



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2020
CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)No.5293 of 2015
and
M.P. (MD)No.1 of 2015

S.Pappa

: Petitioner

vs.

- 1.The Commissioner,
Tamil Nadu State Information Commission,
No.2, Thiyagarayar Road, Chennai.
- 2.The Director of Elementary Education,
Chennai -6.
- 3.The District Elementary Educational Officer,
Virudhunagar, Virudhunagar District.
- 4.The Assistant Elementary Educational Officer,
Srivilliputhur, Virudhunagar District.
- 5.Sivanthi Vinayagar Primary School,
represented by its Secretary,
Mamsapuram, Srivilliputhur Taluk,
Virudhunagar District.

6.M.Vairamuthu

: Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the first respondent, State Information Commission, dated 30.12.2014 and quash the same and to direct the respondents to furnish the documents sought by the petitioner through Right to Information Act 2005.

For Petitioner :Mr.M.R.Vijaya Kumar

For R1 :Mr.K.K.Senthil

For R2 to R4 :Mr.A.Muthu Karuppan
Additional Government Pleader

For R5 and R6 :Mr.M.Thirunavukarasu



O R D E R

This Writ Petition is filed for issuing a Writ of Certiorarified Mandamus to quash the impugned order passed by the first respondent, State Information Commission, dated 30.12.2014 and to direct the respondents to furnish the documents sought by the petitioner through Right to Information Act 2005.

2.The brief facts that are necessary for the disposal of this Writ Petition are as follows:

3.The petitioner originally sought for certain informations and copies of documents specified, so as to enable her to establish that the sixth respondent was never physically present nor worked as Headmaster in the School during the relevant period. No doubt, the documents sought by the petitioner are all public documents and hence, the second appeal filed by the petitioner before the State Information Commission was allowed on 27.08.2014. However, quiet strangely, on 30.12.2014, the State Information Commissioner, after passing of order on merits dated 27.08.2014, has recalled its own order on the ground that the Single Member Bench has no jurisdiction. Aggrieved by the order of first respondent, the above Writ Petition is filed.

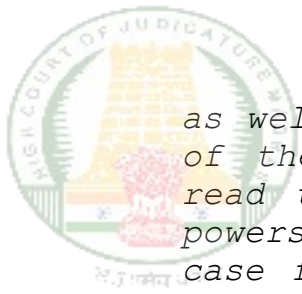
4.The fourth respondent has filed a counter affidavit denying the averments made in the affidavit filed in support of this petition. In the whole counter affidavit, the prime contention of the petitioner that subsequent order of State Information Commission to review its earlier order is without jurisdiction, has not been responded by the respondents. It is well settled that the statute unless confers the power in favour of an authority or forum to exercise the power of review or *suo motu* review or revision, such Authority or forum under the Statute is not authorised to exercise the power of review to review the order passed by authority or forum by itself.

5.A Division Bench of Punjab and Haryana High Court in the case of **Surjit Singh vs. State of Punjab and others**, reported in **1980 1 LLR Punjab & Haryana 11**, has held as follows:

(21) After hearing the learned counsel for the parties on the first point, we are of the opinion that an order under section 197 of the Code is an administrative order and that the Government has no power to review its earlier order passed under the said section. Even in the case of administrative orders it has been held by the Supreme Court in *D. N. Ganguly's case* (supra) that in the absence of a provision granting power to the Government to cancel or supersede its earlier order, no such power can be claimed on the strength of section 21 of the General



