

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.28895 of 2010

B.Muthuramalingam,  
S/o. Late U.Boominathan,  
Deputy Collector/ District  
Information Cell Officer  
Collectorate, Madurai.

... Petitioner

Vs

- 1.The State of Tamil Nadu,  
rep. by its Secretary to Government,  
Tamil Nadu Information Commission,  
Kamadhenu Super Market I Floor,  
New No.318, Anna Salai,  
Teynampet, Chennai 600 018.
- 2.The Joint Commissioner of Revenue  
Administration, Disaster Management and  
Mitigation Department,  
Ezhilagam, Chepauk, Chennai-600 005.
- 3.The District Collector,  
Madurai District, Madurai.
- 4.The District Collector,  
Tiruppur District,  
Tiruppur.
- 5.The Tahsildar,  
Avinashi Taluk,  
Tiruppur District.
- 6.The Public Information Officer,  
O/o. The Tahsildar, Tahsildar Office,  
Avinashi, Tiruppur District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records relating to the order of the 1<sup>st</sup> respondent dated 30.07.2010 made in Case No.5041/Enquiry/10 approved on 03.09.2010 and the consequential proceedings of the 2<sup>nd</sup>

respondent in D.O.Letter No.SEr.2(4)87303/2010 dated 09.11.2010 and the 3<sup>rd</sup> respondent in Na.Ka.Pa.A588855/2010 dated 01.12.2010 and to quash the same.

For Petitioner : Mr.Palani Selvaraj

For Respondents : Mr.Niranjan Rajagopalan for  
M/s.G.R.Associates for R1  
Mrs.K.Bhuvaneshwari,  
Addl. Govt. Pleader for R2 to R6

#### O R D E R

The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorari, to call for the records relating to the order of the 1<sup>st</sup> respondent dated 30.07.2010 made in Case No.5041/Enquiry/10 approved on 03.09.2010 and the consequential proceedings of the 2<sup>nd</sup> respondent in D.O.Letter No.SEr.2(4)87303/2010 dated 09.11.2010 and the 3<sup>rd</sup> respondent in Na.Ka.Pa.A588855/2010 dated 01.12.2010 and to quash the same. "

2. The petitioner who was designated as Appellate Authority under Right to Information Act, 2005 (hereinafter referred to as 'RTI Act'), was Tahsildar of Avinashi Taluk during the year 2009. On 09.12.2009, one S.K.Sivasawami (hereinafter referred to as 'the applicant'), filed an application under Section 8(2) of the RTI Act to the 6<sup>th</sup> respondent for production of Chitta, RSR Adangal and FMB in respect of his family agricultural lands in Old S.F.Nos.9,14,15,16,17,19,20 and 23 in Sengalipalayam Village Avinashi Taluk, Tiruppur District. The 6<sup>th</sup> respondent in his proceedings in Na.Ka.No.8205/2009/A1, dated 18.12.2009, addressed to the said Sivaswami stating that the documents sought by the said person were considered to be from the year 1950-1974 and informed him that the documents pertaining to re-survey was not available in his office and advised him to apply to the office of the Collectorate, Erode District.

3.As against the order passed by the original authority, 6<sup>th</sup> respondent herein, an appeal was preferred before the petitioner herein as Tahsildar of Avinashi Taluk at that point of time, under Section 19(1) of RTI Act on 29.12.2009. In response to the appeal, the petitioner issued proceedings in Na.Ka.No.316/2010/A1 dated 18.02.2010, stating that the documents sought for by the said person were only available in the office of the Collectorate of Tiruppur District, as ordered by the original authority/6<sup>th</sup> respondent herein. Thereafter, it

appears that a further appeal was filed by the said Sivaswamy to the first respondent. The first respondent, after taking the appeal on its file, had issued summons dated 19.07.2010 under Section 18(3) of the Act to the sixth respondent and the petitioner as Tahsildar, to appear before the Commission along with original records on 30.07.2010 at 2.30 p.m.

4. According to the petitioner, the said summons issued by the first respondent Commission was received by the Tahsildar Office on 02.08.2010 and on receipt of the communication, on the same day, the first respondent was informed that the summons said to have been issued to appear on 30.07.2010 was received by the office of the Tahsildar subsequently on 02.08.2010. Obviously, in view of the belated receipt of summons, the petitioner herein could not appear before the first respondent. While so, the first respondent has passed an order on 30.07.2010 itself holding that if the records were not available with the sixth respondent, he should have transferred the application under Section 6(3) of the Act to the public authority, who was having the required documents and ought not to have directed the applicant to go and approach the other public authority for information.

