

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.19407/2020

Dr.S.Ramadoss

... Petitioner

Versus

Tamil Nadu Public Service
Commission represented by its
Secretary, TNPSC Road,
VOC Nagar, Park Town
Chennai-3.

... Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondent to provide the details sought for by the petitioner in his representation dated 24.10.2020, viz., Group wise, caste wise, year wise for selections made by the TNPSC from the year 1989 to till date.

For Petitioner : Mr.K.Balu for
Mr.N.Vinoba Bhoopathy

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J. through
Video Conferencing]

- (1)The petitioner in the affidavit filed in support of the writ petition would aver among other things that he is the Founder of Vanniyar Sangam Advocates Forum Social Justice, Pasumai Thaayagam, a Non Governmental Organization for environmental conservation with consultative status conferred by the United Nation's ECOSOC and also a registered Political Party, viz., 'Pattali Makkal Katchi' [PMK].
- (2)The petitioner would further aver that he is a crusader of social justice and has spearheaded, struggled and agitated for the implementation of the present policy of reservation, both at the Centre and in the State of Tamil Nadu.

(3)The petitioner, in paragraphs No.14, 15 and 16, would aver as follows:-

14.It is submitted that on 20.07.1980, the petitioner founded the Vanniyar Sangam to fight for social justice. Vanniyar community is the single largest community in Tamilnadu, they are socially and educationally backward. They are predominately small time farmers, agricultural collies and primarily employed in unorganized sector. As they were not adequately represented in education and employment within the available backward class reservation, there were left behind from the rest of the society without any development. Since they were inadequately represented in public educational institutions and employment they were severely deprived of fair opportunities of development. To empower and uplift the vanniyar community through education and employment they should be provided with proportional reservation in education and employment in accordance to their population. Therefore, in order to rectify this already existing social injustice and to protect and safeguard social justice, Vanniyar Sangam was founded. The very first resolution passed by the sangam was demanding the then State Government, to immediately conduct a caste based census in Tamil Nadu to provide proportionate reservation for each caste based on their respective population in public sector educational institution and employment. The second resolution was demanding 20% separate reservation for vanniyar community as they were socially and educationally backward and they were not represented adequately in Government educational institutions and government services in proportion to their population.

15.It is submitted that the petitioner travelled across the State and created awareness among the vanniyar community about the inadequate representation in education and employment in public sector and their under development in comparison to other communities. The petitioner protested and conducted various movements [rail & roko] to seek the attention of then Government from 1980 to 1987. All the efforts and struggles of our vanniyar sangam across the State went vain and the then Government failed to even give the petitioner an appointment and meet the

representatives for talks, forget about them accepting our demands. Left with no other option, the petitioner called for one week Saalai Mariyal [road blockade] starting from September 17, 1987 with prior warning to the State Government.

16. It is submitted that the petitioner lead State-wide road blockade agitations launched by Vanniyar Sangam [demanding 20% reservations in State Government and 2% reservations in Central Government] exclusively for Vanniyar community. The then State Government, without hearing or listening to the genuine demands, in an attempt to curb the protest, brought the para-military forces in addition to the State Police machinery in large numbers and excessive forces were used to commit police brutalities and they together committed huge amount human right violations. Tens of thousands of protesters including the petitioner were arrested, properties worth crores of the innocent villagers were damaged, 21 demonstrators were gunned down and killed by the State police and para-military forces in the broad day light, violating any known human right laws and regulations in the weeks that followed."

(4) The petitioner would further aver that on account of the failure in talks with regard to the reservation, a one week road blockade in the year 1987 was spearheaded by the petitioner and in the year 1989, the Government had accepted their demand of 20% separate reservation for Most Backward Classes [MBC], but included 107 other communities within that classification and that apart, 50% of reservation for Backward Class was bifurcated as 30% for Backward Class and 20% for Most Backward Class vide G.O.Ms.No.242 dated 28.03.1989.

(5) It is also stated by the petitioner that he being a responsible citizen, working towards social justice throughout his life, wish to know the date of such appointment made by the respondent, viz., the Tamil Nadu Public Service Commission [TNPSC]. The petitioner, in this regard, has also invoked the provisions of the Right to Information Act, 2005 [in short 'RTI Act'] and through his representation dated 08.09.2020, sought for certain information and it is relevant to extract the same:

"Details of Total [Permanent and Temporary] recruitment made [year wise, group wise, class wise and caste wise] in Group I, II, IV right from January, 1989 till August 2020:

(a) Total vacancies in Group I, II & IV

(b) Total vacancies and percentage of vacancies category wise [General, Backward & Most Backward Class]