Clauses Act. It may be mentioned that before us the counsel for the State has not relied on the provisions of the General Clauses Act to support the power of the State Government to review its earlier order, but argued purely on the basis of Government's administrative or executive power to pass orders on the same matter from time to time, and no fetter can be placed on such a power of the State Government according to the argument raised. With this broad argument of the learned Counsel for the State, we are not impressed and we, are unable to uphold the same. The Government does not act in administrative capacity while passing an order under section 197 of the Code and we may say that the Government is exercising a statutory power and that power can be exercised by it only once in whatever way it chooses to do, but later on it cannot change its mind and pass a fresh order taking a different view, otherwise there will be no end to the exercise of this power. In a given case, if we permit the power of review, it may be exercised a number of times on the same facts. We draw support for the above view from the decision of the Supreme Court in D.N.Ganguly's case (supra) as well as from Hardyal Rais case, Venkatesh Yeshwant Deshpande's case, Bherumal's case and Kanta Devi's case (supra). In all these cases, a fresh order was sought to be passed second time and there was no power for doing so under any of the concerned provisions of the statute and reliance was only placed on the provisions of the General Clauses Act where power to rescind or cancel was contained. In all the, aforesaid cases, it was ruled that order could not be passed a second time rescinding, cancelling or varying the earlier order and the orders passed second time were held to be null and void and were quashed. Same is the position here that there is no specific provision empowering the State Government to pass a second order on the same facts either expressly or by necessary implication. There may be difference in passing an administrative order in exercise of its statutory authority under a specific statute in contradiction to its purely administrative or executive authority under Article 162 of the Constitution. Therefore, the general power of the Government to rescind or vary its order has to be kept at a different level than the orders which the Government has the authority to pass on the basis of a statute framed by Parliament or the State Legislature. So far as the decision of the Supreme Court in M/s.Western India Watch Co.'s case (supra), is concerned, the passage quoted above itself has shown the distinction between the cases when the Government refuses to exercise its power and the cases where the Government has exercised its power. This case



as well as D.N.Ganguly's case (supra) are under section 10 of the Industrial Disputes Act and a reasonable way to read them would be that if Government has exercised its powers once, it cannot exercise the same power in a given case for the second time. But if the Government has not exercised its power, it has not exhausted its power to act and there is no bar in the exercise of that power."

6.The Punjab and Haryana High Court has considered the position where the Government, which has exercised the power once, can not exercise the same power in a given case for the second time. The Punjab and Haryana High Court considered the power of the Government to review its own order, which is not expressly given under the Statute.

7.A Division Bench of Allahabad High Court in the case of **Ajain Narain Agarwal vs Additional District Magistrate (City) Allahabad and others**, reported in **CDJ 2017 All HC 199**, dealing with a similar situation, where, the question was whether the authority can exercise the power of review to review his or its order without any Statute permitting such review application or power to such authority. The relevant portion the said judgment reads as follows:

"36.On this issue, the Court is of the opinion that it is a settled legal proposition that unless the statute permits a review application, the same is not maintainable. In the absence of any provision in the Act granting an express power of review application, no review could be made and any order passed on the review application, if passed, is illegal and without jurisdiction. The Supreme Court has reiterated this proposition in a catena of decisions and, in *Kalabharati Advertising vs. Hemant Vimalnath Narichania and others*, 2010(9)SCC 437 the Supreme Court held that in the absence of any provision under an Act or the Rules, a review of an earlier order was impermissible as review is the creation of the statute and that jurisdiction of review can only be derived from a statute and not otherwise. The Supreme Court further held that in the absence of any statutory provision provided for review, entertaining an application for review or under the garb of clarification/modification/correction was not permissible."

8.It has been repeatedly held by the Honourable Supreme Court that review is always a creature of statute. Unless there is power to oneself to review his own order, such power cannot be exercised. In the present case, after extracting the facts, the Full Bench of State Information Commission has passed the order, setting aside the order passed by the State Information Commission earlier, on 27.08.2014.



9.Since the State Information Commission has no power to review its own order, the impugned order is liable to be set aside and accordingly, the impugned order passed by the first respondent, dated 30.12.2014 is set aside. Though the petitioner sought for a direction to the first respondent to furnish the documents, this Court cannot act as an executing Court to carryout earlier directions of the Commission. It is open to the petitioner to initiate appropriate action, as per the provisions of Right to Information Act 2005 to enforce the earlier order of Commission.

10.With the above directions, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

- 1.The Commissioner,
Tamil Nadu State Information Commission,
No.2, Thiyagarayar Road, Chennai.
- 2.The Director of Elementary Education,
Chennai -6.
- 3.The District Elementary Educational Officer,
Virudhunagar, Virudhunagar District.
- 4.The Assistant Elementary Educational Officer,
Srivilliputhur, Virudhunagar District.

+1 CC to M/s.M.THIRUNAVUKKARASU, Advocate (SR-5183[F] dated 07/02/2020)

+1 CC to M/s.K.K.SENTHIL, Advocate (SR-5441[F] dated 10/02/2020)

+1 CC to M/s.SPL GP (SR-5417[F] dated 10/02/2020)

W.P. (MD)No.5293 of 2015
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