

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2019

CORAM :

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No.2277 of 2018
and Civil Miscellaneous Petition No.18181 of 2018

The Association of St.Christopher's
College of Education,
Rep. by its Secretary,
Dr. (Mrs.) P.Nithila Devakarunyam,
63, EVK Sampath Road,
Vepery, Chennai - 7.

..Appellant/Petitioner

-vs-

1.The State Information Commissioner,
The State Information Commission,
No.2, Thyagarayar Road,
Thenampet, Chennai - 600 018.

2.The Asst. Registrar,
The State Information Commission,
No.2, Thyagarayar Road,
Thenampet, Chennai - 600 018.

3.Mr.S.Prakash Babu

4.Mr.M.Thuyamurthy

..Respondents/Respondents

APPEAL under Clause 15 of the Letters Patent to set aside
the order dated 21.08.2018 made in W.P.No.9984 of 2016.

W.P.No.9984 of 2016 :- Writ Petition filed under Article 226
of the Constitution of India, praying to issue a Writ of
Certiorarified Mandamus calling for the records pertaining to
the common order dated 18.01.2016 in Case No. S.A. 6725/
Enquiry/D/2015 on the file of the 1st and 2nd respondents and
quash the same directing the same respondents to apply the
provisions of Sec.8(1)(e)(j) and sec.11 of the RTI Act for the

connected queries in the RTI Application in Case No. S.A. 6725 / Enquiry/D/2015 filled by the 3rd respondent and prosecuted by the 4th respondent in respect of the petitioner institution.

For Appellant : Fr.Xavier Arulraj, Senior Counsel
: assisted by Sr.A.Arul Mary

For RR1 and 2 : Mr.Niranjan Rajagopalan,
Standing Counsel
for M/s.G.R.Associates

For RR3 and 4 : Mr.N.Sivaprakash

JUDGMENT

(Judgment of the Court was delivered by T.S.Sivagnanam, J.)

This writ appeal is directed against the order in Writ Petition No.9984 of 2016, dated 21.08.2018.

2.The appellant filed the said writ petition challenging the proceedings of respondents 1 and 2 dated 18.01.2016 and for a consequential direction to the same respondents to apply the provisions of Section 8(1)(e)(j) and Section 11 of the Right To Information Act, 2005 (hereinafter referred to as "the RTI Act"), for the connected queries in the RTI application filed by the third respondent and prosecuted by the fourth respondent in respect of the appellant-institution.

3.The learned Single Bench opined that the impugned proceedings which was challenged before it was only a show cause notice and accordingly, held that no writ proceedings can be entertained against a show cause notice in a routine manner; judicial review against a show cause notice is clearly limited and intermittent interventions are not preferable when a statutory commission has undertaken the process of conducting enquiry under the provisions of the RTI Act. Accordingly, the Writ Court dismissed the writ petition directing the appellant to respond to the show cause notice issued by the State Information Commission. The correctness of the order is being questioned in this appeal by the appellant/writ petitioner.

4.We have heard Fr.Xavier Arulraj, learned Senior Counsel, assisted by Sr.A.Arul Mary, learned counsel for the appellant; Mr.Niranjan Rajagopalan, learned Standing Counsel for respondents 1 and 2; and Mr.N.Sivaprakash, learned counsel for respondents 3 and 4. The learned counsels have also filed their written submissions which we have considered in great detail.

5.The first issue to be considered is whether the order

impugned in the writ petition passed by the first respondent/State Information Commission, dated 18.01.2016 is a show cause notice.

6.The learned Standing Counsel for the Information Commission submitted that proviso to Section 20 of the RTI Act contemplates reasonable opportunity to be given to the Public Information Officer before any penalty is decided to be imposed. Further, it is submitted that it may not be possible in all cases for the Information Commission to record its satisfaction that prima facie there is a case for issuance of show cause notice. Therefore, it is contended that issuance of notice calling for explanation as to why penalty should not be imposed cannot be considered as arbitrary. Further, it is submitted that the order impugned in the writ petition remains as a show cause notice in the strict sense, and if the Public Information Officer issues a satisfying response on consideration of the same, proceedings will always be dropped. Therefore, the first respondent seeks to sustain the order impugned in the writ petition.

