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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2021

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.19872 OF 2020

M.Padmini

...Petitioner

Vs.

1.The State Information Commissioner,
State Information Commission,
No.2, Thiyagaraya Salai,
Near Aalai Amman Kovil,
Teynampet, Chennai - 600 018.

2.The Commissioner of Municipal Administration,
Municipal Administration,
6th Floor, Ezhilagam Annex Building,
Chepauk, Chennai - 600 005.

3.The Public Information Commission,
Mettupalayam Municipality,
Mettupalayam, Coimbatore District.

...Respondents

PRAYER : The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the third respondent to issue the information sought through application under Right to Information Act dated 28.04.2018 in the light of the order passed by the first respondent in S.A.No.6746/D/2018, dated 12.09.2019.

For Petitioner	:	Ms.S.Varsha
For Respondent No.1	:	Mr.Niranjan Rajagopalan
For Respondent No.2	:	Mr.V.Kathirvelu
		Special Government Pleader
For Respondent No.3	:	Mr.A.Thambuswamy

O R D E R

The present Writ Petition has been filed for the issuance of a Writ of Mandamus to direct the third respondent to issue the information sought for through application under Right to Information Act dated 28.04.2018 in the light of the order passed by the first respondent in S.A.No.6746/D/2018, dated 12.09.2019.



2. The Writ Petitioner is an applicant under the Right to Information Act. She made an application on 28.04.2018 to the third respondent seeking certain information. Since the third respondent has replied to the petitioner that the information sought for by her cannot be furnished in view of the order passed by this Court in W.P.No.21920 of 2011, she filed an appeal before the appellate authority on 15.06.2018. As there was no response from the first appellate authority, she preferred a Second Appeal before the first respondent on 10.09.2018.

3. The first respondent issued notice for enquiry on 28.08.2019 and passed a final order on 12.09.2019 directing the respondents 2 and 3 to furnish the information as sought for by the petitioner within 15 days in accordance with law. Subsequent to that, the third respondent furnished the information on 12.01.2021 with regard to 12 queries raised by the petitioner out of 16 queries. Insofar as the four queries are concerned, it was informed that the file was missing from the office. Not satisfied with the reply, the petitioner has approached this Court for a direction to implement the orders of the Information Commission.

4. The learned counsel for the petitioner would vehemently contend that the third respondent, in order to suppress the information, refused to give the information and it is untenable to state that the files were misplaced during the shifting of office, whereas, the Information Commission specifically directed the third respondent to furnish the information. Therefore, she would seek that the respondents 2 and 3 shall be directed to give information.

5. The learned counsel appearing for the first respondent would contend that the Information Commission does not have any power to compel the production of documents, but, only can take action against the authorities for non-furnishing of information by way of imposing penalty and recommending disciplinary action to the appropriate authorities.

6. The learned counsel for the third respondent would contend that the information sought for by the petitioner is with regard to selection process which had taken place in the year 1998 and the application came to be filed in the year 2018 i.e., after a period of 20 years. In the interregnum period, the files were misplaced during the shifting of the office. Therefore, those informations were not available with the third respondent.

7. I have heard the learned counsel appearing on either side and perused materials placed before this Court.



8. At the outset, it has to be seen whether the Information Commission has any power to secure compliance of the provisions of the Act or not? The object of the Right to Information Act, 2005, is to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. For that purpose, the State and Central Information Commissions were constituted.

9. As per Section 4 of the Act, every public authority shall maintain all its records duly catalogued and indexed in a manner facilitates the right to information under this Act and ensure that the particulars of the public organisation, function and duties, the powers and duties of the officers and its employees, the procedure followed in the decision making process and accountability and the rules, regulations, instructions, manuals and records under its control or used by its employees for discharging its functions and all other boards, councils, committees and other bodies, whichever be required should be furnished by the public authority.

