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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 33936 of 2007

and

W.M.P. Nos. 1 of 2007 and 1 and 2 of 2008

1. State of Tamil Nadu,
Represented by its Secretary to Government,
Industries Department,
Fort St. George, Chennai - 9.
2. Deputy Secretary to Government,
Public Information Officer,
Industries Department,
Fort St. George, Chennai - 9. ... Petitioners

-vs-

1. The Tamil Nadu Information Commission,
Represented by the Officer on Special Duty /
Registrar, Thiru T.R. Dhandapani,
No. 278, Anna Salai, Chennai - 18.
2. Mrs. Madhumitta Dutta
3. Thiru S. Ramakrishnan, I.A.S. (Retd),
State Chief Information Commissioner,
Tamil Nadu Information Commission,
Teynampet, Chennai - 18. ... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari calling for the records in connection with the order dated 05.10.2007 including the summons dated 10.10.2007 made in Case No. 20030/Enquiry/2007 on the file of the first respondent i.e., Tamil Nadu Information Commission, Chennai and to quash the same.

For Petitioners : Mr. G.K. Muthukumar
Special Government Pleader



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For Respondents : Mr. Niranjan Rajagopal
Standing Counsel for R1 and R3

Mr. Balaji
for Mr. D. Nagasaila for R2

O R D E R

The prayer sought for herein is for a Writ of Certiorari calling for the records in connection with the order of the first respondent dated 05.10.2007 and summon, dated 10.10.2007 in Case No. 20030/Enquiry/2007 and quash the same.

2. The short facts which are required to be noticed for disposal of this Writ Petition are as follows:

(i) That the second respondent who will henceforth be called as 'Information Seeker', made an application under the provisions of the Right to Information Act, 2005 (in short "the Act") to the petitioners Department i.e., Industrial Department, Government of Tamil Nadu, seeking certain information, which includes some Memorandum of Understanding reached between the State Government and the third parties entrepreneurs relates to some industrial developments in the State.

(ii) The said information since was not furnished, according to the Information Seeker by the PIO concerned, she seems to have filed an appeal to the Appellate Authority of the department, where also according to the Information Seeker, she could not get the information sought for. Therefore, it triggered her to file further appeal before the first respondent i.e., Tamil Nadu Information Commission (TIC).

(iii) On taking into file of the said appeal, the first respondent / Information Commission had issued summons to the petitioners' Department / concerned PIO to bring the records / documents pertaining to the information sought for by the Information Seeker on the particular date before the office of the first respondent / Information Commission. However on that date, it seems that, officials concerned / PIO could not appear before the Commission or could not brought the records as directed by the Commission. Therefore, the said developments made the Commission to issue a notice on 05.10.2007 to the petitioners to appear before the Commission on 08.10.2007 at 3.30 p.m. to explain as to why, penal provisions prescribed under Section 20 of the RTI Act, should not be invoked against the PIO for his alleged disobedience of the orders of the Commission.



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(iv) In this context, the Commission, pursuant to the hearing conducted on 04.10.2007, had passed an order on 05.10.2007 whereby, the following directions were given, which reads thus:

" Therefore the Commission clearly comes to the conclusion that in this case, the complaint under Section 18 is valid and admissible and must be allowed and direct as follows:

1) All the documents involved in this case will be brought to the Commission's Office and made available preferably inspected by the petitioners at the room of the Secretary to the Commissioner and the petitioner will be allowed to have them inspected through out the day on 8th and 9th and if necessary to give extension of time. The Public Information Officer / Under Secretary will be allowed to use the Commission's Office to take photo-copies of any pages then and there;

2) The Public Information Officer will file before the Commission before the evening of 14th October 2007 at 5 p.m. his explanation as to why the penalties prescribed under the Act should not be imposed upon him for the information not having been supplied till now and the orders of the Commission not having been carried out; and

3) The petitioner is free to file before the Commission her request for such compensation she can justify for the delay and additional expenses which has been incurred by her which is to be awarded against the public authority for their failure.

