

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.09.2020
CORAM
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 34952 of 2013
and
M.P. No. 1 of 2013

Periyar Maniammal University
Represented by its Registrar
Periyar Nagar
Vallam, Tanjavur - 613 403

... Petitioner

-vs-

1. The Assistant Registrar
The Tamil nadu State Information Commission
No.2, Thiyagaraya Road
(Near to Alayamman Koil)
Teynampet, Chennai - 600 018.

2. The Public Information Officer (PIO)
Periyar Maniammai University
Periyar Nagar, Vallam
Tanjavur - 613 403.

3. Mr. R.Kumaran
No.12, Bala Nagar
Reddipalyam Road
Tanjavur - 613 403.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in Case No. 22398/ Enquiry/C/ 2013 dated 13.11.2013 on the file of the First Respondent and quash the same as illegal, arbitrary and against the law.

For Petitioner: Dr. A.Thiyagarajan, Senior Counsel
M/s. D.Veerasekaran

For Respondents: Mr. M.Kumaravelu (For R2)
Mr. S.Krishnasamy (For R3)

O R D E R

(through video conference)

Heard Dr. A.Thiyagarajan, Learned Senior Counsel appearing for the Petitioner, Mr. M.Kumaravelu, Learned Counsel for the Second Respondent and Mr. S.Krishnasamy, Learned Counsel for the Third Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Third Respondent in his application dated 08.12.2012 under Section 6(1) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act' for short) had sought information from the Second Respondent as to whether any amount of gratuity has been disbursed to the employees of the University belonging to the teaching profession on their retirement, termination and resignation and if so, to produce the copies of the same and inform cost to be remitted in that regard. The Second Respondent by Letter No. 003/PMU/ Regr./RTI Act/2013, dated 02.01.2013 rejected the claim made by the Third Respondent stating as follows:-

"In this connection, the attention of the applicant is drawn to the rulings given under Section 8(1)(j) read with Section 8(1)(e) of the Right to Information Act, 2005, according to which the information solicited by the applicant cannot be furnished to him, since such act of this University will cause unwarranted invasion of the privacy of the individual concerned since the request of the applicant has no relationship to any public activity, as defined in the Act."

The Third Respondent had then filed an appeal dated 22.01.2013 under Section 19(1) of the Act against that order before the Petitioner, who had by order dated 15.02.2013, rejected the same relying on the decision of the Hon'ble Supreme Court of India in *Girish Ramchandra Deshpande -vs- Central Information Commissioner* [(2013) 1 SCC 212] in which it has been held that disclosure of personal information is exempted under Section 8 (1)(j) of the Act.

3. Thereafter, the Third Respondent preferred the Second Appeal under Section 19(3) of the Act against that order before the First Respondent. It was held by the First Respondent by the order in Case No. 22398/Enquiry/C/2013 dated 13.11.2013 that the information sought by the Third Respondent cannot be construed as personal information exempted under Section 8(1)(j) of the Act as it falls under Section 4(1)(b)(x) of the Act which would

have to be provided suo motu to the public so that they have minimum resort to the use of the Act to obtain such information. It was also pointed out that the aforesaid decision of the Hon'ble Supreme Court of India relied by the Petitioner was not applicable to the nature of information that had been sought by the Third Respondent in the case. As a consequence of that conclusion reached, the Second Appeal was allowed and the Petitioner was required to furnish the information within 15 days and file a report of compliance. That apart, the Petitioner was required to show cause why disciplinary action should not be initiated against the Petitioner for the delay of 11 months in furnishing information that had been sought by the Third Respondent. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging that order passed by the First Respondent.

4. The pivotal attack on the impugned order in this Writ Petition is that the personal information relating to the employees of the Petitioner sought by the Third Respondent from the Second Respondent was exempted under Section 8(1)(j) of the Act. It is beyond any pale of doubt that 'gratuity' which is a retiral benefit is deferred wages that an employee is entitled to receive from his employer at the time of his termination from service, which would fall within the meaning of 'remuneration' in Section 4(1)(b)(x) of the Act. Clauses (2), (3) and (4) of Section 4 of the Act cast an obligation on the Public Authority to suo motu provide the various kind of information in Section 4(1)(b) of the Act to the public. In this context, it would be useful to refer to the following passages from the decision of the Hon'ble Supreme Court in Central Board of Secondary Education -vs- Aditya Bandopadhyay [(2011) 8 SCC 497] which is extracted below:-

"59. The effect of the provisions and scheme of the RTI Act is to divide 'information' into the three categories. They are :

- (i) Information which promotes transparency and accountability in the working of every public authority, disclosure of which may also help in containing or discouraging corruption (enumerated in clauses (b) and (c) of Section 4(1) of the RTI Act).
- (ii) Other information held by public authority (that is, all information other than those falling under clauses (b) and (c) of Section 4(1) of the RTI Act).
- (iii) Information which is not held by or under the control of any public authority and which cannot be accessed by a public authority under any law

for the time being in force.

