

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.1989 of 2012

S.Pugazhendi

President

Subash Chandra Bose

Podhu Nala Sangam

97-D, Neela South Street,

Nagapattinam

...

Petitioner

Vs.

1.Dy.Superintending Engineer/
Public Information Officer
Office of the Superintending
Engineer,
Highways Department,
Alagar Kovil Road,
Madurai Circle,
Madurai - 625 002.

2.The Superintending Engineer/
Appellate Authority
Office of the Superintending
Engineer,
Highways Department,
Construction and Maintenance
Alagar Kovil Road,
Madurai Circle,
Madurai - 625 002.

3.State Public Information
Commissioner,
Tamil Nadu State Information
Commission,
Kamadhenu Co-operative
Supermarket Building,
1st Floor, Teynampet, (Near Vanavil)
Old No.273, New No.378,
Anna Salai, Chennai - 600 018.

4.State Chief Information

Commissioner,
Tamil Nadu State Information
Commission,
Kamadhenu Co-operative
Supermarket Building,
1st Floor, Teynampet (Near Vanavil)
Old No.273, New No.378,
Anna Salai, Chennai - 600 018. ...

Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus, calling for the records of the 4th respondent in the impugned order No.49220/B/2011 dated 26.12.2011 and quash the same and consequently, direct the 1st respondent to furnish forthwith the information sought for by the petitioner in the RTI application dated 05.08.2011.

For Petitioner : Mr.R.Anitha

For Respondent : Ms.K.Bhuvaneswari
Nos.1 & 2 Additional Govt. Pleader

Respondent No.3 : Served - No appearance

For Respondent : Ms.K.Swetha
No.4 for G.R.Associates

ORDER

This writ petition has been filed challenging the order dated 26.12.2011 passed by the 4th respondent and consequentially, direct the first respondent to furnish forthwith the information sought for by the petitioner in the RTI application dated 05.08.2011.

2.It is the case of the petitioner that he made a request under the RTI Act, 2005 to the first respondent on 17.06.2011 requesting him to furnish details of the First Class Contractors registered with the Highways Department within the territorial limits of the Madurai District. According to the petitioner, he received a reply dated 19.07.2011 from the first respondent and he was informed that he had to pay a sum of Rs.348/- for obtaining the list of First Class Contractors. However, it is his case that the reply dated 19.07.2011 sent by the first respondent did not contain any whisper about the information or

details sought for by the petitioner under the RTI Act.

3.It is the case of the petitioner that subsequently on 05.08.2011, he submitted another application under the RTI Act, 2005 to the first respondent requesting him once again to give the details of the list of First Class Contractors registered with the Highways Department within the territorial limits of the Madurai District. The petitioner had also requested the copies of all the documents, which were submitted by the First Class Contractors to the Highways Department at the time of the registration and the petitioner had also undertaken to pay the necessary charges/fees for furnishing the copies of the same.

4.It is the case of the petitioner that since no reply was furnished to the application dated 05.08.2011 for a period of 30 days as contemplated under the Act, he filed the statutory appeal before the second respondent on 10.09.2011. It is the case of the petitioner that there was no response from the second respondent also with regard to the appeal and hence, he was constrained to file a second appeal with the third respondent on 26.09.2011 under the RTI Act.

5.It is the further case of the petitioner that he received a reply dated 21.10.2011 from the second respondent to the appeal filed before him on 10.09.2011, wherein, the petitioner was informed that the information sought for by him could not be furnished in view of Section 11(1) of the RTI Act. According to the petitioner, Section 11(1) of the Act has no application to the facts of the instant case and therefore, the rejection of the request by the second respondent is baseless as no confidential information has been sought for by the petitioner with regard to the First Class Contractors.

6.Aggrieved by the order dated 21.10.2011 rejecting the appeal and the inaction of the third respondent with respect to the petitioner's appeal dated 26.09.2011, the petitioner preferred a further appeal dated 03.12.2011 before the 4th respondent. The 4th respondent passed the impugned order dated 26.12.2011 dismissing the appeal stating that the information sought for by the petitioner could not be furnished since it relates to third party information and it is also confidential in nature. Aggrieved by the order dated 26.12.2011, this writ petition has been filed.

7.Heard Mr.R.Anitha, learned counsel appearing for the petitioner, Ms.K.Bhuvaneshwari, learned Additional Govt. Pleader appearing for the first and second respondents and

Ms.K.Swetha for M/s.G.R.Associates appearing for the fourth respondent.