- (c) Total number of selected candidates group wise [Group I, II & IV] and year wise.
- (d) Total percentage of selected candidates category wise [General category, Backward class, Most Backward class] with group [Group I, II & IV] wise & year wise.
- (e) Total number of candidates [caste wise] selected in General category and their percentage with respect to total vacancies.
- (f) Total number of candidates [caste wise] selected in Backward class category and their percentage with respect to total vacancies.
- (g) Total number of candidates [caste wise] selected in Most Backward class category and their percentage with respect to total vacancies.'
- (6) Mr.K.Balu, learned counsel appearing on behalf of Mr.N.Vinoba Bhoopathy, learned counsel for the petitioner has drawn the attention of this Court to the order dated 07.09.2020 made in WP.No.17677/2010 filed by TNPSC represented by the Secretary, Chennai-6, Vs. Mr.P.Muthian, Tiruchirappalli,-620005, and would submit that the respondent herein, being the writ petitioner therein, has filed the said writ petition praying for issuance of a writ of certiorari calling for the records relating to the impugned order dated 20.11.2009 made in Case.No.6109/Enquiry/2009 on the file of the Tamil Nadu Information Commission and to quash the same as void, unlawful, unjust and unconstitutional.
- (7) A Single Bench of this Court, after taking note of the materials, rival submissions, has dismissed the said writ petition, filed by TNPSC and directed them to furnish the details sought for by the respondent therein within a period of one month from the date of receipt of a copy of that order and despite the said order, the details sought for as to the number of vacancies called for in the years 2006, 2007 and 2008, number of seats allocated to Backward Class Community out of total number of the said vacancies, number of seats allocated to Most Backward Class out of total number of vacancies and the list of selected candidates from the sub-sects of Mutturaja and Muthuriyar etc., and therefore, the attitude on the part of the respondent herein, in not furnishing the said information, despite the dismissal of their writ petition, is per se contemptuous.
- (8) It is the further submission of the learned counsel for the petitioner by drawing the attention of this Court to the representation dated 24.10.2020 submitted by the petitioner to the Chairman, TNPSC and the Joint / Deputy Secretary / Public Information Officer of the respondent as to the above cited

details and despite receipt and acknowledgment, no response is forth coming for nearly two months and left with no other option only, the petitioner is constrained to approach this Court by filing this writ petition.

(9) This Court paid its anxious consideration and best attention to the arguments advanced by the learned counsel for the petitioner and also perused the contents of the affidavit filed in support of this writ petition as well as the typed set of documents.

(10) The petitioner, vide his representation dated 24.10.2020 appears to have sought for information as enumerated in paragraph No.18 of the affidavit filed in support of this writ petition [extracted supra].

(11) Section 6 of the RTI Act, speaks about the request for obtaining information ; Section 7 speaks about disposal of the request ; Section 8 speaks about the exemption from disclosure of information ; Section 9 speaks about the grounds for rejection to access in certain cases and Section 10 speaks about the severability with regard to the access to the information.

(12) Chapter IV of the Right to Information Act, 2005, deals with the State Information Commission and Section 15 speaks about the constitution of State Information Commission [SIC].

(13) Section 18 of Chapter V deals with the powers and functions of the Information Commissioner, Appeals and Penalties and it is relevant to extract Sections 18, 19 and 20:-

Powers and functions of the Information Commissions, appeal and penalties

18. (1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person,-

(a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public

Information Officer or senior officer specified in subsection (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;

(b) who has been refused access to any information requested under this Act;

(c) who has not been given a response to a request for information or access to information within the time limit specified under this Act;

(d) who has been required to pay an amount of fee which he or she considers unreasonable;

(e) who believes that he or she has been given incomplete, misleading or false information under this Act; and

(f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The Central Information Commission or State Information Commission, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(a) 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;

(b) requiring the discovery and inspection of documents;

(c) receiving evidence on affidavit;

(d) requisitioning any public record or copies thereof from any court or office;

(e) issuing summons for examination of witnesses or documents; and

(f) any other matter which may be prescribed.

(4) Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act

applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

Appeal

19. (1) Any person who, does not receive a decision within the time specified in subsection (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) by publishing certain information or categories of information;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause (b) of subsection (1) of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act; (d) reject the application.

(9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may

be, shall decide the appeal in accordance with such procedure as may be prescribed.

Penalties

20. (1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under subsection (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary

action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.''

(14) If at all the petitioner is unable to get information as sought for by him by invoking the provisions of the RTI Act, the effective, efficacious and alternative remedy available, has been enumerated and detailed in Chapter V of the RTI Act, 2005.

(15) It is pertinent to point out that Section 20 also provides for penalties in the event of non-compliance of the other provisions.

(16) It is a well settled position of law that if the petitioner is having an effective, alternative and efficacious remedy, the writ petition, by invoking the jurisdiction under Article 226 of the Constitution of India, is not maintainable.

(17) In the light of such an efficacious and effective remedy available, this Court is of the considered view that the writ petition, at present, is not maintainable.

(18) At this juncture, the learned counsel for the petitioner, once again, invited the attention of this Court to the order dated 07.09.2020 made in WP.No.17677/2010 and would submit that despite the writ petition filed by the respondent herein, came to be dismissed opposing the order for grant of the said information sought for by the respondent therein, viz., Mr.P.Muthian, it is yet to be complied with.

(19) If the respondent in the said writ petition is so advised, he is always at liberty to work out his remedy in accordance with law for the compliance of the above said order dated 07.09.2020 in WP.No.17677/2010.

(20) In the light of the reasons assigned above, the writ petition is dismissed as not maintainable. However, the petitioner is always at liberty to work out his remedy in the light of the provisions available under Chapter V of the Right to Information Act, 2005. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Secretary,
Tamil Nadu Public Service Commission
TNPSC Road,
VOC Nagar, Park Town,
Chennai-3.

WP.No.19407/2020

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