

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No.26906 of 2009

and

M.P.No.1 of 2009

The Deputy Inspector General of Prisons,
Coimbatore Range, Coimbatore,
Tamilnadu.

..Petitioner

Vs.

1.A.Samsudeen

2.The Tamil Nadu Information Commission,
New No.378, Anna Salai, Teynampet,
Chennai 600 018 rep. by the
State Chief Information Commissioner.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking issuance of a writ of Certiorari to call for the records relating to the order dated 04.12.2009 made in Case No.242/O-8/Enquiry/09 on the file of the 2nd respondent and quash the same.

For Petitioner :Mr.AN.Thambidurai
Special Government Pleader

For R1 :Mr.Manoharan

For R2 :Mr.Niranjan Rajagopalan
for M/s.G.R.Associate

ORDER

Heard Mr.AN.Thambidurai learned Special Government Pleader appearing for the petitioner, Mr.Manoharan learned counsel appearing for the 1st respondent, Mr. Mr.Niranjan Rajagopalan appearing for G.R.Associates and perused the materials available on record.

2.This Writ Petition has been filed by the Deputy Inspector of General of prisons challenging the order of the second respondent dated 04.12.2009 made in Case No.242/O-8/Enquiry/09. The first respondent sought for information from the

Superintendent Central Prison, Coimbatore as to whether while recommending his case and that of one Hakeem S/o Mohammed Malangu for release of prisoners on 15.09.2008 during Anna Anniversary, their cases have been mentioned as ''Communal'' or not. The reply was given stating that for Security and Administrative reasons the information could not be furnished. When the matter was taken up to the second respondent, the second respondent has directed the Public Information Officer to furnish the information sought for by the first respondent and also imposed a fine of Rs.25,000/- Challenging the said order dated 04.12.2009, the Deputy Inspector General of Prisons has filed the writ petition.

3.The learned Special Government Pleader by referring to the exemptions to Section 8(1) (a) and (g) of the Right to Information Act, would argue that the information sought for by the first respondent, need not be furnished. It is further submitted that before imposing penalty, the second respondent had not provided sufficient opportunity as per Proviso to Section 20 of the Act. Moreover though the first respondent was not released during Centenary Birth of Anna on 15.09.2008, but, subsequently, he was released by the Hon'ble Apex Court on the ground that he was a Juvenile on the date of Commission on offence.

4.The learned standing counsel for the second respondent would state that despite providing ample opportunity to the Public Information Officer, he failed to appear before the second respondent and the grounds taken in the Writ Petition was not agitated before the second respondent. During the second hearing, the writ petitioner has admitted the fact that the first respondent was informed in the bomb blast was occurred in the year 1998 in Coimbatore, he was already convicted and sentenced to imprisonment in SC.No.240/03 on the file of the Sessions Judge, Nagapatinam. He was also convicted in another case in SC. No.2/2000 on the file of the Special Court (Bomb Blast Cases) Coimbatore. While so, the first respondent submitted that the petition on 28.10.2008 requesting him to inform as to whether his case was considered for release on 15.09.2008, or his case has been mentioned as 'Communal'. Considering the security and Administrative reasons the Information sought for by the first respondent was not furnished and hence he preferred an appeal to the second respondent.

5. Section 8(1) (a) & (g) of the Right to Information Act reads as follows :

''8 (1) (a) Information disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, Scientific or economic

interests of of the State, relation with foreign State or lead to incitement of an offence.

(g) Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes.''

6. In the case on hand also, the petitioner having satisfied with exemption provided under Section 8(1)(a) & (g), refused to furnish information sought for by the first respondent. It is not the case of the respondents that the decision was arbitrary and vindictive. Further as per Proviso of Section 20 of the Act, before imposing penalty to the Public Information Officer, he should have been given reasonable opportunity of being heard. In the instant case, the second respondent, without affording any opportunity, had imposed the penalty of Rs.25,000/-. In the light of the above facts the order impugned in this Writ Petition is liable to set aside.

7. For the foregoing reasons, the impugned order dated 04.12.2009 is set aside and the Writ Petition is allowed. No Costs. Consequently, connected miscellaneous petition is also closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

vsn

To

1. The Chief Information Commissioner.
New No.378, Anna Salai, Teynampet,
Chennai 600 018

2. The Deputy Inspector General & Prison
Coimbatore Range, Coimbatore.

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MR(CO)
SP(06/11/2019)