



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.12.2021

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.13732 of 2017

and

W.M.P.Nos.14916 of 2017 & 1839 of 2018

AM Asokan, B.E., B.L., M.I.E.,
Vigilance Officer, 44R/Executive Engineer, P.W.D.,
On deputation with T.W.A.D., Board,
Chepauk,
Chennai - 600 005. ... Petitioner

Vs.

1.The State Information Commissioner,
Representation by its Registrar,
Tamil Nadu Information Commission,
No.2, Theayagarayar Salai,
(Near Alaiamman Kovil),
Eldams Road Junction,
Teynampet, Chennai - 600 006.

2.G.Thangaraj ... Respondents

PRAYER :

Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records pertaining to the order made by the first respondent dated 18.04.2017 in Case No.SA.5138/visaranai/B/2016/X and quash the same as devoid of every canon of law.

For Petitioner	:	M/s.R.Dharani
For R1	:	Mr.Niranjan Rajagopalan for M/s.G.R.Associates
For R2	:	No appearance

O R D E R

The challenge in this Writ Petition is to the order passed by the first respondent, dated 18.04.2017, in Case No.SA.5138/visaranai/B/2016/X and to quash the same.



2. The facts of the case, in brief as follows:-

i) The petitioner joined in the Government service as an Assistant Engineer, in 1983, and thereafter, promoted as Assistant Executive Engineer in 2002 and further promoted as Executive Engineer, in Public Works Department, in the year 2010, and is now working as a Vigilance Officer on deputation with the Tamil Nadu Water Supply and Drainage Board, Chepauk, Chennai.

ii) Ever since, he joined in the service, he has been rendering unblemished service. While that being so, the second respondent, vide Petition, dated 23.03.2016, addressed to the Public Information Officer, Kosasthalaiyur Basin Division, Tiruvallur, sought for an information under the RTI Act with regard to the award of tender and such other details, in the Office of the Executive Engineer, P.W.D. WRD, Kosasthalaiyar Basin Division, Tiruvallur. The said petition of the second respondent, dated 23.03.2016, was properly responded by the petitioner, vide reply, dated 10.05.2016. The second respondent, not being convinced with the reply furnished by the petitioner, made an Appeal, dated 27.05.2016 before the Appellate Authority. Since there was no designated Appellate Authority, as per the provisions of the RTI Act, 2005, the petitioner, himself gave reply to the Appeal, dated 16.06.2016. Not satisfied with such reply, the second respondent filed further Appeal before the first respondent, and the first respondent passed the impugned order, dated 18.04.2017. Hence, the present Writ Petition.

3. The learned counsel appearing for the petitioner submitted that, the second respondent has sought for an information, which was res judicata, as the second respondent, himself has filed W.P.No.2860 of 2014, seeking for a direction to evict encroachment put by one K.P.S.Ilayaraja, and in the said Writ Petitioner, an order was passed for removal of encroachment, and since the said order was not complied with, the second respondent filed Contempt Petition No.68 of 2015, and this Court granted time to evict the encroachment and at the request of the Executive Engineer, two weeks time was granted and the cost of demolition work was ordered to be recovered from the second respondent. Thereafter, an affidavit, complying with the order was filed on 30.09.2015 and thereafter, the case was disposed of.

3.1 Therefore, the learned counsel submitted that, the second respondent had been the petitioner in both the Writ Petition and Contempt Petition, and in both the proceedings, the petitioner herein were not impleaded as party, and hence, the second respondent very well knew about full facts of the case and there was no necessity for the second respondent to seek for information with regard to the award of tender, to whom, it was awarded, what was the expenditure incurred for engaging the contractor, what was the amount that was collected towards tender and how much was the compensation



awarded, and such other details. Irrespective of the same, the information sought for by the second respondent under RTI Act, vide petition, dated 23.03.2016, was properly responded by the petitioner, vide reply, dated 10.05.2016. However, the second respondent, coloring the said reply to be wrong, filed an Appeal, dated 27.05.2016 before the Appellate Authority and again, not being satisfied with the reply given by the petitioner, made further Appeal before the first respondent, and the first respondent, without considering all these aspects, passed the impugned order.

3.2 The learned counsel for the petitioner further contended that, of course, it is no doubt true that, as per the order of the Court, the petitioner has taken steps for removal of the encroachment; but for removal of encroachment, no contractor was engaged for the demolition work; demolition work was carried out by hiring JCB; cost incurred for hiring JCB was a sum of Rs.6,800/-, and the same was borne by the encroacher and paid to the owner of the JCB; the said amount cannot be accounted in the books of account of the petitioner and all these facts were also brought into the knowledge of the Hon'ble First Bench of this Court and the Division Bench also, vide its order, dated 05.10.2015, recorded the said facts.