7.We have carefully perused the order impugned in the writ petition. On a reading of the said order, it is evidently clear that it is not a show cause notice simpliciter, but it is an order holding that the Public Information Officer is guilty for being proceeded against. The first respondent/State Information Commission has invoked Section 18(3)(b) by directing the District Educational Officer requiring the discovery and inspection of documents and furnish the same to the third respondent who sought for information and the said provision, namely, Section 18(3) gives power to the Central Information Commission or State Information Commission, as the case may be, and shall while inquiring into any matter under the said Section [18(3)], have the same powers as vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908 in respect of the following procedure:-

- (i) Summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;
- (ii) Requiring the discovery and inspection of documents;
- (iii) Receiving evidence on affidavit;
- (iv) Requisitioning any public record or copies thereof from any court or office;
- (v) Issuing summons for examination of witnesses or documents; and
- (vi) Any other matter which may be prescribed.

8.In the light of the above legal position, it can hardly be stated that the impugned proceedings in the writ petition is a show cause notice. The power under Section 18(3) of the RTI Act

could have been invoked by the first respondent/Commission while inquiring into the matter under Section 18(3) on the contrary, the Commission has directed the District Educational Officer to go to the appellant's institution, search the premises, takeover the records and other documents and furnish information to the third respondent who is the applicant seeking information. We find that there is no such power vested with the Commission to exercise the powers conferred under Section 18(3) of the RTI Act in the manner done by the Commission. Therefore, we are of the clear view that the impugned proceedings is not a show cause notice simpliciter, but an order by itself. In this regard, a decision of the Division Bench of this Court in the case of Registrar General, High Court of Madras Vs. A.Kanagaraj and Another reported in (2013) 5 MLJ 385 will come to the aid and assistance of the appellant. Therefore, we, accordingly, hold that the learned Single Bench was not right in coming to the conclusion that the proceedings, which was impugned in the writ petition is a show cause notice and the said finding needs to be set aside. Accordingly, the same stands set aside.

9.Next we move on to the aspect as to whether the information sought for by respondents 3 and 4 pertaining to question nos.7, 9, 10, 11 and 12 is liable to be disclosed under the provisions of the RTI Act. On a reading of the impugned proceedings, we find that the Commission has not assigned any reasons as to why such information has to be furnished. In other words, the Commission has not dealt with the objections which were raised by the appellant before the Commission as to why such information is not required to be furnished. The appellant claimed exemption in terms of Section 8(1)(j) of the RTI Act.

10.Before us, the learned Senior Counsel for the appellant contended that the first respondent/State Information Commission has foreclosed the issue relating to the need for furnishing information to the said five questions without giving any valid reason and the presumption drawn by the first respondent on disclosure without reference to the legal position is unsustainable.

11.Further, it is submitted that with regard to the information to question no.7, the addresses of individuals, donors and the amount donated to the school has been sought for and this will clearly fall within the exemption clause under Section 8(1)(e) of the RTI Act. Furthermore, the appellant has clearly explained before the authority that there is no public interest involved in the instant case and the information seeker is a busy body and he forms part of a group of individuals, who by turn make applications under the RTI Act only for the reason that one teacher was not promoted, that too, for valid reason.

12.Further, it is submitted that so far as the income and expenditure statement other than staff salary, allowances, and information regarding audited statements, i.e., for question nos.9 and 11 are concerned, they would fall within the exemption clause under Section 8(i)(j) of the RTI Act. Further, with regard to the reply given for question nos.10 and 11, the appellant has stated that they have been granted a certificate by the Income Tax Department under Section 80G of the Income Tax Act, 1961 and this reply is sufficient for question no.10.

13.So far as question no.12 is concerned, it is submitted that service details of a particular teacher is not required to be furnished except in overwhelming public interest or when it is needed for the applicant in service. The information seeker is a third party and except the Statutory Authority, no one can claim service details of the employed persons.