10. Section 4(4) of the Act also provides that all materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area for the purpose of easy accessibility to the citizens. Therefore, the object of the act is to facilitate the right to information to every citizen with regard to the transparency and good management of every public authority. It also provides for obtaining information under Section 6 of the Act. Except for exempted information, all other information shall be furnished to the applicant without asking for any purpose or reasons. It is also mandated that the application shall be disposed of within 30 days. In view of the matter, the third respondent has suppressed the information. Even the second respondent appellate authority failed to furnish the same and only on the intervention of the first respondent, the information with regard to 12 queries out of 16 queries were furnished to the petitioner.

11. Now, the petitioner wants to get information with regard to remaining four queries to which, the learned counsel for the first respondent states that the Information Commission has no power to compel the public authority to produce certain information.

12. Insofar as the powers of the appellate authority is concerned, under Section 19 of the Act, the Information Commission is given ample powers to secure compliance of the object of the Act. As per sub-Section 8 of Section 19 of the Act, the Information Commission has power to require the public



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authority to take any such steps as may be necessary to secure compliance with the provisions of the Act, including (i) by providing access to information in a particular form. It has power to require the public authorities by publishing certain information or categories of information, by making necessary changes to its practices in relation to the maintenance, management and destruction of records and by requiring the public authority to compensate the complainant for any loss or other detriment suffered; impose any of the penalties provided under the Act even to reject the application. For that purpose, the Information Commission shall have power as vested in a Civil Court for 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, requiring the discovery and inspection of documents, receiving evidence on affidavit, requisitioning any public record or copies from any court or office, issuing summons for examination of witnesses or documents and any other matter which may be prescribed, which means that the Information Commission, as the appellate authority, has the power as a Civil Court, to require the public authority, to produce all the documents and records for its inspection or to be produced before it for inspection or examination. The words found in clause (a) of sub-Section 8 of Section 19 is "to take any such steps as may be necessary to secure compliance with the object of the Act". When the right to information is recognised as an important right to citizens to secure compliance of the provisions of the Act, the words in clause (a) implies that the Information Commission has the power more than what is demonstrated under the provision.

13. It is also to be noted that under Section 20 of the Act, the Information Commission has the power to impose penalty for refusal to furnish information or furnishing of incorrect, incomplete or misleading information or destroyed information and also recommend disciplinary action against the officer, who refused to furnish the information or furnished incorrect or misleading or destroyed information and dealt with enhanced power for directing the public authority to produce certain information and the available information was furnished to the applicant.

14. Therefore, the contention of the learned counsel for the first respondent that the Information Commission has no power is not acceded to. Insofar as the present case is concerned, the learned counsel for the third respondent would contend that the document, which is sought for by the petitioner is an obsolete document which is 20 years old and some of the documents were missing. Insofar as this aspect is concerned, it is for the Information Commission to examine the categories of documents, which can be retained or destroyed or disposed of within time limit and to pass appropriate orders.



15. Therefore, this Court is of the considered opinion that the matter has to be remanded to the Information Commission for exercising its power in letter and spirit of the Act as to whether the Information can be produced or request is liable to be rejected. Therefore, the order passed by the Information Commission in S.A.No.6746/D/2018, dated 12.09.2019, is set aside and direction is given to the Information Commission to reopen the Second Appeal and to pass appropriate orders. The petitioner is directed to submit the Second Appeal again in the prescribed form within a period of two (2) weeks from the date of receipt of a copy of this order.

In the result, the Writ Petition is allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

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To

1.The State Information Commissioner,
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6th Floor, Ezhilagam Annex Building,
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3.The Public Information Commission,
Mettupalayam Municipality,
Mettupalayam, Coimbatore District.

+1cc to Mr.A.S.Thambuswamy, Advocate SR.No.9478
+1cc to Mr.G.R.Associates for Niranjana Rajagopalan, Advocate
SR.No.9304
+2ccs to Mr.S.S.Varsha, Advocate SR.No.9348
+1cc to the Government Pleader SR.No.9528

W.P.No.19872 of 2020

KV(CO)
RVM(28/12/2021)