

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.01.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.5627 and 5628 of 2018
and W.M.P.Nos.6959 and 6960 of 2018

Praveen Kumar Abhinapu, I.P.S.,
Public Information Officer,
Superintendent of Police,
North Zone, i/c.Special Units,
Crime Branch CID,
Egmore, Chennai 600 008

.. Petitioner in both W.Ps

-vs-

1. The State Information Commissioner,
Tamil Nadu Information Commission,
Teynampet, Chennai - 18 ..1st Respondent in both W.Ps

2. Tr.S.R.Jangid, I.P.S.,
Director General of Police,
2/626, 4th Main Road,
Ganga Street, River View Enclave,
Manapakkam, Chennai 125 .. Respondent-2 in
W.P.No.5627 of 2018

2. Tr.B.Gajapathy,
S/o.Late Balakrishna Naidu,
No.292/330, Bazaar Street,
Madhavaram, Chennai 600 060 .. Respondent-2 in
W.P.No.5628 of 2018

Prayer in W.P.Nos.5627 and 5628 of 2018 : Writ petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records made in the impugned order in S.A.No.3819/A/2017 dated 24.01.2018 and S.A.No.12050/F/2016 dated 26.04.2017 respectively passed by the first respondent herein and quash the same.

* * *

For Petitioner in
both W.Ps.

:Mr.P.H.Aravindpandian,
Additional Advocate General
Assisted by
Mr.V.Shanmugasundar,
Special Government Pleader

For Respondent-1 in : Mr.Niranjan Rajagopal
both W.P.s for M/s.G.R.Associates

For Respondent-2 in :
W.P.No.5627 of 2018 : Mr.K.Sampathkumar

For Respondent-2 in :
W.P.No.5628 of 2018 : Mr.S.M.Muralidharan

C O M M O N O R D E R

These Writ Petitions are directed against the orders passed by the first respondent in S.A.No.3819/A/2017 dated 24.01.2018 and S.A.No.12050/F/2016 dated 26.04.2017 respectively and to quash the same.

2. According to the petitioner, who is the Public Information Officer, one Tmt.Vidya, T.Nagar, Chennai preferred petitions levelling various allegations against the second respondent in W.P.No.5627 of 2018, who was the then Sub Urban Commissioner and the other police officials of the then Sub Urban Commissionerate. The allegations were pertaining to the registration of six criminal cases against her on various complaints. An enquiry was ordered by the Director General of Police, Tamil Nadu on 03.07.2015 and enquiry was also conducted. The report of the enquiry was forwarded to the Office of the Director General of Police, Tamil Nadu. The second respondent in both Writ Petitions were also examined by the Enquiry Officers. In addition to them, 17 witnesses in W.P.No.5627 of 2018 and 16 witnesses in W.P.No.5628 of 2018 were summoned during the enquiry and their statements were also recorded. The second respondent in both Writ Petitions had asked for the said enquiry report through RTI petitions dated 17.08.2015, 29.09.2015 and 20.09.2015 respectively. But, the Public Information Officer refused to provide the information to the second respondent in both the petitions stating that the Crime Branch CID was exempted from providing information by virtue of G.O.Ms.No.1043, Public (ESTT I and LEG) Department, dated 14.10.2005 and the same was also communicated to the second respondents herein. Aggrieved by the refusal of the Public Information Officer, the second respondent in both Writ Petitions preferred appeals before the Appellate Authority on 10.04.2017 and 12.09.2016 respectively. The Appellate Authority also denied the same quoting the above referred G.O. on 18.04.2017 and 23.09.2016 respectively. Aggrieved by the same, the second respondent in W.P.No.5627 of 2018 preferred Second Appeal before the Tamil Nadu State Information Commission requesting for the enquiry report enabling him to file an elaborate counter in the Writ Petition filed against him by the said Smt.Vidhya. The second respondent in W.P.No.5628 of 2018

also preferred Second Appeal before the Tamil Nadu State Information Commission. The second appeals were allowed on 24.01.2018 and 26.04.2017 respectively directing the Public Information Officer and others to furnish the information sought for by the second respondents herein in their RTI petitions within 5 days and 20 days respectively from the date of receipt of copy of the said orders. The said orders passed by the first respondent are now under challenge in these Writ Petitions.

3. The learned Additional Advocate General appearing for the petitioner contended that the order of the State Information Commissioner is not in conformity with G.O.Ms.No.1043, Public (ESTT I and LEG) Department, dated 14.10.2005. It is further stated that the said Smt.Vidya also sought for a copy of the enquiry report before the Public Information Officer, CBCID and the same was refused quoting the above said G.O.Ms.No.1043. The said Vidya had also approached the Appellate Authority, which also ended in refusal. She filed an appeal before the first respondent stating that her human rights were violated during the investigation of the cases and that she may be provided with the enquiry report. However, the first respondent refused to furnish the copy of the enquiry report as required. Aggrieved by the same, a Writ Petition in W.P.No.39767 of 2016 was filed, which also met with the same fate. Hence, W.A.No.857 of 2017 was preferred by the said Smt.Vidhya, in which, on 14.12.2017, the Division Bench of this Court directed the second respondent therein to furnish a copy to the appellant therein including the reports dated 08.07.2015 and 17.08.2015. The information sought for by the said Smt.Vidhya was provided by the Public Information Officer, only based on the order passed by the Division Bench of this Court.