5. While holding such, the first respondent Commission directed the Collector, Tiruppur, to levy penalty of Rs.25,000/- to be recovered from the Tahsildar, the petitioner herein and also directed to frame charges against the petitioner to proceed under the provisions of the disciplinary rules. The first respondent Commission further directed to refund the payment already made by the petitioner under Section 7(6) of RTI Act to the tune of Rs.600/- towards transport and incidental expenses payable to the petitioner for attending enquiry at Chennai.

6. In pursuance of the direction passed by the Commission by further proceedings dated 01.12.2010, the third respondent initiated steps for recovery of the amount from the petitioner. Having aggrieved by such action of the respondents, the petitioner is before this Court, challenging the same.

7. Upon notice, Mr. Niranjan Rajagopalan, learned counsel entered appearance on behalf of the first respondent and Mrs. K. Bhuvaneswari, the learned Additional Government Pleader entered appearance on behalf of Respondents 2 to 6.

8. Mr. Palani Selvaraj, the learned counsel for the petitioner would submit that for more than one reason, the impugned orders referred above are liable to be interfered with and further would submit that summons which was issued by the first respondent Commission to appear on 30.07.2010 was received by the office of the Tahsildar only on 02.08.2010. He would further

contend that before the receipt of summons, the petitioner himself was promoted and transferred to other place. Therefore, no notice was served on the petitioner and hence, the direction by the Commission to refund the penalty of Rs.25,000/- and also further direction to conduct disciplinary action against the petitioner cannot be validly made in law. Consequently, he would contend that as per Section 20 of RTI Act, penalty shall be imposed only on the Public Information Officer viz., the original authority and not on the appellate authority as per Section 20 of RTI Act which reads as under:-

"1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees: Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him: Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be."

Therefore, he would submit that the impugned order passed by the first respondent and further action initiated by the respondents have to be set aside. He would also add that in any event, the information which was sought for by the applicant has already been furnished to the applicant and therefore, there was no cause of action for compliance in this regard.

9.The learned counsel for the first respondent Commission would accept the fact that there was no service of notice to the petitioner. However, in regard to the legal submissions of the learned counsel for the petitioner, he would submit that the scheme of RTI does not envisage imposition of penalty on the appellate authority and as per Section 20 of RTI Act, such penalty can be imposed only on the Public Information Officer, 6<sup>th</sup> respondent herein.

10.After considering the submissions of the learned counsel for both the parties, this Court has no hesitation to allow the writ petition as to hold in all fours that the impugned order passed by the first respondent dated 30.07.2010 in Case No.5041/Enquiry/10 approved on 03.09.2010 and the impugned orders dated 09.11.2010 and 01.12.2010 passed by the second and third respondents against the petitioner, cannot stand the test of the judicial scrutiny and therefore, the imposition of penalty has to be interfered with. As rightly contended by the learned counsel for the petitioner that the penalty can be imposed only on the Information Officer and not on the Appellate Authority, viz., fifth respondent. Therefore, the direction issued by the first respondent Commission is contrary to the specific provision of the RTI Act as well as the Scheme of the RTI Act. Therefore, the impugned direction of the first respondent has to be held as illegal and therefore, the further action initiated by the second and third respondents is also affected by the said illegality.

11.For the above said reasons, the impugned orders passed by the respondents 1 to 3 respectively in proceedings viz., the order of the 1<sup>st</sup> respondent dated 30.07.2010 made in Case No.5041/Enquiry/10 approved on 03.09.2010 and the consequential proceedings of the 2<sup>nd</sup> respondent in D.O.Letter No.SEr.2(4) 87303/2010 dated 09.11.2010 and the 3<sup>rd</sup> respondent in Na.Ka.Pa.A588855/2010 dated 01.12.2010, are hereby set aside and the writ petition stands allowed accordingly. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kal

To

1.The Secretary to Government,  
Tamil Nadu Information Commission,  
Kamadhenu Super Market I Floor,  
New No.318, Anna Salai,  
Teynampet, Chennai 600 018.

2.The Joint Commissioner of Revenue  
Administration, Disaster Management and  
Mitigation Department,  
Ezhilagam, Chepauk, Chennai-600 005.

3.The District Collector,  
Madurai District, Madurai.

4.The District Collector,  
Tiruppur District,  
Tiruppur.

5.The Tahsildar,  
Avinashi Taluk,  
Tiruppur District.

6.The Public Information Officer,  
O/o. The Tahsildar, Tahsildar Office,  
Avinashi, Tiruppur District.

+1cc to Mr.Palani Selvaraj, Advocate, S.R.No.15136

+1cc to Mr.G.R.Associates, Advocate, S.R.No.14462

+1cc to the Government Pleader, S.R.No.14805

W.P.No.28895 of 2010

KJ(CO)

RRK(05/04/2018)

WEB COPY