14.So far as question no.7 is concerned, they all pertain to details of names and addresses of individuals, alumni, corporate organization, donors who have extended support to the appellant-institution and donated various sums of money. If this information is to be disclosed, then it would amount to disclosing third party details and this will clearly fall within the exemption as provided under Section 8(1)(e) of the RTI Act where there is no obligation for the appellant to furnish information which they are holding in fiduciary capacity. Furthermore, the first respondent/Commission has not recorded any satisfaction that larger public interest warrants disclosure of such information. In fact, in the written submissions filed by the learned Standing Counsel for the Information Commission, identical stand has been taken and therefore, the appellant cannot be compelled to disclose information for question no.7.

15.Insofar as question no.9 is concerned, the appellant would contend that they are all details pertaining to Income and expenditure statements, staff salary, allowances, etc., and question no.11 deals with audited statements.

16.The High Court of Delhi in the case of Naresh Trehan Vs. Rakesh Kumar Gupta, [W.P.(C) No.85 of 2010: dated 24.11.2014] while considering the scope of Section 8(1) of the RTI Act, in a matter pertaining to a query for furnishing details under the Income Tax Act, 1961, pointed out that books of accounts would also record salaries and other payments to other individuals and disclosure of such information would affect not only the assessee (in the said case), but also other parties. It was further held that in such circumstances, it would be necessary to examine the details of information that are sought for from the public authority and since in the said case, the information

seeker sought for an omnibus disclosure of all records and returns, the same was not allowed by the Court. The said decision will squarely apply to the facts of the present case, insofar as queries raised in question nos.9 and 11 are concerned. If such an omnibus information is sought for, definitely, it would amount to disclosing certain third party details and other vital information which is held by the appellant. That apart, the State Information Commission has not recorded any reasons as to why the objections raised by the appellant does not merit consideration and as to why information has to be furnished for question nos.9 and 11. Therefore, the direction issued by the State Information Commission in this regard is set aside.

17. So far as question no.10 is concerned, the question pertains to whether any approval has been obtained by the appellant for accepting donation. The appellant has given an answer that they have secured exemption under Section 80G of the Income Tax Act, 1961. In our considered view, this information would be sufficient to answer question no.10. Therefore, the finding of the State Information Commission holding the appellant guilty in not having answered question no.10 to the satisfaction of the third respondent is without any basis and accordingly, the same is set aside.

18. So far as question no.12 is concerned, the first respondent/Commission would take a stand that the disclosure sought for has to be decided keeping in mind the decision of the Hon'ble Supreme Court in the case of Girish Ramchandra Deshpande vs. Cen. Information Commr. and Others reported in (2013) 1 SCC 212. However, in our considered view, the Commission having not recorded any reasons as to why the objection raised by the appellant is not sustainable, the question of granting one more opportunity to the Commission in this regard would not arise. Admittedly, those are details pertaining to a particular candidate.

19. The Hon'ble Supreme Court in the case of Bihar Public Service Commission vs. Saiyed Hussain Abbas Rizwi and Another reported in (2012) 13 SCC 61, expounded the meaning of the expression "public interest" occurring in Section 8(1) in the following terms:

"22. The expression "public interest" has to be understood in its true and connotation so as to give complete meaning to the relevant provisions of the Act. The expression "public interest" must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression "public

interest", like "public purpose", is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs (State of Bihar v. Kameshwar Singh). It also means the general welfare of the public that warrants recognition and protection; something in which the public as a whole has a stake.

23. The satisfaction has to be arrived at by the authorities objectively and the consequences of such disclosure have to be weighed with regard to the circumstances of a given case. The decision has to be based on objective satisfaction recorded for ensuring that larger public interest outweighs unwarranted invasion of privacy or other factors stated in the provision. Certain matters, particularly in relation to appointment, are required to be dealt with great confidentiality. The information may come to knowledge of the authority as a result of disclosure by others who give that information in confidence and with complete faith, integrity and fidelity. Secrecy of such information shall be maintained, thus, bringing it within the ambit of fiduciary capacity. Similarly, there may be cases where the disclosure has no relationship to any public activity or interest or it may even cause unwarranted invasion of privacy of the individual. All these protections have to be given their due implementation as they spring from statutory exemptions. It is not a decision simpliciter between private interest and public interest. It is a matter where a constitutional protection is available to a person with regard to the right to privacy. Thus, the public interest has to be construed while keeping in mind the balance factor between right to privacy and right to information with the purpose sought to be achieved and the purpose that would be served in the larger public interest, particularly when both these rights emerge from the constitutional values under the Constitution of India."