4. It is contended that the first respondent cannot provide information, which is not covered under the provisions of the Right to Information Act (for short, RTI Act) and hence, the prayer of the second respondent and the order passed by the first respondent completely lack jurisdiction.

5. According to the learned Additional Advocate General, in exercise of powers conferred under Section 24(4) of the R.T.I Act, the said G.O. was issued and the notification was given completely exempting the petitioner's organisation, namely, Crime Branch CID from the purview of the Act. As the exemption is complete on all aspects and taking into consideration the provisions of Section 24 of R.T.I Act, the information sought for by the second respondent cannot be provided, since the same being beyond the scope and category of "information" defined under the R.T.I Act.

6. So far as the second respondents in both Writ Petitions are concerned, two separate discreet enquiries were conducted by the Deputy Superintendent of Police, CB-CID and the Additional Director General of Police, on the basis of the complaints given by the said Vidya against some police officials for taking action against them for lodging foisted criminal cases against her by misusing the power and corrupt practices and the reports were also submitted to the Director General of Police, Tamil Nadu and as on date, there is no enquiry pending. The above said fact is recorded in the impugned order as furnished by the Public Information Officer during the enquiry. As the enquiry is complete and the reports have also been filed, Section 8(1) (h) of the R.T.I Act will strictly not have an application at this stage. However, the said G.O.Ms.No.1043 dated 14.10.2005, which is still in force, prevents the Public Information Officer, CB-CID from furnishing any information under the R.T.I Act without the approval of the Tamil Nadu Information Commission. At this point, Section 24(1) of the R.T.I Act becomes relevant. Section 24 exempts intelligence and security organisations from disclosing the information.

7. In the decision reported in 2011 (5) L.W. 151 in the case of S.Vijayalakshmi -vs- 1. Union of India and another, a Division Bench of this Court had an occasion to deal with Section 24 of the R.T.I Act. It is useful to extract the paragraphs 21 and 22 of the said order, which read as follows:

"21. Before we proceed further, it has to be borne in mind that the Second Schedule enumerated Intelligence and Security Organisations being Organisations established by the Central Government. The exemption under section 24(1) was with regard to the organisations themselves and also with regard to any information furnished by such organisations to the Government. Therefore, there is a vital distinction between the exemption from disclosure of information contemplated under section 8(1) of the Act to that of the exemption of the organisation themselves and the information furnished by them to the Government under section 24(1) of the Act. Therefore, these two provisions are exclusive of each other and one cannot substitute for the other. Therefore, we are not persuaded to accept the submission of the learned counsel for the petitioner that in view of the exemptions contemplated under section 8(1) of the RTI Act there would be no necessity for a blanket exemption under section 24(1) of the Act. This contention, in our view, is wholly misconceived.

22. Repeated reference has been made by stating that the exemption under section 24(1) is a blanket exemption or in other words a whole sale exemption. In the preceding paragraphs we have reproduced section 24 of the Act. In terms of subsection (1) of section 24, nothing contained in the RTI Act shall apply to the Intelligence and Security organisation specified in the second schedule being organisations established by the Central Government or any information furnished by such organisations to that Government. As noticed above, first proviso to section 24(1) of the Act states that information pertaining to the allegations of corruption and human right violation shall not be excused under section 24(1) of the Act. In terms of the second proviso, to sub section (1) of section 24, that in case of information sought for is in respect of allegations of violation of human right, the information shall only be provided after the approval of the Central Information Commission and not withstanding anything contained in section 7 (which deals with the disposal of requests), and such information shall be provided within 45 days from the date of receipt of request. Therefore, it can hardly be stated to be case of a whole sale exemption or a blanket exemption. If an RTI applicant comes with a query alleging corruption in any of the Agencies or Organisations, listed out in the Second Schedule to the RTI Act, such information sought for is bound to be provided and the protection under section 24(1) cannot be availed of. Similar is the case relating to violation of human rights. Therefore, the safeguard is inbuilt in the Statute so as to ensure that even in respect of the Agencies or Organisations listed out in the Second Schedule are not totally excluded from the purview of the RTI Act."

8. As held in the above decision, if an RTI applicant comes with a query alleging corruption in any of the Agencies or Organisations, such information sought for is bound to be provided and the protection under Section 24(1) cannot be availed of. In W.P.No.5627 of 2018, the R.T.I applicant contended that as the complainant herself, had applied for and availed the benefit, by virtue of the order of the Division Bench of this Court, the second respondent in the said Writ Petition, against whom complaint was given, is also entitled to be provided with the same enquiry report.