3.3 Therefore, the learned counsel submits that all these facts have been brought into the knowledge of the first respondent. However, the first respondent, without considering the same, issued a show cause notice, imposing a cost of Rs.25,000/- along with a sum of Rs.15,000/- towards compensation to the second respondent. Therefore, the learned counsel submits that the impugned order is not at all sustainable and is liable to be set aside.

4. Per contra, the learned counsel for the first respondent submitted that, in terms of the order passed by this Court, dated 11.09.2015, in Contempt Petition No.68 of 2015, in W.P.No.2860 of 2014, the petitioner only took steps for removal of encroachments, and hence, he is abreast of all the facts. Therefore, the second respondent sought for information as regards the award of tender, to whom, it was awarded, what was the cost of the tender, what was the expenditure incurred towards demolition work, what was the compensation awarded and such other details, but, the petitioner has not provided the information sought for, and the information provided by the petitioner were wrong, and hence, the second respondent preferred Appeal before the Appellate Authority, and the petitioner, without forwarding the Appeal papers before the Appellate Authority, he himself gave reply, which necessitated the second respondent to file further appeal before the first respondent, and the first respondent considering the illegality on the part of the petitioner and all other aspects has passed the impugned order, issued a show cause notice and not being satisfied with



the reply offered by the petitioner, passed the impugned order. Therefore, the learned counsel submitted that there is no merit in this Writ Petition and the same liable to be dismissed.

WEB COPY

5. Heard the learned counsel appearing for the petitioner and the learned counsel for the first respondent. Insofar as the second respondent, none appeared, despite his name is printed in the causelist.

6. Upon hearing the arguments of the learned counsel for the petitioner as well as the first respondent and on perusal of records, it appears that the petitioner has taken steps consequent to the order passed by this Court in W.P.No.2860 of 2014 to remove the encroachment put by one Ilayaraja, and carried out the demolition work for the purpose of removal of encroachment. Further, it appears that, neither any tender was called nor any contractor was engaged and the petitioner hired JCB and the cost incurred for hiring JCB was a sum of Rs.6,800/-, and the said amount was paid to the owner of the JCB by the encroacher, since, as per the direction of this Court, the cost has to be borne by the encroacher, and accordingly, the encroacher has paid the entire cost to the JCB owner directly and the said amount cannot be accounted in the books of account of the petitioner.

6.1 As rightly pointed out by the learned counsel appearing for the petitioner, when the order for removal of encroachment was not complied with, the second respondent filed Contempt Petition No.68 of 2015, wherein, all these facts were also brought into the knowledge of the Hon'ble First Bench of this Court and the Division Bench also, vide its order, dated 05.10.2015, recorded the fact as follows:-

"3. The contemnor/Executive Engineer present in Court states that the costs expended for removal of the unauthorized construction was Rs.6,800/- consisting of the rental for the JCB and the labour. This Cost is stated to have been directly paid by the third respondent to the persons hired for the said purpose."

6.2 Pursuant thereto, an affidavit, complying with the order was filed on 30.09.2015 and thereafter, the case was disposed of. Thus, the second respondent had been the petitioner in both the Writ Petition and Contempt Petition, and in both the proceedings, the petitioner herein were not impleaded as party, and hence, the second respondent is abreast of the facts of the case and there was no necessity for the second respondent to seek for information and further, when no tender was called for, no contractor was engaged, and nothing was paid directly by the petitioner, requiring the petitioner to maintain details of accounts, where comes the question of providing information with regard to the details



sought for by the second respondent, when he himself is a litigant and spectator in both the Writ Proceedings and Contempt Proceedings. Despite the same, the petitioner has responded to the information sought for by the second respondent by providing certain informations and the same is well within the time limit, i.e. on 10.05.2016, as the second respondent's application dated 23.03.2015 itself was received by the petitioner on 24.11.2016. However, the second respondent not being satisfied with such reply, filed appeal before the Appellate Authority and since there was no designated Appellate Authority, as per the provisions of the RTI Act, 2005, the petitioner himself gave reply to the Appeal, dated 16.06.2016. Not being satisfied with such reply, the second respondent filed further Appeal before the first respondent and the first respondent/Information Commissioner, without considering all these aspects, passed the impugned order dated 18.04.2017. In these circumstances, this Court is of the view that impugned order is an outcome of non-application of mind and is liable to be set aside. Further, I do not find any force in the submissions made by the first respondent.

7. Accordingly, the Writ Petition stands allowed and the impugned order is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Pns

To

The Registrar,
State Information Commissioner,
Tamil Nadu Information Commission,
No.2, Theayagarayar Salai, (Near Alaiamman Kovil),
Eldams Road Junction, Teynampet, Chennai - 600 006.

+1cc to M/s.T.Dharani, Advocate SR. No.68247

+1cc to M/s.G.R.Associates, Advocate SR. No.68370

W.P.No.13732 of 2017
and

W.M.P.Nos.14916 of 2017
& 1839 of 2018

PCH (CO)