BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2021

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P(MD)No.14288 of 2021
and
W.M.P(MD).No.11213 of 2021

DR.I.Ismail ... Petitioner

Vs.

1.Tamil Nadu State Information Commission,
Represented through its Assistant Registrar,
Block No.19, Government Farm Village,
Saidapet,
Chennai-600 015.

2.R.Raja Gopal,
Presently functioning as Chief Information Commissioner,
Tamil Nadu State Information Commission,
Chennai.

3.The District Registrar (Societies)/ Public Information Officer,
Societies and Registration Department,
Madurai ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records of the impugned summons issued by the first respondent herein vide proceedings in Case No. SA.3624/SCIC/2020 dated 02.08.2021 and quash the same as illegal and for other reliefs.

For Petitioner : Mr.V.Meenakshisundaram
For R-1 and R-2 : Mr.Veera Kathiravan,
Additional Advocate General,
Assisted by Mr.K.K.Senthil
and by Mr.P.Subbaraj,
Counsel for State for R3.

ORDER

The central issue that arises for consideration in this case is whether the Victoria Edward Hall Society (in short, "Victoria

Society") is a public authority under Section 2(h) of the Right to Information Act, 2005 (the RTI Act). Ancillary issues relating to whether information may be called for under the RTI Act even from a private body and whether the impugned summons is actuated by malice also arise. Besides, an issue of non-joinder was raised.

2. The narrative begins from 1911 when G.O.Ms.No.254, Revenue Department, dated 27.01.1911 (G.O.Ms.No.254) was issued. By G.O.Ms.No.254, land of an extent of 72 cents was granted to the Victoria Society. The said Government Order also adverts to the sale of 1.11 acres with exemption from ground rent. G.O.Ms.No.254 is subject to conditions. The first condition is that the whole extent of 1.83 acres of land (72 cents + 1.11 acres) shall be used for the construction of a town hall, museum and library. The second condition is that if the land is not used for the purpose for which it was granted or at all, the Government is entitled to resume 72 cents and impose the full ground rent as regards 1.11 acres. The 1.11 acres of land was sold subsequently to the Victoria Society by sale deed dated 26.03.2012. This sale deed also is subject to the conditions set forth in G.O.Ms.No.254, but is for a consideration of Rs.7,000/-. The said sale does not appear to be subject to resumption by the State.

3. The salience of the above mentioned facts would become evident only upon entering into the heart of the controversy. The petitioner received a summons dated 02.08.2021, which has been issued by the Assistant Registrar, Tamil Nadu Information Commission. Such summons was issued by exercising powers under Section 18(3) of the RTI Act. By such summons, the petitioner was summoned to appear before the Commission at 10.30 AM on 12.08.2021 to provide information relating to the list of members of the Victoria Society from 2014-15 to 2018-19; the list of members whose names have been deleted from the membership of the Victoria Society in the last twenty years; and the bylaws including all amendments with regard to the Victoria Society.

4. Upon receipt of such summons, the petitioner filed the present writ petition challenging the jurisdiction of the Information Commission to summon him for an inquiry under the RTI Act. The principal contention, in such regard, is that the Victoria Society is not a public authority under Section 2(h) of the RTI Act. As indicated earlier, the petitioner also contends that the issuance of summons is actuated by malice inasmuch as the petitioner lodged a complaint against the second respondent, who presently functions as the Chief Information Commissioner, to the Minorities Commission. The petitioner asserts that such complaint before the Minorities Commission was taken on file and an inquiry in relation thereto had been instituted. By drawing reference to the sequence of dates and events, the petitioner contends that he was summoned under the impugned summons only after the inquiry by the Minorities Commission commenced. Prior thereto, it is stated that the RTI proceedings were

confined to the public authorities under the Tamil Nadu Societies Registration Act, 1975.

