

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.12.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.20148 of 2008

and

M.P.No.1 of 2008

The Secretary,
Tamil Nadu Sales Tax
Appellate Tribunal (Additional Bench)
Coimbatore.

... Petitioner

Vs.

1. Tamil Nadu Information Commission,
379, Anna Salai, Teynampet,
Chennai.

2. V.Subbiah Naidu

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 1st respondent in Case No.2005/Enquiry/2008 dated 24.06.2008 and quash the same.

For Petitioner:Mr.M.Hariharan
Special Government Pleader (Taxes)

For R1 :Mr.Niranjan
For G.R.Associates

R2 - Served

No Appearance

ORDER

This Writ Petition has been filed to call for the records of the 1st respondent in Case No.2005/Enquiry/2008 dated 24.06.2008 and to quash the same.

2. The brief facts leading to the present Writ Petition are that the 2nd respondent was a practicing advocate, seems to have asked for certain information from the petitioner on 04.10.2007 regarding the powers and the details of the actual exercise of powers by the Tamil Nadu Sales Tax Appellate Tribunal,

Coimbatore. The following questions were asked by the 2nd respondent from the Writ Petitioner:

A) Dates of actual functioning of the Bench with both the members date-wise during July 2007 and August 2007.

B) Provisions of regulations with regard to passing of the ex-parte orders of stay and appeal without serving final notice either to the Appellant / Respondent or his Authorized Counsels during July 2007 and August 2007 - date-wise (with reference to CTP Number / CTA Number / CTSA Number); and

C) The Chairman has held the post of Judicial Member in the STAT (AB), Coimbatore during the months of July and August 2007. In this connection, the following details may please be furnished:

a) Provisions / regulations with regard to hold the post of judicial member by the Chairman who is in the Cadre of District Judge, in the Additional Bench which is statutorily allotted to the Cadre of Sub-Judge, may please be enlightened; and

b) Section 30(3)(C) of the TNGST Act 1959 goes as under:

"Where an appeal or application is heard by a Bench consisting of two members, and the members are divided in their opinion on any point, the point shall be referred for decision to a Bench consisting of three members of whom one shall be the Chairman".

3. For the said query, a reply seems to have been issued on 06.11.2007 by the Writ Petitioner, stating that the Tamil Nadu Value Added Tax Appellate Tribunal Right to Information Rules and Guidelines are pending before the Government of Tamil Nadu for approval and notification is awaited, and therefore, unable to furnish the reply to the 2nd respondent's query. Thereafter, the 2nd respondent filed an appeal before the 1st respondent and the 1st respondent by an order dated 24.06.2008 has passed the impugned order, which is under challenge in this Writ Petition, wherein, the following orders have been passed.

"A reply was given on 06.11.2007 by the Secretary, Tamil Nadu Sales Tax Appellate Tribunal, Additional Bench, Coimbatore, stating that no Public Information Officer has been appointed to the Tribunal and as such they are unable to reply to the queries. When an enquiry was posted by the

Commission last time on 17.06.2008, the public authority stated that they wanted to be represented by a lawyer, upon which the enquiry was posted today (24th June 2008). The public authority has come again today without any lawyer claiming that they can themselves argue the case which itself seems to be a dilatory tactic. The public authority is not only remiss in not supplying the information, but are even more seriously remiss for the violation of the duty cast upon them by Section 5(1) of the Right to Information Act by which within 100 days of the Act coming into operation, they should have designated the Public Information Officer. The public authority stated that they have written to the Government and are awaiting Government sanction on the appointment of Public Information Officer, but, the Act does not ask for sanction by the Government and place the application straight away on the public authority.

The Commission finds it particularly galling considering the fact that this Tribunal is headed by a trained law officer of the cadre of the District Judge, who should at least be aware of the law of the land. The Commission has therefore no option but to require the public authority to appoint, under the powers vested under Section 19 (8) (a) (ii), the Chairman of the Tribunal, who is reported to be the administrative head as stated by the officer representing the public authority at the enquiry as the Public Information Officer, and direct him to supply information within three days of this order to the petitioner in full, obtain his acknowledgment and file the same before the Commission.

The Commission also directs the Public Information Officer to submit his personal explanation as to why the penalty as prescribed under the Act of Rs.250/- per day of default of not supplying information which in this case would amount to Rs.25,000/- limited by the Act as maximum should not be levied upon the Public Information Officer and collected from him. This explanation should reach the Commission within four weeks of this order, failing which the Commission would consider that there is no explanation to offer and proceed with consideration on levying the penalty as called for. The Commission also directs that the information should be given free of cost and any payment made by the petitioner should be refunded to him as called for under Section 7(6) of the Act"

4. Challenging the above said order, the present Writ Petition has been filed by the petitioner Tribunal on the ground that the 1st respondent had exceeded its power by directing the petitioner to appoint any officer without concurrence of sanction of the Government.

