

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2018

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.No.4277 of 2015

The Principal Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat, Chennai - 600 009. ... Petitioner

Vs

1.G.Devadhas
2.The Tamil Nadu Information Commission,
No.2, Thiyagaraya Road,
Teynampet, Chennai - 600 018.
represented by the Registrar. ... Respondents

Prayer : Writ Petition filed under Article 226 of the
Constitution of India for issuance of a Writ of Certiorari
calling for the records relating to the order dated
20.11.2014 made in Case No.27031/SCIC/2014 passed by the
2nd respondent herein and quash the same.

For Petitioner : A.Shrijayanthi
Special Government Pleader

For Respondents : Mr.T.Ranganathan for R1

: Mr.L.P.Maurya
for M/s. G.R. Associates for R2

O R D E R

The order passed by the Tamil Nadu Information
Commission in Case No.27031/SCIC/2014 dated 20.11.2014, is
under challenge in this writ petition.

2. The Principal Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat, Chennai - 600 009, is the petitioner. The
affidavit filed in support of the writ petition has been
filed by the Deputy Secretary to Government (B&E),

Personnel and Administrative Reforms Department,
Secretariat, Chennai.

3. The learned Special Government Pleader, appearing on behalf of the writ petitioner made a submission that the 1st respondent, G.Devadhas, sent a letter dated 18.06.2014 to the Public Information Officer, Personnel and Administrative Reforms (Q) Department, Secretariat, Chennai, with a request to furnish a copy of the note file and current file in the file bearing No.29054/Q/2008. The 1st respondent is an employee of the Secretariat, who was working as an Under Secretary to Government in the Secretariat of Tamil Nadu and he was facing departmental disciplinary proceedings, as well as criminal proceedings. The application submitted by the 1st respondent, seeking information in respect of the note file and current file was rejected by the Public Information Officer, under Section 8(1)(h) of the Right to Information Act, 2005. The reason furnished to the applicant for rejection is that, the production of the note file and current file would impend the process of the disciplinary case, as well as the criminal case pending against the 1st respondent. The said order was challenged by the 1st respondent before the Tamil Nadu Information Commission. The Commission conducted an enquiry and came to a conclusion that the 1st respondent is not entitled to seek information in respect of the note file, whereas, he is entitled to seek information in respect of the current file.

4. At the outset, the request of the 1st respondent in respect of the note file had been rejected and in respect of the current file was allowed. Challenging the said order of the Tamil Nadu Information Commission, the Principal Secretary to Government filed the present writ petition on the ground that the current file also cannot be given, in view of the fact that, disciplinary proceedings and criminal case are pending against the 1st respondent.

5. The learned Special Government Pleader states that the 1st respondent had not appeared in person, even on one occasion, in the enquiry proceedings before the Enquiry Officer, contrarily, he had remained absent throughout the enquiry proceedings, conducted by the Enquiry Officer appointed by the Disciplinary Authorities.

6. This apart, the said fact was disputed by the learned counsel for the writ petitioner by stating that the 1st respondent had appeared during the enquiry proceedings and he had submitted his objections in respect of the conduct of enquiry.

7. The Special Government Pleader states that the 1st respondent had not appeared in person, contrarily, he had sent letters through some other persons to the Enquiry Officer.

8. This Court is of an opinion that the 1st respondent was working in the cadre of Under Secretary to Government, which is a responsible position. An employee in the cadre of Under Secretary to Government is bound to attend the enquiry proceedings, conducted in accordance with the rules. The Under Secretary to Government cannot behave in such way, by abstaining himself from appearing in person, before the Enquiry Officer.

9. The learned counsel for the petitioner emphasizes that the writ petitioner is giving letters to the Enquiry Officer during each and every hearing. Such a conduct of a responsible officer, who served in the cadre of Under Secretary to Government, is to be deprecated. Any officer, on initiation of disciplinary proceedings is bound to co-operate with the enquiry proceedings. An officer cannot disrespect the proceedings initiated under law. Remaining absent continuously and filing applications under the Right to Information Act, seeking certain files, cannot be appreciated.

10. A responsible official, on initiation of disciplinary proceedings, shall appear before the Enquiry Officer and thereafter, he may seek files or information required, or if needed, request for perusal of files, in relation to the charge memo framed against him. Contrarily, he cannot remain absent by abstaining himself and sending representatives to the Enquiry Officer and thereafter, asking the files to be produced.

11. This apart, the learned Special Government Pleader informs this Court that the 1st respondent had not even appeared once, before the Enquiry Officer and going on sending letters through representatives, stating that the Disciplinary Authority has no jurisdiction to proceed with the enquiry. However, the 1st respondent has to appear in person and submit his objections based on legal grounds, enabling the authorities to consider the same. That is the minimum requirement, which is expected from a responsible official, like the 1st respondent, who served for many years in the Government and more specifically, in the cadre of Under Secretary to Government.

12. It is brought to the notice of this Court that the criminal case, originally registered was dismissed and subsequently, the petitioner preferred a Criminal Appeal in CrI.A.No.405 of 2017 and the said criminal appeal is now pending before this Court. Under these circumstances, the information in the note file or the current file

cannot be provided to the 1st respondent, as the same will affect the very conduct of the enquiry proceedings. The Government is keeping the files for the purpose of proceeding with the disciplinary proceedings, as well as the criminal appeal filed. If at all, the 1st respondent wants to peruse the details in current file, the same can be done before the Enquiry Officer, by making a request in this regard.

13. This being the factum of the case, this Court is of an opinion that the disciplinary proceedings are still pending, on account of the fact that the present writ petition is pending before this Court. Now it is brought to the notice of this Court that the enquiry proceedings had already been concluded and the report was submitted by the Enquiry Officer and thereafter, further action was also initiated by the competent Disciplinary Authorities. This being the factum of the case, the competent authority is bound to conclude the disciplinary proceedings and pass final orders in the disciplinary proceedings, without any undue delay.

14. With these observations, the impugned order issuing a direction to furnish the current file to the 1st respondent, passed by the Tamil Nadu Information Commission stands quashed, and the writ petition is allowed. No costs.

Sd/-

Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

mkn/ssr

To

1.The Principal Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat, Chennai - 600 009.

2.The Registrar,
The Tamil Nadu Information Commission,
No.2, Thiyagaraya Road,
Teynampet, Chennai - 600 018.

+1 CC TO GOVERNMENT PLEADER SR.NO. 66307

+1cc to M/S.G.R.ASSOCIATES , Advocate SR.No. 66059

+1cc to Mr.T.Ranganathan , Advocate SR.No. 65859

W.P.No.4277 of 2015

ASK(17/10/2018)