5. In response, the Information Commission and State contend that the Victoria Society qualifies as a public authority under Section 2(h) of the RTI Act because it is substantially funded by the State. For such purpose, the State relies heavily upon G.O.Ms.No.254 as also the sale deed executed in favour of the Victoria Society. With regard to the allegation of malice, the Information Commission contends that such Commission is not a party to or even privy to the proceedings before the Minorities Commission. Secondly, it is contended that the summons was issued by the Assistant Registrar of the Tamil Nadu Information Commission and malice cannot be attributed to the second respondent on such basis. The Information Commission and State contend that the threshold for drawing an inference of malice is extremely high and the petitioner has completely failed to satisfy the requirements for establishing malice, whether malice in fact or law.

6. Therefore, it becomes necessary to first examine whether the Victoria Society qualifies as a public authority under the RTI Act. The question as to which type of entities qualify as public authorities under the RTI Act is no longer *res integra* and has been the subject matter of multiple judgments of the Hon'ble Supreme Court. Both the petitioner and the Information Commission and State placed considerable reliance on the judgment of the Hon'ble Supreme Court in *Thalappalam Service Cooperative Bank Ltd. v. State of Kerala* [(2013) 7 MLJ 407] (*Thalappalam*). While the petitioner placed reliance upon paragraphs 9, 31, 34 and 38 of the said judgment, the Information Commission and State relied on paragraphs 17,24,26,34,36,38, 45 and 47 thereof. In paragraph 36 and 37 of the said judgment, the Court examined the ambit of the expression "substantial" and in paragraph 38, the meaning of and test for determining whether an entity is "substantially financed" by the appropriate Government. Before closely examining this aspect of the matter, it is relevant to extract Section 2(h), and the same is set out below:

> "*2. Definitions.—In this Act, unless the context otherwise requires,—*
>
> *(h) "public authority" means any authority or body or institution of self-government established or constituted,—*
>
> *(a) by or under the Constitution;*
>
> *(b) by any other law made by Parliament;*
>
> *(c) by any other law made by State Legislature*
>
> *(d) by notification issued or order made by the appropriate Government, and includes any—*
>
> *(i) body owned, controlled or substantially financed;*
>
> *(ii) non-Government Organisation substantially financed, directly or indirectly by funds provided by the*

appropriate Government;"

As can be seen from the above, sub-clauses (a) to (c)are undoubtedly inapplicable to the Victoria Society and the only pertinent question is whether the Victoria Society qualifies as a body substantially financed by the Government in terms of Section 2 (d)(i) or whether it constitutes a non-government organisation substantially financed, directly or indirectly, by funds provided by the appropriate Government in terms of Section 2(d)(ii). In paragraph 34 of *Thalappalam* (cited supra), the Supreme Court concluded that the mere exercise of supervisory jurisdiction or regulation by statute of a body would not bring it within the scope of Section 2(h)(d)(i) of the RTI Act. As regards the meaning of the expression "substantial", the Supreme Court adverted to definitions under several standard dictionaries, such as Black's Law Dictionary (6th Edition) which define it as "of real worth and importance" and "of considerable value", and concluded that substantial does not mean dominant but is closer to material. In fact, in paragraph 38, the Supreme Court proceeded to examine whether the provision of subsidiaries, grants, exemptions, privileges, etc. would lead to an inference of substantial financing. Upon such examination, the Supreme Court concluded that substantial financing is such that without such funding the relevant body would struggle to exist. While so concluding, the Supreme Court noted that a private educational institution receiving 95% grant-in-aid may qualify as a public authority.