5. Mr.Hariharan, learned Special Government Pleader appearing for the petitioner, had vehemently contended that the 1st respondent has no Jurisdiction to give direction to the petitioner to appoint a Public Information Officer. The statute does not provide any such powers to the 1st respondent in directing any authority much less the petitioner tribunal to appoint Public Information Officer, despite the reason that such appointment and the draft rules pertaining to Right to Information Act to be framed was pending before the Tribunal for the sanction of the Government.

6. Mr.Nirenjan, the learned counsel appearing for the 1st respondent contended that in the absence of the Public Information Officer as contemplated under the Act, the 1st respondent commission is justified in directing the petitioner to appoint Public Information Officer, as the power is vested to the Information Commission under Section 19(8)(a)(ii) of the Act.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondents, and perused the materials available on record.

8. The present Writ Petition is filed against the order passed by the 1st respondent in an appeal filed by the 2nd respondent herein. Section 19 of the Right to Information Act, 2005, clearly provides that any person, who does not receive a decision or a reply within 30 days as specified under Sub Section (1) of Section 7 of the Act or is aggrieved by a decision of the Central Public Information Officer or the State Public Information Officer, as the case may be, within 30 days from the date of expiry of such period or from the receipt of such a decision, can prefer an appeal to such officer, who is senior in the rank to the Central Public Information Officer or the State Public Information Officer, as the case may be, in each public authority. As far as the order passed in the present appeal which is under challenge in this Writ Petition, wherein, the 1st respondent had directed the Head of the Tribunal who is the administrative head as Public Information Officer, to supply the information within 3 days from the date of order to the 2nd respondent herein. Apart from that, the 1st respondent had also directed to submit his explanation, as to why penalty as prescribed under the Act of Rs.250/- per day of default for not supplying information which in this case amount to Rs.25000/-, limited by the Act as the maximum, should not be levied upon the

Public Information Officer and further sought an explanation within four weeks from the date of the order.

9. On perusal of the provision of the Act, especially Section 19(8)(a)(ii), no doubt the provision empowers the Commission by appointing a Central Public Information Officer or State Public Information Officer, as the case may be. However, in the present case, both the Right to Information Officer or the State Public Information Officer, as even in the year 2007, after almost 2 years of the Act coming into force, the petitioner had stated that the Rules under Right to Information Act and the Guidelines are pending before the Government of Tamilnadu for approval and notification was awaited as on 06.11.2007. Thereafter, on a perusal of the documents filed by the petitioner, it is clear that on 25.06.2008 the petitioner has appointed the designated Public Information Officer and the Appellate Authority. However, at that time, the 2nd respondent sought for certain information on 04.10.2007 from the petitioner herein. Admittedly, the petitioner tribunal had not appointed the Public Information Officer, as contemplated under Right to Information Act 2005.

10. In the absence of any Public Information Officer, the Secretary, Sales Tax Appellate Tribunal, seems to have addressed the 2nd respondent herein that the Rules under the Right to Information Act and the Guidelines are pending before the Government of Tamilnadu for approval and the notification was awaited as on 06.11.2007.

11. In the absence of any Public Information Officer and the Appellate authority under Section 19, the 2nd respondent has filed an Appeal directly to the 1st respondent being the Chief Information Commission.

12. On the reading of Section 19(8)(a)(ii), no doubt, the Commission is empowered to direct for appointing the Public Information Officer to the petitioner tribunal as it is the duty and mandate of the public office of the petitioner's tribunal to appoint Public Information Officer. The records show that even after 2 years of the Right to Information Act 2005 coming into force, only on 25.06.2008, the notification in R.C.No.11775/2007/C5 came to be issued by the petitioners tribunal, notifying and designating the Public Information Officer and the Appellate authority.

13. On a careful perusal of the order of the 1st respondent, as far as directing the head of the Tribunal as Public Information Officer and directing him to supply information to the 2nd respondent herein, this Court do not find any infirmity, as the same is in consonance with Section 19(8)(a)(ii) of Right to Information Act 2005. However, the second portion of the order showing cause why penalty should not be imposed for not

furnishing the information to the maximum of Rs.25,000/-, this Court is of the view that the later portion of the impugned order has to be set aside for the reason that it is a factual portion since on the date of the second respondent seeking information, no Public Information Officer was appointed and the framing of rules and guidelines under Right to Information Act was under consideration and the same came to be notified only on 25.06.2008 i.e. one day later than the order passed by the 1st respondent on 24.06.2008.