Information under the third category does not fall within the scope of the RTI Act. Section 3 of the RTI Act gives every citizen, the right to "information" held by or under the control of a public authority, which falls either under the first or second category. In regard to the information falling under the first category, there is also a special responsibility upon the public authorities to suo motu publish and disseminate such information so that they will be easily and readily accessible to the public without any need to access them by having recourse to Section 6 of the RTI Act. There is no such obligation to publish and disseminate the other information which falls under the second category.

....

61. Some High Courts have held that Section 8 of the RTI Act is in the nature of an exception to Section 3 which empowers the citizens with the right to information, which is a derivative from the freedom of speech; and that, therefore, Section 8 should be construed strictly, literally and narrowly. This may not be the correct approach. The Act seeks to bring about a balance between two conflicting interests, as harmony between them is essential for preserving democracy. One is to bring about transparency and accountability by providing access to information under the control of public authorities. The other is to ensure that the revelation of information, in actual practice, does not conflict with other public interests which include efficient operation of the Governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. The Preamble to the Act specifically states that the object of the Act is to harmonise these two conflicting interests. While Sections 3 and 4 seek to achieve the first objective, Sections 8, 9, 10 and 11 seek to achieve the second objective. Therefore, when Section 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfilment and preservation of democratic ideals.

62. When trying to ensure that the right to information does not conflict with several other public interests (which includes efficient operations of the Governments, preservation of confidentiality of

sensitive information, optimum use of limited fiscal resources, etc.), it is difficult to visualise and enumerate all types of information which require to be exempted from disclosure in public interest. The legislature has however made an attempt to do so. The enumeration of exemptions is more exhaustive than the enumeration of exemptions attempted in the earlier Act, that is, Section 8 of the Freedom of Information Act, 2002. The courts and Information Commissions enforcing the provisions of the RTI Act have to adopt a purposive construction, involving a reasonable and balanced approach which harmonises the two objects of the Act, while interpreting Section 8 and the other provisions of the Act."

In that view of the matter, it is not possible to accept the contention of the Petitioner that the particulars of gratuity paid by the Petitioner to its employees sought by the Third Respondent amounted to personal information exempted under Section 8(1)(j) of the Act.

5. Insofar as the reliance placed by the Petitioner on the decision of the Hon'ble Supreme Court of India in *Girish Ramchandra Deshpande -vs- Central Information Commissioner* [(2013) 1 SCC 212] emphasizing that disclosure of personal information is exempted under Section 8(i)(j) of the Act is concerned, it must, at once, be pointed out here that the information that had been sought in that case related to the copies of disciplinary proceedings and assets of an employee, which invades privacy of the individual concerned and does not have any relationship to any public activity or public interest. In this context, reference has to be made to the ruling of the Constitution Bench of the Hon'ble Supreme Court of India in *Padma Sundara Rao -vs- State of T.N.* [(2002) 3 SCC 533], where it has been observed as follows:-

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington -vs- British Railways Board* [(1972) 2 WLR 537 [Sub nom *British Railways Board -vs- Herrington* (1972) 1 All ER 749 (HL)]]]. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

6. At the same time, it is not possible to uphold the conclusion reached by the First Respondent requiring the Petitioner to show cause why disciplinary proceedings should not be initiated against the Petitioner under Section 20(2) of the Act for the delay of 11 months in furnishing information sought by the Third Respondent. It is borne out from the materials placed on record that the Third Respondent had made the application for information under Section 6(1) of the Act on 08.12.2012 and reply to the same had been sent on 02.01.2013 within a period of 30 days stipulated in Section 7(1) of the Act. Though exemption was claimed for furnishing information and the Appellate Authority had confirmed that order, the direction to furnish information, after hearing the parties by way of adjudication came to be passed by the First Respondent only through the impugned order passed on 13.11.2013 and that by itself cannot be construed that the Second Respondent and the Petitioner had malafidely denied the request for information made by the Third Respondent. Accordingly, that part of the direction in the impugned order would stand set aside. If the petitioner has not furnished information to the Third Respondent till date, the Petitioner shall ensure that the information sought by the Third Respondent, as directed in the impugned order dated 13.11.2013, is furnished by 30.11.2020 under written acknowledgment.

7. Having due regard to the fact that the scheme devised in the Act requires the State Information Commission to ensure its compliance, the First Respondent shall list the aforesaid Second Appeal on 03.12.2020, and the Petitioner and the Third Respondent shall appear for that hearing without fail. If the First Respondent is not in a position to take up the matter for hearing on that date, it shall inform to all parties concerned of the adjourned date of hearing in the prescribed manner. The First Respondent shall verify whether the order has been complied by the Petitioner and if not, shall take further action in accordance with law following the prescribed procedure in consonance with the principles of natural justice and shall communicate the decision taken to the parties.

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In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

maya/dm
To

1. The Assistant Registrar
The Tamil nadu State Information Commission
No.2, Thiyagaraya Road
(Near to Alayamman Koil)
Teynampet, Chennai - 600 018.
2. The Public Information Officer (PIO)
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Copy to

1. Periyar Maniammal University
Represented by its Registrar
Periyar Nagar
Vallam, Tanjavur - 613 403

+1 cc to M/s.D.Veerasekaran Advocate sr31433

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W.P. No. 34952 of 2013

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