STATE INFORMATION COMMISSION"

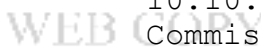
(v) Subsequently, on 10.10.2007, further order in the form of show cause notice was issued by the first respondent / Information Commission to the following effect:-

" The Commission therefore directs the Secretary to Government, Industries Department, Chennai to:-

a) personally explanation as to why the orders of the Commission have been flouted by the public authority repeatedly;

b) why the Commission should not proceed with the complaint of contempt at the appropriate forum for willful disobedience of the orders of the Commission;

c) how the Government have refused to disclose the file which they have agreed to disclose at the enquiry of the Commission, the Memorandum of



STATE INFORMATION COMMISSION"

4. During the pendency of this Writ Petition, as there has been interim order of stay granted by this Court, pursuant to the second impugned order dated 10.10.2007, the petitioners seems to have not appeared subsequently before the first respondent / Information Commission and the matter has gone rest to that stage and has been pending all along during these thirteen years.

5. At this juncture, when this Writ Petition is taken up for final hearing, Mr. Balaji, learned counsel appearing for the second respondent / Information Seeker, on instructions, would submit that, though the information which she sought for from the petitioners' department were not supplied and those documents were not brought for inspection for taking a photo copy at the Commission's Office, as directed by the Information Commission, subsequently after filing of this Writ Petition in the year 2008, the petitioners' department had come forward to furnish all those information / documents which were sought for by the Information Seeker and accordingly those information / documents in entirety were received by the second respondent / Information Seeker. Therefore, insofar as getting of information sought for by the second respondent is concerned, after 2008, since the documents and information were furnished to her, she could not have any further grievance. Further he would add that, insofar as the impugned summons or orders issued by the Commission to the petitioners' department, it is between the Commission and the petitioners' department to agitate the issue, if at all they want to agitate. Therefore, in this context, the second respondent does not have any grievance as satisfactorily she has received the documents, which she sought for.

6. I have heard Mr. Niranjan Rajagopal, learned Standing counsel appearing for the first respondent / Information Commission, who would submit that, in the year 2007, the Act was at nascent stage. Therefore, there could not have been any better understanding on the import of the various provisions of the Act among the PIOs in various departments including the petitioners' department and therefore, there could have been some misconception on the import of the various provisions of the Act, which might have triggered to develop this issue. Show cause notice was issued by the Commission to the petitioners' department, to appear or to give show cause, as to why, action



7. He would also submit that, however in view of the developments which was taken place subsequently i.e., immediately after filing of this Writ Petition, where the second respondent / Information Seeker got all the information / documents from the petitioners' department and the Officers concerned, who were responsible at that time, of the petitioners' department might have retired by this time, hence there could be no effective persuasion of the impugned orders and therefore, in that context, whether there could be an effective persuasion or not could be ascertained by the Court, by taking note of the developments, as has been projected by the Information Seeker, who admittedly received the information long back i.e., in the year 2008 itself from the petitioners' department.

9. However, Mr.G.K. Muthukumar, learned Special Government Pleader appearing for the petitioners' department would submit that, first of all, the information sought for by the Information Seeker are furnishable or not within the meaning of the provisions of the RTI Act, has to be taken into account. In this context, he would submit that, certain informations like Memorandum of Understanding, where third party information also would have been involved, may not be justifiable to be compelled for furnishing the same and therefore, only in that context, in order to explain the position of the State Government, especially the PIO concerned of the department of the petitioners, they wanted to make their position clear before the Commission, but due to some miscommunication or communication gap, the said position could not be brought to the notice of the Commission to their satisfaction. Therefore, it landed in issuance of these impugned orders including the show cause notice towards invoking the penal provisions under the Act against the petitioners department.

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the bonafide, on the part of the petitioners' department, in fact, what are all the information sought for or documents required to be furnished as per the request of the Information Seeker, since had been furnished to the satisfaction of the Information Seeker, still the proposal to invoke the penal provisions as intended or indicated in the impugned show cause notices, is having any effect, is a matter to be decided by this Court.

11. The learned Special Government Pleader would also submit that, the State Government Officers or Officials concerned also in the dual capacity as PIO, apart from the regular job, are attending innumerable applications received by them every day. When dealing with such application received by them under the RTI Act, due care are being given or will be given and then and there, what all the information, which are sought for by the Information Seeker, unmindful of the intention behind it, as to why such Information Seeker seek such information, those informations are being supplied within the time limit as prescribed under the Act. However in some of the cases, where, if the information sought for by the Information Seeker is considered to be an information which is protected under the provisions of the RTI Act, especially under Section 8, certainly the petitioners' department or any other Public Information Officer or Authorities concerned will have a right to say 'no' to such information ofcourse within the provisions of the Act, especially under Section 8.

