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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30 / 04 / 2021

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.19337 OF 2017

Mahadev Viswanathan

...Petitioner

Vs.

1. Joint Secretary
Department of Economic Affairs (DEA)
Ministry of Finance (MF)
Room No.39-B,
New Delhi - 110 001. (India)
2. Joint Secretary
Department of Consumer Affairs (DCA)
Room No.312-A Wing, Shastri Bhawan,
New Delhi - 110 001.
3. Joint Secretary
Department of Legal Affairs (DLA)
Ministry of Law and Justice (MLJ)
4th Floor, A-Wing, Shastri Bhawan,
New Delhi - 110 001.
4. Joint Secretary
Ministry of Corporate Affairs (MCA)
Garage No.14, "A" Wing,
Shastri Bhawan, Rajendra Prasad Road,
New Delhi - 110 001.
5. Director
Forward Markets Commission (FMC)
(Currently under the control and supervision of SEBI)
Everest, 3rd Floor, 100, Marine Drive,
Mumbai - 400 002.
6. Joint Secretary
CDMRD, Securities Exchange Board of India (SEBI)
Plot No.C4-A, "G" Block,
Bandra Kurla Complex, Bandra (East)
Mumbai - 400 051.

...Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the respondents herein to allow the petitioner to inspect the records as mentioned in the representation dated 16.08.2016.

For Petitioner : Mr.Nithyaesh Natraj
For Respondents : Mr.Venkatasamy Babu
1 to 4 : CGSC
For Respondent-6 : Mr.Shivakumar

O R D E R

The present Writ Petition has been filed for a direction directing the respondents to allow the petitioner to inspect the records as mentioned in his representation dated 16.08.2016.

2.The petitioner made a representation on 16.08.2016 requesting the respondents to permit him to inspect the records under Section 4(1)(a), 4(1)(b), 4(1)(c) and 4(1)(d) of the Right to Information Act, 2005. It is necessary to understand the import of Section 4 of the Right to Information Act, 2005 (Shortly "the Act"). Section 4 of the Act reads as under:

"4. Obligations of public authorities. -
(1) Every public authority shall-

a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;

b) publish within one hundred and twenty days from the enactment of this Act,-

(i) the particulars of its organization, functions and duties;

(ii) the powers and duties of its officers and employees;



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(iii) the procedure followed in the decision making process, including channels of supervision and accountability;

(iv) the norms set by it for the discharge of its functions;

(v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

(vi) a statement of the categories of documents that are held by it or under its control;

(vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;

(viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

(ix) a directory of its officers and employees;

(x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

(xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;

(xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

(xiii) particulars of recipients of concessions, permits or authorisations granted by it;

(xiv) details in respect of the information, available to or held by it, reduced in an electronic form;

(xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;

(xvi) the names, designations and other particulars of the Public Information Officers;



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(xvii) such other information as may be prescribed; and thereafter update these publications every year;

c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;

d) provide reasons for its administrative or quasi-judicial decisions to affected persons.

(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

(3) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed. "

3. The above provision specifies the obligations of public authorities in maintaining the records and disseminating the information about its functioning. As per sub-clause (a) of Section 4(1) of the Act, every public authority shall maintain all its records in the manner which facilitates providing of the information. Whatever information which can facilitate the right to information shall be catalogued and grant access to such records. Sub-clause (b) of Section 4(1) of the Act mandates that the public authority shall publish the particulars of the organization, functions and its duties, powers and duties of its officers and employees and the procedure followed, the rules and regulations, instructions, manual and records held by its or under its control are used for its functioning. The public authority shall provide the particulars of arrangements which exists for consultation with the public and enable them to make



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representation in relation to formulation of its policy or implementation thereof. Likewise, it shall provide information about its meetings, directory of its officers and employees, monthly remuneration received by the officers and employees, budgetary provisions, execution of subsidy programmes and particulars about their beneficiaries of the same and facilities provided to the citizens for obtaining information, details of Public Information Officer and all other information shall be provided to the public and shall be published and updated in the web portals and other methods. Sub-Section (2) of Section 4 of the Act provides for as much information on its own to the public at regular intervals through various means of communication. Sub-Section (3) of Section 4 of the Act, provides for wide dissemination of every information which is easily accessible to the public. As per Sub-Section (4) of Section 4 of the Act, dissemination of information shall be cost effective in local language and easily accessible to the Central Public Information Officer as well as State Public Information Officer, either free or at cost. Explanation to Sub-Section (4) of Section 4 of the Act defines the word "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

4.As such, Section 4 of the Act makes it obligatory on the part of the public authorities to keep all the information about the organization and its functions and duties and also the information disseminated by the said organization about its functioning. In that view of the matter, it shall be understood that Section 4 of the Act facilitates right to information and easy access of information. It does not mean that whatever transpired within the organization and the business secrets or confidential matter or privileged communication or materials exempted under the Act shall be thrown open to the public. The object of the Act is that every citizen shall have the right to information as well as easy access to the information from the organization and there shall not be any lame excuse on the part of the officials that the files are missing or that it is difficult to get that information. That is why, all the informations are directed to be duly catalogued, digitalized, computerized and easily accessible even through electronic modes.