14. The 1st respondent has also relied on the Judgment of the Honourable Supreme Court of India, reported in 2004 3 SCC 440, in the case of [Special Director and Another Vs. Mohd. Ghulam Ghouse and Another], wherein, the Honourable Apex Court in paragraph 5 of the said Judgment, held an alternative remedy that the show cause notice cannot just like be questioned before this Court under Article 226 of the Constitution of India, stating that unless the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of Jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine and the Writ Petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the Writ Petition. It is also held that whether the show cause notice was founded on any legal premises is a jurisdictional issue, which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court.

15. The above case cited by the 1st respondent is not applicable to the case on hand, since on the date of the show cause notice, the authority was waiting for the Government's approval for appointing a Public Information Officer, hence, there is no fault on their part and accordingly, the Writ Petitioner has correctly approached this Court, challenging the said show cause notice proposing to impose Rs.25,000/- as penalty for not appointing the officer, and this Court is not entertained the same and the penalty has been set aside.

16. The learned counsel Mr.Niranjan would submit that even though, the Public Information Officer has been appointed and the information has been given to the 2nd respondent, it is only for the academic purpose, he is pursuing this Writ Petition, regarding the validity of Section 19(8)(a)(ii) of Right to Information Act, 2005. Since already a Public Information Officer has been appointed and the purpose of appointing the person has been fulfilled, nothing survives in this Writ Petition. But, still, this Court is of the view that the impugned order has to be set side in part with regard to the proposed imposition of the penalty and it is hereby set aside to that extent. Accordingly, the Writ Petition is partly allowed.

No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

raja

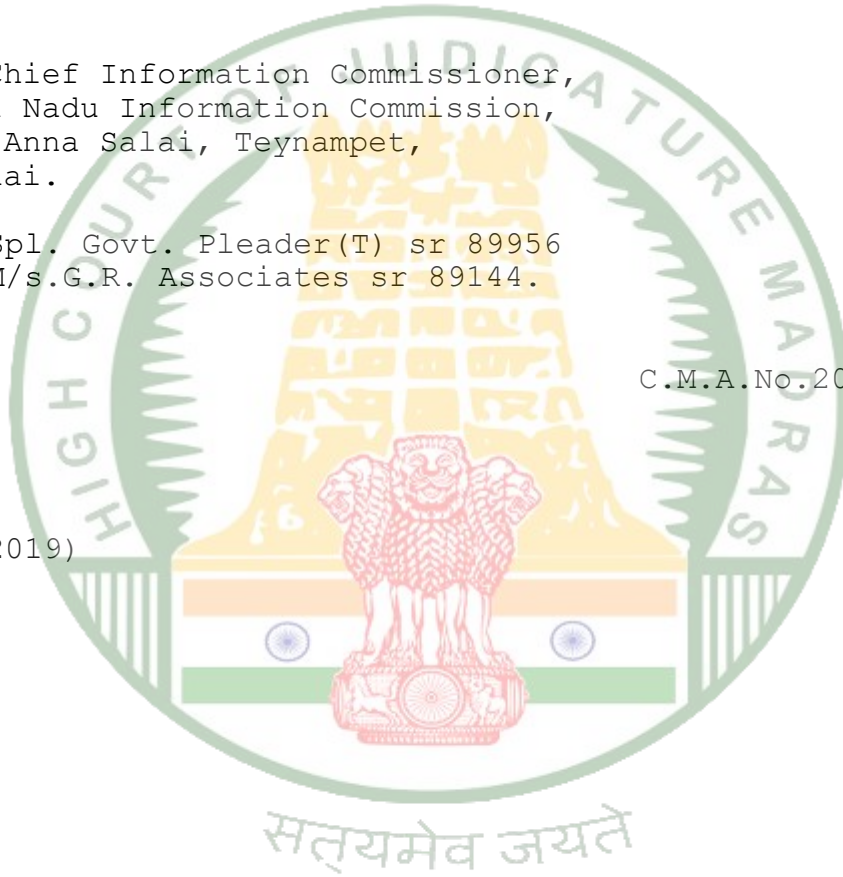
To

The Chief Information Commissioner,
Tamil Nadu Information Commission,
379, Anna Salai, Teynampet,
Chennai.

+1 CC to Spl. Govt. Pleader(T) sr 89956
+1 CC to M/s.G.R. Associates sr 89144.

C.M.A.No.20148 of 2008

GMR(CO)
SP(21/02/2019)



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