12. Here in the case in hand, according to the learned Special Government pleader, the information sought for by the Information Seeker as well as the documents, he wanted to peruse or take a photo copy, were considered at length by the petitioners' department to take a decision, as to whether, those information or documents seeks to supply to the Information Seeker as, they initially thought that, some of the documents might have been protected documents within the meaning of Section 8 or some of the documents where third party information could have been involved. In order to ascertain this position, since the provisions of the RTI Act was in nascent stage, as rightly submitted by the learned counsel appearing for the Information Commission, the petitioners' department also had taken some reasonable time to respond, however the same had been understood differently. With the result, the first respondent / Information Commission had come out with these impugned orders, therefore in order to explain the position of the petitioners' department, having no other option, they had approached this Court during that point of time by filing this writ petition challenging the impugned orders.



13. However, the learned Special Government Pleader would submit that, in view of the subsequent developments, where the entire information sought for by the Information Seeker has been supplied to her, to the satisfaction expressed on behalf of the second respondent through the counsel and also some of the officers of the petitioners' department, against whom such notices, which are impugned herein, were issued by the First Respondent / Information Commission, have since retired, what is the persuasive value of the impugned orders still available can be gone into by this Court and accordingly by protecting the interest of the petitioners' department, if this Court wants to give a quietus to this issue, the petitioners' department would be satisfied, he contended.

14. I have considered all these submissions made by the learned respective counsel appearing for the parties.

15. The issue, though appears to be a major one, at the time of filing the Writ Petition i.e., in the year 2007, in view of the subsequent developments taken place and in view of the submissions now made by the learned respective counsel appearing for the parties, after having considered the same, this Court is of the considered view that, what is remaining now in this Writ Petition for adjudication and decision is only a very small issue or it is only in a very narrow compass.

16. These two orders which are under challenge in this Writ Petition is that, the first order dated 05.10.2007, where the first respondent / Information Commission issued a notice to the petitioners' department to appear on a particular date i.e., on 08.10.2007 at 3.30 p.m. before the first respondent / Information Commission and to explain, as to why penal provisions prescribed under Section 20 of the RTI Act, should not be invoked against the PIO concerned. The second order dated 10.10.2007, where, a set of observations or directions with notices for show cause had been issued by the Commission, where the petitioners' department were directed to produce all the documents asked for by the Information Seeker on 30.10.2007. In the said directions, the petitioners' department were directed to produce those documents only for the purpose of inspection by the petitioners.

17. Only at that stage, the petitioners have moved this Writ Petition and the matter has been, from that stage, pending.

18. Unmindful of the pendency of this Writ Petition, subsequently all those information sought for and the documents required by the Information Seeker since had been furnished and the same has been accepted by the second respondent through the



learned counsel who made the submissions in this regard as stated supra. As far as the question, whether the documents sought for or the information asked for by the Information Seeker still has been concealed or still have not been furnished by the petitioners' department, does not arise, as those documents or informations have been furnished to full extent, there could be no further proceedings to that aspect to give any directions even by the first respondent / Information Commission to the petitioners' department to furnish those information to the Information Seeker.

19. In view of the said developments, whether still the impugned show cause notices or orders passed by the Information Commission are having any persuasive value to identify the PIO for initiating the penal action against such PIO for the alleged non-compliance of the orders or directives issued by the Commission, is the only question to be answered.

20. In this context, though the import or veracity of the impugned orders are supported by the learned Standing counsel appearing for the Information Commission, he has also submitted that, the act was in nascent stage at that time, therefore there could have been chances of misconstruing the provisions of the Act or the workability of the various provisions of the Act. Though justification was made by the learned standing counsel appearing for the Information Commission to justify the impugned orders, the said stand has been objected by the learned Special Government Pleader appearing for the petitioners. According to him, such notices, which are impugned herein, ought not to have been issued by the first respondent / Information Commission, without realising the ground position, where the petitioner department / PIO were placed at that time.