7. However, it appears that the law has been further refined thereafter, especially with regard to the meaning of the expression substantially financed. This issue came up for consideration in *D.A.V. College Trust and Management Society v. Director of Public Instructions* [2019 (9) SCC 185] (*D.A.V. College Trust*). The State relied heavily on paragraphs 17, 22, 24 and 26 of the said judgment. In paragraph 22, the Supreme Court held that there are, in total, six categories of entity that qualify as public authority, and, in paragraph 24, it was held that a society which is substantially financed, directly or indirectly, by the Government would fall within the scope of sub-clause (ii). In paragraph 26, it was held that "substantial" means a large portion but it does not necessarily have to mean a major portion or more than fifty percent. The Supreme Court also held that no hard and fast rule can be laid down in this regard. An interesting dimension of the judgment in *D.A.V. College Trust* is that the Supreme Court also dealt with the issue of indirect financing, which is of particular relevance to this case. The Supreme Court held that even the grant of land free of cost or at a heavy discount could result in an inference of substantial financing. Thereafter, in paragraphs 27-29, the Supreme Court emphasised that the facts of each case should be analysed before a conclusion is drawn. Eventually, on the facts of that case, it was held that the Society received grants that constituted about 44% of the total expenditure per year and that 95% of the salary of

teaching and non-teaching staff was borne by the Government. Therefore, it was held that the society is a public authority.

8. The principles laid down in these judgments should be applied to the facts of this case to determine whether the Victoria Society is substantially financed by the State. The State and the Information Commission rely on the fact that 72 cents of land was granted to the Society subject to conditions. Even as regards the 1.11 acres, the State points out that no ground rent is being charged in respect of such land.

9. On the contrary, the petitioner contends that 1.11 acres were alienated in favour of the Victoria Society. Such alienation is not subject to resumption. As regards the 72 cents of land, the petitioner points out that this land was resumed by the State. Instead, an extent of about 14276 square feet was granted on a fifty year lease exclusively for the purposes of maintaining a tennis court. In this regard, the petitioner relied upon G.O.Ms.No.242 , Revenue Department, dated 28.01.1972 (G.O.Ms.No.242), and pointed out that 16,001 square feet along with the superstructures thereon were required to be and were, in fact, surrendered by the Victoria Society under G.O.Ms.No.242. In effect, the petitioner contends that the conditional grant of 72 cents was effectively revoked by resuming the relevant land, and that the lease for fifty years in respect of about 14276 square feet is exclusively for purposes of maintaining a tennis court. On this issue, the petitioner also points out that the Victoria Society can easily function without the said tennis court, which is not essential to its functioning. As a result, the petitioner states that the only land on which the Victoria Society carries on its core activities is the 1.11 acres of land which was purchased from the State.

10. These contentions are refuted by the State on the ground that no ground rent is being levied even for the 1.11 acres of land. The State also points out that G.O.Ms.No.254 makes it clear that the conditions apply equally both to the 72 cents of land, which was originally granted, and the 1.11 acres. The State also points out that the Victoria Society has departed from the original object and purpose of constructing the town hall, museum and library. Instead, the land is being put to use for the purpose of running a cinema hall and other purposes which are far removed from its original objects. As regards the land given on lease, the State points out that it has been given on the rent of Rs.1 per annum, which is purely nominal. While on this subject, it is pertinent to notice that it is not necessary to record conclusions on whether the Victoria Society has breached the terms and conditions of G.O.Ms.No.254 for purposes of this case. Such alleged breach is outside the scope of this lis and, therefore, no findings are recorded on that issue. The above discussion is for the limited purpose of determining whether there is substantial financing.

11. After the judgment in *D.A.V. College Trust*, there is little doubt that substantial financing can also be indirect. In the case at hand, the question is whether the sale of the 1.11 acres or the lease of the 14276 square feet constitutes substantial financing. Paragraph 38 of *Thalappalam* indicates that substantial financing should be such that the entity concerned would struggle to exist but for such funding. Although this test has been tweaked and refined in *D.A.V. College Trust*, it cannot be completely disregarded. In this regard, the wise counsel of Judge Learned Hand in *Cabell v. Markham, 148 F.2d 737* that "it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary" is apposite. While "substantial" does not mean predominant, in the context of extension of the status of public authority to private bodies, the materiality threshold should be set high and at least at the level where the private body concerned would struggle to exist or continue its activities without such direct or indirect financing. The Victoria Society is certainly not dependent for its core activities on the land leased for purposes of maintenance of the tennis court. As regards the 1.11 acres of land, which was sold to the Victoria Society for Rs.7000 in 1912, the consideration may appear meagre by today's standards, but there is nothing on record to indicate that such consideration was nominal or even heavily discounted at the time such consideration was paid. Therefore, the question arises as to whether the exemption from ground rent in respect of such land would lead to the inference that the Victoria Society is substantially financed by the State. Unlike in *D.A.V. College Trust,* the total income and expenditure of Victoria Society is not on record. In addition, the admitted position is that the State did not provide any direct funding either towards capital or recurring expenditure. Another way of approaching the issue would be to ask the question: would the Victoria Society struggle to exist or sustain itself if ground rent is imposed or if the 14276 square feet of land is restored to the State? The unequivocal answer would be that the Victoria Society would still survive and sustain its operations. When viewed holistically, therefore, especially given the object and purpose of the exercise, i.e. to decide whether the entity is a public authority, the Victoria Society cannot be said to be substantially financed by the State.