8.The learned counsel appearing for the petitioner submitted that the information sought for by the petitioner pertaining to the First Class Contractors of the Highways Department in Madurai District is not confidential information or third party information and cannot be exempted from disclosure as per provisions of Section 8 of the RTI Act, 2005. She drew the attention of this Court to the alleged objections raised by various contractors with regard to the information sought for by the petitioner, which is found in the typed set of papers filed by the respondents 1 to 3. Further, she drew the attention of this Court to page Nos.5 to 17, which contains the various objections raised by the First Class Contractors with regard to the request made by the petitioner under the RTI Act as regards them and it is pointed out that the letters are identical and the printing is also identical and in most of the cases, the dates found are also same. According to her, the said letters are fabricated letters. It is also her case that none of those letters were brought to the notice of the petitioner by either of the respondents. According to her, a fraud has been played upon the petitioner.

9.Per contra, the learned Additional Government Pleader appearing for the respondents 1 & 2 would submit that the information sought for by the petitioner is exempted from disclosure as per the provisions of Section 8 of the RTI Act, 2005 as under Section 8(d), the information if furnished, will affect the commercial confidence and will amount to divulging secrets, which harms the competitive position of a third party. She would also submit that the respondents have rightly rejected the request after considering the objections raised by the First Class Contractors with regard to the request made by the petitioner under the RTI Act. According to the learned Additional Government Pleader, the procedure contemplated under Section 11 of the RTI Act, has been duly followed in the case on hand. It is also her case that since the information sought for by the petitioner does not deal with public documents, the respondents have rightly rejected the request of the petitioner. According to the fourth respondent, they have followed the due procedure of law as laid down in the RTI Act, 2005 and rightly rejected the request of the petitioner.

10.Admittedly, in the case on hand, the copies of the objections raised by the First Class Contractors with regard to the request made by the petitioner under the RTI Act were not furnished to the petitioner by the respondents under the

impugned proceedings. It is the case of the petitioner that the copies of the objections, which are found in the typed set of papers filed by the respondents 1 to 3, are identical as the printing is also identical and dates in most of the objections are the same and hence they are fabricated documents. It is the case of the petitioner that no sufficient opportunity was given to the petitioner by the respondents to counter the alleged objections raised by the First Class Contractors. According to the petitioner, the respondents have not followed the principles of natural justice and they have not followed the due procedure as contemplated under Section 11 of the RTI Act, 2005. It is also the case of the petitioner that the information sought for does not deal with any confidential information or any trade secret and it is a public document about which any person can seek information.

11. Section 8(e) of the RTI Act, which is relied upon by the respondents 1 to 3 for the purpose of not divulging the information to the petitioner, reads as follows:

"8(e).information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information:"

12. As seen from Section 8(d), exemption is granted, when the information sought for includes commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information. In the case on hand, without giving an opportunity to the petitioner with regard to the alleged objections raised by the First Class Contractor, the respondents have come to the conclusion that the information sought for by the petitioner is exempted from disclosure as per the provisions of Section 8 of the RTI Act. Further, there is a procedure contemplated under Section 11 of the RTI Act, 2005, with regard to third party information. Section 11 of the RTI Act, 2005 reads as follows:

"11. Third party information.-(1). Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a

third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2).Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3).Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under Section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of

his decision to the third part.

(4).A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision."

13.As seen from Section 11 of the Act, timelines have been fixed with regard to the receipt of the objections from the third parties in respect of requests with regard to third party information under the RTI Act, 2005. From the impugned order, this Court is unable to draw inference as to whether the procedure contemplated under Section 11 of the RTI Act, 2005 has been followed. It is incumbent on the part of the respondents to follow the procedure whenever a request is made by a party under the RTI Act. In the case on hand, since the copies of the objections raised by the First Class Contractors with regard to the request made by the petitioner for disclosure of information pertaining to them were not furnished to the petitioner and the impugned order also do not disclose as to whether the procedure contemplated under Section 11 of the RTI Act, 2005 has been followed or not, this Court is of the considered view that the impugned order has been passed by the respondents without adhering to the principles of natural justice and not following the procedure contemplated under Section 11 of the RTI Act, 2005, with regard to the disclosure of third party information.

14.In the result, the impugned order dated 26.12.2011 passed by the 4th respondent is hereby quashed and the matter is remanded back to the fourth respondent for fresh consideration and he shall pass final orders in accordance with law within a period of three months from the date of the receipt of a copy of this order after giving sufficient opportunity to the petitioner as well as the objectors who have objected to the request made by the petitioner under the RTI Act.

15.With the aforesaid directions, the writ petition is disposed of. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

sms

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To

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Public Information Officer
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Highways Department,
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+1 cc to M/s.G.R.Associates sr 8790
+1 cc to M/s.R.Anitha Advocate sr8380
+1 cc to M/s Government pleader sr9485

W.P.No.1989 of 2012

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