21. In this context, it is the concern of the petitioners' department that, for no fault of them or without having involved in any violation intentionally in order to float the orders or directives issued by the Information Commission, they have been targeted or the Commission proposed to initiate action against those officials of the petitioners' department, as has been proposed in the impugned orders. Therefore, at the instance of the Information Seeker, such a course of action against the officials / PIO of the petitioners department might not have been taken by the Information Commission.

22. As to whether, the Information Commission has rightly issued the impugned communications proposing some penal actions against the officials of the petitioners department or not, in the considered opinion of this Court, need not be gone into at this juncture.



23. The penal provisions which are form part of the RTI Act are intended only to ensure that, the provisions of the Act are implemented in letter and spirit, as the intention of the legislature is to see that whatever information sought for by the Information Seeker under the provisions of the Act are provided then and there by the concerned PIO's within the time frame as contemplated under the Act itself.

24. Therefore, it may not be the intention of the Commission to punish or impose any penalty on the Public Information Officers, who are, in most of the organizations like the State Government, doing the job of PIO in dual capacity, apart from their regular work. When that being so, that too, as rightly pointed out by the learned counsel appearing for the Information Commission, at the nascent stage of the provisions of the Act in the year 2007, there could have been some misconception in the understanding of the workability of the Act and therefore, that could have triggered the Commission to issue these notices which are impugned herein. Therefore, this Court feels that, the said rigorousnesses attached with the impugned orders may not be available as of now, especially in the context, where in the subsequent developments taken place and the Information Seeker to her satisfaction has received all the informations from the petitioners department.

25. Whether the particular information is an exempted information within the provisions of the RTI Act, especially under Section 8, or not, need not be gone into in this Writ Petition by this Court because those aspects have been exhaustively discussed in number of cases by the Hon'ble Apex Court and in fact various issues arising out of RTI Act has been settled by legal pronouncements made by the Hon'ble Apex Court.

26. Therefore, there cannot be any straight jacket formula to be attached in this case, where, a particular information is an information, capable of being furnished or not or it is an information exempted within the provisions especially under Section 8 of the Act or not, can be gone into only depending upon the nature of the information sought for by the Information Seeker and therefore that aspect also insofar as the information sought for in this case, need not be gone into.

27. In view of the aforesaid developments, after having gone through all these documents and after hearing the submissions elaborately made by the counsel for the parties and in view of the discussion herein before made, this Court is of the considered view that, a quietus can be given on the issue raised in this Writ Petition and accordingly, this Writ Petition can be disposed of with the following orders:



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"(i) That the developments taken place subsequent to filing of this Writ Petition, where the second respondent / Information Seeker has been furnished all the information / documents sought for by her, which are subject matter in this Writ Petition and she satisfactorily received all those documents and in this regard, the second respondent does not have any grievance to be adjudicated in this Writ Petition, are hereby recorded.

(ii) In view of the said developments, where the Information Seeker obtained the information, what is the persuasive value attached with the impugned orders, if it is gone into, the resultant position would be that, in view of the discussion made above, the impugned orders need not be proceeded further by the first respondent / Information Commission and therefore, in this context, what has been observed by the Information Commission in the impugned orders could not have any effect for the purpose of present issue or for any future reference.

(iii) Therefore, the first respondent / Information Commission is hereby directed to give a quietus to this issue, by not proceeding anything further in pursuance of the impugned orders and in other words, the impugned orders for the purpose of proceeding anything further in future shall not have any effect against the concerned officials / PIO of the petitioners department."

28. With all the above directions, this Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vji



To

1. The State of TamilNadu,
Represented by its Secretary to Government,
Industries Department,
Fort St. George, Chennai - 9.

2. Deputy Secretary to Government,
Public Information Officer,
Industries Department,
Fort St. George, Chennai - 9.

3. The Officer on Special Duty / Registrar,
The Tamil Nadu Information Commission,
T.R. Dhandapani,
No. 278, Anna Salai, Chennai - 18.

4. Thiru S. Ramakrishnan, I.A.S. (Retd),
State Chief Information Commissioner,
Tamil Nadu Information Commission,
Teynampet, Chennai - 18.

+1cc to Mr.D.Nagasaila, Advocate, S.R.No.41834

+1cc to the Government Pleader, S.R.No.41971

W.P. No. 33936 of 2007

and

W.M.P. Nos. 1 of 2007 and 1 and 2
of 2008

BP(CO)
PM(27/07/2021)