12. The next issue that arises for consideration is whether malice in fact or malice in law has been established by the petitioner. The petitioner relies upon the sequence of events to substantiate the contention of malice. He points out that he filed the appeal before the Minorities Commission on 18.02.2021, and he received a notice dated 15.07.2021 for an inquiry on 26.07.2021. Although the proceedings seeking information from the Information Commission had been initiated as early as in May 2020, it is stated that the summons was issued to the petitioner only on 22.08.2021, which is shortly after the inquiry was scheduled by the Minorities

Commission. On the basis of this sequence of events, the petitioner states that there is reasonable basis to conclude that the summons was actuated by malice. On this issue, the petitioner also points out that the summons was issued to an individual and not to the Victoria Society.

13. The Information Commission and the State, on the other hand, contend that the threshold for establishing malice is extremely high and that an inference of malice cannot be drawn in the facts and circumstances. The Information Commission points out that the summons was issued by the Assistant Registrar. It is also pointed out that the Information Commission was neither privy nor party to the proceedings before the Minorities Commission. The Information Commission relies upon the judgment of the Hon'ble Supreme Court in *Purushottam Kumar Jha v. State of Jharkhand*, which is reported in 2006 (9) SCC 458, and contends that the petitioner has miserably failed to establish malice. The Information Commission points out that sufficient particulars and cogent materials should be placed before the Court and that vague allegations or bald assertions would not suffice.

14. The petitioner counters this contention by drawing reference to a judgment of the Hon'ble Supreme Court, which is reported in 1974 (3) SCC 459. On such basis, the petitioner contends that it is sufficient if there is a reasonable apprehension of bias. The petitioner also points out that no counter was filed by the party against whom the allegations of malice were levelled.

15. As correctly contended by the Information Commission, an inference of malice, be it malice in fact or law, should not be easily drawn. It is not without reason that the threshold in such regard has been set at a high level. While the petitioner has some basis to harbour a doubt that the summons may have been triggered by his complaint to the Minorities Commission, especially bearing in mind that the second respondent holds a senior position in the Information Commission, the mere sequence of events relied upon by the petitioner is grossly insufficient to record an inference of malice. On this issue, it should be borne in mind that the allegation of malice is being levelled against a statutory functionary and, therefore, inferences should not be readily or lightly drawn in such regard.

16. A tertiary issue was raised with regard to the non-joinder of the applicant for information under the RTI Act as a respondent herein. On this issue, as correctly contended by the petitioner, the challenge is to a summons issued to the petitioner by the Information Commission. Such challenge is founded both on the grounds of jurisdiction and malice. The applicant for information under the RTI Act is certainly not required for purposes of granting the relief prayed for in this proceeding or even for purposes of effectively adjudicating all the issues that arise herein.

Therefore, the contention as regards non-joinder is untenable.