9. Exemption against furnishing information under the R.T.I Act has been provided under Sections 8(1) and 9 of the said Act. Unless the Public Authority is able to demonstrate that information sought for falls under any of the exempted categories of the information, it would be bound to provide information.

10. Section 8(1)(h) of the R.T.I Act says that the Public Authority is not under obligation to furnish information that would impede the process of investigation or apprehension or prosecution of offenders. The term 'investigation' used in Section 8(1)(h) of the R.T.I Act has to be interpreted liberally. The investigation would mean all actions of law, enforcement, disciplinary proceedings, enquiries, adjudications and so on. Logically, no investigation could be said to be complete until the final decision on the basis of that investigation is taken. While an investigation is in progress, certain information need to be protected, such as identity of the witnesses, the circumstances put together against a person etc. The said protection from disclosure of the information should no longer cause any impediment to prosecution of offenders. Whether mere pendency of an investigation or enquiry by itself would justify denial of information to be furnished?. Unless it is shown that the disclosure of the information sought would impede or even on a lesser threshold hamper or interfere with the investigation, the information cannot be denied.

11. It has been consistently held by the Courts that any authority withholding information under Section 8(1)(h) must show satisfactory reasons as to why the release of such information would hamper the investigation process and that the existence of investigation process cannot be a ground for refusal of information. As stated supra, the term 'investigation' under Section 8(1)(h) should be construed liberally. To apply Section 8(1)(h), firstly, there should be an on going investigation / prosecution or contemplation of investigation/prosecution. Secondly, the disclosure of information would hamper the process of said investigation/prosecution. Unless the above two conditions are complied with, the petitioner cannot succeed in the Writ Petition. A mere fact that a matter is involved in investigation could not be sufficient reason for exclusion from disclosure. Under Section 8(1)(h) unless it is proved that such a disclosure would impede the investigation process, the information cannot be denied.

12. Whether such an information would impede the current process of investigation if the second respondent is furnished with the information required?. The Division Bench of this Court while allowing the appeal filed by the complainant Vidya

in W.A.No.857 of 2017 had held as follows:-

"21.6. While, the police officers in lodging cases against the appellant, based on the complaints made against her, and in having her prosecuted thereafter may have acted under the authority of law-the fact that four (4) out of the six (6) cases fell by the wayside did denude the appellant of her dignity, while she was being prosecuted. The reasoning given by the first respondent that the police officer acted under the authority of law, may be a valid defence in an action for malicious prosecution, provided they are able to show good faith that, however, by itself would not prevent the appellant from contending that her dignity was impaired and hence, violated her human rights. If, that be the position, surely, information with regard to the result of the enquiries carried out, based on her complaints ought to be furnished to the appellant for whatever they are worth."

13. The proviso to Section 24(1) specifies that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under the said Sub Section and only if the allegation of corruption and human rights violations were within the Intelligence Bureau or pertaining to the Officer of the Intelligence Bureau, the exception would be applicable. Whether it could be stated that the exceptions would have no application in case the allegations of corruption and human rights violation pertain to organisations other than the Intelligence Bureau in respect of which the report is available with the Public Information Officer ?.

14. Furnishing of the enquiry report would be in response to the R.T.I request of the second respondent, and unless it is shown that such disclosure would cause harm to the core activity of security or intelligence of the CB-CID, the same can be furnished.

15. A perusal of paragraph 11 of the impugned order would go to show that the Public Information Officer had admitted that the reports were already submitted to the Director General of Police, Tamil Nadu for further action and they are ready to furnish the information, for which, the Tamil Nadu Information Commission passed the order. Having conceded before the Commission, the Public Information Officer has now challenged the order of the first respondent.

16. As mentioned earlier, the complainant was already held to be entitled to get the report from the first respondent, pursuant to the order the Hon'ble Division Bench of this Court. The second respondents are also entitled for the same. The argument of the learned Additional Advocate General stating that unless the enquiry report is used by the complainant in any future proceedings, the second respondents will not be entitled for the copy of the information, is unsustainable.

17. In view of the above, the petitioner herein/Public Information Commissioner, is directed to furnish the information sought for by the second respondents in both Writ Petitions as requested in their applications within a period of four weeks from the date of receipt of a copy of this order.

18. With the above observations and direction, the Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srn

To

The State Information Commissioner
Tamil Nadu Information Commission,
Teynampet, Chennai - 18

+1 cc to Mr.S.M.Muralidharan, Advocate, S.R.No.5222

+2 ccs to M/s.G.R.Associates, Advocate, S.R.Nos.4867, 4868

+2 ccs to M/s.K.Sampathkumar, Advocate, SR Nos.5221

W.P.Nos.5627 and 5628 of 2018
and W.M.P.Nos.6959 and 6960 of 2018

VD(CO)
SSM(19/02/2019)

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