20. In the light of the above, we are of the clear view that the finding recorded by the State Information Commission with regard to question no.12 is without any basis and accordingly, the same is set aside.

21.The next aspect which has to be seen is whether the Commission could have issued a direction directing the Officials of the Education Department to go over to the appellant-institution to collect (search and seize) the records and furnish the same to the third respondent. We see no such power conferred on the first respondent/Commission and as pointed out by us earlier, the first respondent/Commission cannot take umbrage under Section 18(3) of the RTI Act. A Hon'ble Division Bench of this Court in the case of Tamil Nadu Nursery, Matriculation and Higher Secondary Schools Association (Regd.) vs. The State of Tamil Nadu (DB) reported in 2010 (4) CTC 353 considered the validity of sub-Clauses (4) and (5) of Rule 4 of the Tamil Nadu Schools Regulation of Collection of Fees Rules, 2009. The said Rule was inserted to carry out search and seizure provided under Section 11 of the Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009. The Hon'ble Division Bench in the said judgment, had struck down the Rule as unconstitutional and violative of Article 14 of the Constitution of India. The following reasons were assigned to strike down the Rule.

"34. This Rule gives unbridled, un-channeled and unregulated powers to the officers and as such, poses a perennial threat to the very functioning of private schools. Both Section 11 of the Act and Rule 4(4) leave the matter in entirety to the unregulated discretion of the authorized officers and District Committee Members. In view of our finding that Section 11 is ultra vires of Article 14 of the Constitution, the corresponding Rule as contained in Rule 4(4) and 4(5) are also liable to be struck off as unconstitutional, and violative of Article 14 of the Constitution of India."

22.The above decision will come to the aid and assistance of the appellant. The State Information Commission could not have directed for search and seizure of the documents from the appellant and then hand it over to the third respondent, Information Seeker. Therefore, the direction issued by the first respondent/State Information Commission is without jurisdiction and therefore, the same is set aside.

23.With regard to the power to impose penalty on the Appellate Authority, the State Information Commission was required to record reasons in writing. As pointed out by us earlier, no such reasons have been recorded by the Commission. Therefore, the order is a non-speaking order and consequently, liable for interference.

24. Furthermore, we find that similar queries were asked by other persons who according to the appellant, are part of a team of persons who are involved in such applications being filed under the RTI Act and the third respondent, the information seeker in this case is one among the group. In the written submissions filed by the appellant, a tabulated statement has been given showing that there were 13 such applications made by several persons including the third respondent who sought for two other queries as well. We find there are two writ petitions pending before this Court since the year 2014 and interim stay has also been granted. This should not have been ignored by the Information Commission.

25. So far as the written submissions filed by respondents 3 and 4 are concerned, none of the legal issues raised by the appellant have been dealt with in the written submissions and they are all pertain to the factual matrix as to what are their grievances against the institution. This would clearly give a fair idea that the information seeker has a different agenda behind seeking for information. Thus, we would be right in coming to a conclusion as to whether at all there is any larger public interest warrants the disclosure of information sought for by the information seeker.

26. Thus, for all the above reasons, we hold that the order passed by the State Information Commission, impugned in the writ petition, is liable to be set aside.

27. Accordingly, this writ appeal stands allowed and the order passed in W.P.No.9984 of 2016, dated 21.08.2018 is set aside. Consequently, the proceedings of the first respondent dated 18.01.2016 is quashed. No costs. Consequently, connected miscellaneous petition is closed.

mrr/abr

सत्यमेव जयते
sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The State Information Commissioner,
The State Information Commission,
No.2, Thyagarayar Road,
Thenampet, Chennai - 600 018.

2.The Assistant Registrar,
The State Information Commission,
No.2, Thyagarayar Road,
Thenampet, Chennai - 600 018.

+1cc to Mr.S.Natana Rajan, Advocate, SR.No.26580
+2cc to M/s.Father Xavier Associates, Advocate, SR.No.26708
+1cc to M/s.G.R.Associates, Advocate, SR.No.26939

W.A.No.2277 of 2018

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