17. Another issue of some significance arises, namely, whether the information requested for under the summons constitutes information as defined in the RTI Act. On this issue, the petitioner does not dispute the contention that the information called for qualifies as information in terms of Section 2(f) of the RTI Act. The Information Commission and the State referred to the judgment in the RBI case. In particular, paragraph 68 thereof was relied upon wherein the Supreme Court extracted the definition of information and concluded that such information could relate to a private body. On such basis, the Information Commission contends that it is entitled to call for the information from the petitioner by resorting to Section 18 of the RTI Act. The Information Commission points out that the authorities under the RTI Act have been given the powers of a civil court with regard to summoning and enforcing the attendance of persons and also compelling them to provide evidence.

18. Therefore, this aspect should also be examined. In effect, the contention of the Information Commission and State is that Section 18 may be used to summon documents and information even from a person or entity which does not qualify as a public authority under Section 2(h) of the RTI Act. The Information Commission relies on the fact that Section 18(3) of the RTI Act does not confine the power of the Information Commission to persons who qualify as public authority under the Act. A more nuanced argument is also made that Section 18 may be resorted to against a private body under the supervisory control of a public authority. If that position were to be accepted, this avenue could be used against all societies, cooperative societies, limited companies, limited liability partnerships, partnerships and the like because all these entities are subject to supervisory and regulatory control under the relevant statute. Thus, if the contention of the State on this issue were to be accepted, the RTI Act would become indirectly unenforceable against all persons, irrespective of whether they answer to the description of public authority under Section 2(h) or not. This was clearly not the intention of the RTI Act. Indeed, sub-section 4 thereof throws light on this issue. Sub-section 4 enables the CIC/SIC, as the case may be, to examine any record to which the Act applies, which is under the control of any public authority. Therefore, it is clear that the power under Section 18(3) of the RTI Act is intended for summoning witnesses and calling for production of documents which are available with the public authority.

19. This leads to another interesting issue. The Victoria Society is governed by the Tamil Nadu Societies Registration Act, 1975. Such Act empowers the authorities under the Act to conduct an inquiry. The said Act also imposes an obligation on societies to file certain documents and returns periodically. Without doubt, by exercising powers under the Tamil Nadu Societies Registration Act

1975, the authorities under the said Act are empowered to call for the information requested for from the petitioner under the impugned summons. In other words, the same information may be readily called for from the Victoria Society albeit under the provisions of the Tamil Nadu Societies Registration Act, 1975. Indeed, the petitioner also concedes this position. In a sense, therefore, the petitioner's victory is pyrrhic; but, given the fact that there are larger issues at play here which go beyond the petitioner or the Victoria Society, he cannot be denied his share of glory, however ephemeral, on that count.

20. A final issue also requires to be addressed. The Victoria Society is a body corporate under the Tamil Nadu Societies Registration Act,1975. Therefore, ordinarily, the information and documents called for under the impugned summons should have been called for from the Society and not from the petitioner.

21. For all the reasons set out above, W.P(MD).No.14288 of 2021 is allowed by quashing the impugned summons. However, it is made clear that nothing in this order shall preclude the institution of an inquiry or the issuance of communications calling for the relevant documents from the Victoria Society under the Tamil Nadu Societies Registration Act, 1975. It is also made clear that nothing in this order should be construed as an endorsement that the Victoria Society has fully complied with conditions imposed under G.O.Ms.No.254. There will be no order as to costs. Consequently, W.M.P(MD).No.11213 of 2021 is closed.

Sd/-

Assistant Registrar (A.D.II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

lm/pkn

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Assistant Registrar,
Tamil Nadu State Information Commission,
Block No.19, Government Farm Village,
Saidapet,
Chennai-600 015.

2.R.Raja Gopal,
Presently functioning as Chief Information Commissioner,
Tamil Nadu State Information Commission,
Chennai.

3.The District Registrar (Societies)/ Public Information Officer,
Societies and Registration Department,
Madurai

+1 CC to M/s.SPL.GP (SR-30988[F] dated 04/10/2021)

+1 CC to M/s.K.K.SENTHIL, Advocate (SR-31051[F] dated 04/10/2021)

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-31155[F] dated 05/10/2021)

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01.10.2021

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