2015 and 17.08.2015. She requested the PIO to supply the copy of the findings of DSP Mr.Balu and ADGP Mr.Karan Singha along with the copies of the summons sent to the witnesses along with the statement of witnesses and materials received in connection with the enquiry conducted by them.

9. Since the concerned PIO failed to supply the information within the stipulated time, she filed First Appeal under Section 19(1) of the RTI Act on 25.09.2015 to the Appellate Authority. Since she was not supplied with the information within the stipulated time, she filed a complaint under Section 18(1) to the Commission for not supplying the information and also to have joint enquiry with CP No.173 of 2015. As per the direction of the Commission, she filed Second Appeal under Section 19(3) of the RTI Act for getting information from the concerned PIO on her petitions dated 18.12.2014 and 24.08.2015. On the basis of the order dated 09.06.2016, she filed Second Appeal dated 22.06.2016 under Section 19(3) of the RTI Act and the same was taken on file by the Commission in SA 5408/F/2016. The petitioner has sought for certain information about the actions taken by the CBCID Police in connection with her complaint dated 01.12.2014 and the complaints given before the Chief Minister Cell. She has further stated that those complaints were given to take appropriate action against the erring police officials who have arrested her and confined her in custody in criminal cases on the complaint given by one K.C.Bose and during the course of investigation, the petitioner was arrested and was remanded. The information sought for by the petitioner is connected with the discreet and confidential enquiry particulars.

10. It is pertinent to extract Section 24 of the Right to Information Act, 2005, which reads as follows:

"24. Act not to apply in certain organizations.-

(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.

(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 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."

11. As per Section 24(4) of the RTI Act, the Act shall apply to such intelligence and security organizations being organizations 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 the 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 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.

12. The respondents relied upon a Government Order in G.O.Ms.No.1043, Public (ESTT-I & LEG) Department, dated 14.10.2015, wherein certain establishments are exempted under Section 24(4) of the RTI Act by the Government of Tamil Nadu from supplying information under the RTI Act. As per the G.O.Ms.No.1043 dated 14.10.2015, the CBCID and Special Investigation Team are exempted from providing information under RTI Act.

13. According to the respondents, the Government Order in G.O.Ms.No.1043 dated 14.10.2015 is still in force. In view of the provisions of Section 24(4) of the RTI Act and G.O.Ms.No.1043 dated 14.10.2015, the 1st respondent Commission has rightly found that it has no powers to direct the PIO, CBCID to furnish the information sought for by the petitioner. Since the information sought for by the petitioner are confidential enquiry particulars, the same cannot be furnished to the petitioner under the RTI Act in view of the provisions of Section 24(4) and G.O.Ms.No.1043 dated 14.10.2015. The 1st respondent also recorded that the petitioner was arrested and remanded to judicial custody during the course of investigation and therefore, no malafides can be attributed to the police officers. In the absence of any material to establish that the police officials have violated human rights of the petitioner and also indulged in corrupt activities, the 1st respondent has rightly dismissed the appeals.

14. For the reasons stated above, the judgments relied upon by the petitioner are not applicable to the present case.

15. In these circumstances, the Writ Petition is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The State Information Commissioner,
Tamil Nadu Information Commission,
Teynampet, Chennai - 600 018.
2. The Public Information Officer CBCID,
Pantheon Road, Egmore,
Chennai - 600 008.

+2cc to Ms.V.Vidya, Advocate, S.R.No.46201

W.P.No.39767 of 2016

CS/05/07/17