5.But, the Writ Petitioner demands as a matter of right, to enter the public office and gather information, which he seeks for. By no stretch of imagination, the explanation given to Sub-Section (4) of Section 4 of the Act that dissemination includes inspection of offices of any public authority does not empower a citizen to conduct search of the



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records of the Public Office or to conduct an inspection or raid the office of the Public Authority to secure any information which they want. The object of the Act is only to promote transparency and accountability in the working of every public authority. The transparency does not mean that all the information shall be thrown open to the public without there being any confidentiality or privilege. The object of the Act also preserves the paramountcy of the democratic ideal by exempting dissemination of information which has conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information. Therefore, the obligations of public authorities shall not be read in conflict of the public interest. Section 4 of the Act, as such, does not permit anyone to have a search into the records in the guise of inspection of offices of any public authority. With that view to regulate such demand for information under the guise of transparency and containing corruption, the Act has been enacted. Therefore, any person, who is desirous of getting some information shall make the request in writing or through electronic means to the Public Information Officer designated for this purpose. If it is presumed that Section 4 of the Act provides for unfettered power to inspect any office to search any document of the public authority and gather information, the other provisions of the Act will become redundant.

6. For example, if a person claims that he has a right to have any document of any public authority, he can go and search all the informations including sensitive information intellectual information and information with regard to the commercial secrets of that organization, only because it is a public authority. If he does not find any information, which is useful or beneficial to him, he can leave office after ransacking all the records. If a handful of such people, take a ride to any public office, it will result only in chaotic condition and the efficiency of organization will go to docks. Therefore, the enactment, as such, is only to regulate the unscrupulous elements from misusing or abusing the power and to maintain transparency and accountability or to eliminate corruption. Therefore, the request made by the petitioner to inspect all the records on his own with the assistance of his own people, will create chaos and that was not the intent of the Act. It is absurd to give such an interpretation to the provision, when a legislation provides for certain rights to secure information in a particular manner, that right shall be exercised or benefit shall be obtained in such manner prescribed under the statute. Only because he is a citizen, he cannot take law into hands and dictate terms.



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7.The Section 2(f) of Act defines "information" as under:-

"2(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force; "

Which means, the information which is held by the public authority and information of a private body to which the public authority has legal access. It is not all the information which are not legally accessible to the public authority can be obtained. Secondly, the word "held" connotes that the public authority has a right to hold some information which includes right to withhold certain information which is exempted under the purview of the Act. This definition is exhaustive. It does not mean that all the information can be obtained by pick and choose method by making search of the entire records of the office. That is why, there are certain checks and measures are provided under the Act.

8.The definition to "right to information" under Section 2(j) of the Act, means the right to information accessible under this Act which is held by or under the control of the public authority includes right to inspection of works, documents or records. The legislature have coined the word "right to information" accessible under this Act which means the Act specifies for information to which access can be provided which impliedly mean that there are certain information to which access cannot be provided. Further, the works held by or under the control of public authority means all the informations are not open and there shall be some checks and measures to provide the information which is permissible under the Act. The right to information, by inspection of work or document or records will be restricted only with respect to information which can be provided under the Act and not all the information. Therefore, the petitioner cannot seek for inspection of any organization and take its records without making a proper request under the appropriate provision of the statute. It is not the object as contended by the learned counsel for the petitioner that Section 4(4) of the Act provides for inspection of whatever records available in the office at his whims and fancies. It is highly illogical, impractical, unworkable to permit any Tom Dick and Harry to raid public offices in the guise of inspecting the



records. If thousands of people are allowed to enter in public office without any restriction, the very object of the Act to provide efficient and transparent administration would become meaningless. Therefore, the request of the petitioner, cannot be granted.

9.The Writ under Article 226 of the Constitution of India can be exercised for the violation of fundamental rights and the statutory rights and to enforcement of such lawful rights in the lawful manner, it cannot be exercised for circumventing improper acts of citizens taking shelter under the statutory rights.

10.In so far as the information sought for by the petitioner, it is open to him to file a proper application under the appropriate provisions of the Act and he cannot be granted access to conduct omni bus search of all the records and ransack the offices of the public authorities. In the event, the petitioner approaches the respondents in the manner known to law, the respondents are directed to provide information, in accordance with law.

11.The Writ Petition, as such, merits no consideration and accordingly, stands dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

TK

To

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Ministry of Finance (MF)
Room No.39-B,
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CDMRD, Securities Exchange Board of India (SEBI)
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Bandra Kurla Complex, Bandra (East)
Mumbai - 400 051.

+1cc to Mr.Venkatasamy Babu, Advocate, S.R.No.26836

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