

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.11747 OF 2016

S.Sivarasu

...Petitioner

Vs.

1. The Registrar
Tamil Nadu State Information Commission
No.2, Thiyagarayar Road,
Eldams Road Junction, Teynampet,
Chennai - 600 018.

2. The Public Information Officer
(Assistant Commissioner)
East Zonal Office
Coimbatore Corporation
Coimbatore - 641 105.

3.S.P.Thiyagarajan

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records relating to the order dated 09.03.2016 in Case No.32770/Enquiry/D/14 of the 1st respondent herein in so far as it relates to the petitioner is concerned and quash the same.

For Petitioner : Mr.A.R.L.Sundaresan

Senior Counsel for Ms.A.L.Ganthimathi

For Respondents: Mr.P.Karthikeyan,GA

ORDER

Challenging the order of the first respondent Tamil Nadu State Information Commission, in Case No.32770/Enquiry/D/14, dated 09.03.2016, the petitioner is before this Court.

2. From a perusal of the impugned order, it is seen that a case has been filed by the third respondent against the second respondent. The petitioner is not a party to the same.

3. At the outset, when the petitioner was not a party, any adverse order passed against him, on the face of it, is illegal. Secondly, the petitioner was working as an Appellate Authority in respect of information provided under Right to Information Act, 2005 (shortly "the Act"). It is noted from the records that the third respondent sought certain information from the Public Information Officer. Since the file was missing, the second respondent sent a communication to the third respondent that the information will be provided after the file is traced. However, the third respondent made an appeal to the Appellate Authority. The petitioner, at that point of time, being an Appellate Authority, directed the second respondent / Public Information Officer to provide the information within a week. Since it was not provided, the third respondent preferred a Second Appeal to the State Information Commission. While dealing with the said matter, the State Information Commissioner has imposed the penalty of Rs.25,000/- against the second respondent and issued a show cause notice to the petitioner as to why action should not be taken. The petitioner has given a reply that he has disposed of the appeal in time and that he will advise the Public Information Officer to adhere to the provisions of the Act and requested to drop the show cause notice. However, the State Information Commissioner, under Sections 19(1) and 19(6) of the Act, has recommended disciplinary action against the petitioner.

4. Section 19 of the Act deals with the procedure for filing appeal, limitation and disposal of the same. Sub-section 6 of Section 19 states that the appeal shall be disposed of within thirty days or within such extended period not exceeding a total of 45 days from the date of filing appeal for the reasons recorded in writing.

5. In the case on hand, the first respondent has not given any specific details as to when the appeal was disposed of and how it violates Sub-section 6 of Section 19 of the Act, but however, recommended disciplinary action against the petitioner under Section 20(2) of the Act. A reading of Section 20 of the Act clearly shows that if the Public Information Officer, without any reasonable cause, failed to furnish information within the specified time or acted in malafide or deliberately given incorrect, incomplete or misleading information, penalty can be imposed and the case can be recommended for disciplinary action. Section 20 of the Act thus clearly speaks about the action could be recommended only against the Public Information Officer for not discharging his duties without any reasonable cause.

6. At the outset, it is not applicable to the appellate authority. Even assuming it is applicable, whether the appellate authority has committed any misconduct, without reasonable cause

or not, has to be seen. The first respondent has failed to record any reason as to how the appellate authority has failed in discharge of his duties. On the other hand, proceeded on the delusion "if I had been there". It appears that the first respondent is still in hang over of his previous post.

7. It is seen from the materials that the file which relates to the information sought was found missing. After the matter is taken up before the State Information Commission and after noting the observations, a Police complaint was also lodged to investigate about the missing file. The Head of the Department, namely, the Commissioner of Corporation has also filed an affidavit setting out the details to the State Information Commission. However, the State Information Commissioner, has proceeded to observe as to how the file was misplaced, who was responsible for the misplacing of file and what action was taken against that erring official and other details were not furnished to him, as if he is the authority as Head of the Department.

8. It is well settled that the Act pertains to providing information alone. The powers of the Commissioner is only with respect to the complaints made before him. He has no powers of the disciplinary authority to take action against the delinquents as observed supra. The hang over is still not over in the case of the State Information Commissioner. He meddles into the internal affairs of the Department and exceeded his powers and passed orders without jurisdiction. Therefore, the order dated 09.03.2016 passed by the first respondent in Case No.32770/Enquiry/D/14 is set aside in so far as the petitioner is concerned.

9. In fine, the writ petition is allowed. No costs.

-s/d-

सतयमेव जयते
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Registrar
Tamil Nadu State Information Commission
No.2, Thiagarayar Road,
Eldams Road Junction, Teynampet,
Chennai - 600 018.

2. The Public Information Officer
(Assistant Commissioner)
East Zonal Office
Coimbatore Corporation
Coimbatore - 641 105.

+1cc to M/s.G.R.Associates in SR.21069
+1cc to M/s.K.Magesh, Advocate in SR.20954
+1cc to M/s.N.Subramaniam, Advocate in SR.21308
+1cc to M/s.K.S.Arumugam, Advocate in SR.21011

W.P.NO.11747 OF 2016

RR (CO)
RV (17/09/2020)



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