



W.P.No.10644 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.11.2022

CORAM:

THE HON'BLE **MR.JUSTICE N.SATHISH KUMAR**

W.P.No.10644 of 2016
and W.M.P.No.9336 of 2016

The Principal
V.S.B.Engineering College
Karudayampalayam
Karur – 639 111

... Petitioner

Vs.

1.The Tamil Nadu Information Commission
Rep. by its Assistant Registrar
No.2, Thiyagaraya Road
Near Alayamman temple
Eldams Road Junction
Chennai 600018

2.The Public Information Officer
Anna University
Guindy, Chennai 600025

3.The District Schedule Caste and Schedule Tribes Welfare Officer
Karur District

4.K.Ramachandran

... Respondents



W.P.No.10644 of 2016

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the first respondent dated 22.02.2016 in SA.1033 / Enquiry/D/2015 (MP9049/2015) on his file and quash the same.

For Petitioner : Mrs.Hema Sampath
Senior Counsel for M/s.R.Meenal

For Respondents : Mr.Niranjana Rajagopalan
for M/s.G.R.Associates for R1

Mr.M.Muthusamy
Govt. Advocate for R3

No Appearance – R2 & R4

ORDER

The Writ Petition is filed, challenging the order of the first respondent, directing the Anna University to appoint a responsible officer to go to the college of the petitioner and inspect the documents and provide information sought by the information seeker.

2.The brief facts leading to the filing of the Writ Petition is as follows;



W.P.No.10644 of 2016

WEB COPY

The 4th respondent appears to have sought certain information relating to disbursement of scholarship to the Adi Dravida students for the year 2010 to 2014/2015. It is relevant to note that instead of seeking information directly from the college, he has sought information from the 3rd respondent, however, the same could not be provided on the ground that no records are available with them. As against which, an appeal has been filed before the District Collector. When the District Collector could not provide the information sought, the Second Appeal came to be filed before the 1st respondent. The 1st respondent also summoned the writ petitioner during the proceedings. Whereas, the writ petitioner college took a stand that no document is available with them. Now, the Information Commission has passed the impugned order, directing the Anna University to appoint a responsible officer to inspect the premises of the writ petitioner college and collect the information for a period of 2010 – 2014/2015 and provide the same to the information seeker. Challenging the above said order, the writ petition has been preferred.

3.Counter has not been filed by the respondents.



W.P.No.10644 of 2016

WEB COPY

4.It is the contention of the learned Senior Counsel appearing for the petitioner college that, directing the Anna University to appoint an officer to inspect the college records is beyond the scope of the R.T.I. Act and in fact the information itself is not available with the petitioner. According to her, the entire scholarship is provided by the Government and the Government has all the information. She added that instead of directing the Government to provide an information, the 1st respondent had directed the writ petitioner to do so, which is not according to law. It is her further contention that the college itself does not comes under the purview of the R.T.I. Act. Hence submitted that the entire order has to be set aside.

5.Learned counsel appearing for the 3rd respondent would submit that the applications sent by the respective colleges would be forwarded by them to the Director, Adi Dravida and Tribal Welfare Department, Chepauk, Chennai. Therefore, they have no details in this regard.



W.P.No.10644 of 2016

WEB COPY

6. Whereas, the learned counsel appearing for the 1st respondent would submit that though the order directing the inspection will not fall within the purview of Section 18(3) of R.T.I. Act, the fact remains that all the informations are available with the Government and it is the duty of the Government to collect the information either from the college or from the respective department. He, therefore, submitted that when the information seeker seeks certain information relating to disbursement of scholarship money provided by the Government, it is the duty of the Government to collect the information from the concerned department and provide the same.

7. I perused the entire materials. As referred in the factual narration, the information sought is relating to the disbursement of scholarship amount to the students belonging to Adi Dravida and Schedule Community from the year 2010-2014/2015. However, the Collector forwarded the same to the 3rd respondent and again copies have also forwarded to the college authorities. As none of them have come forward to provide the information, Second Appeal came to be filed. The



W.P.No.10644 of 2016

WEB COPY

1st respondent has taken a stand that, since the said information is not available with the District Collector, the 3rd respondent as well as the college authorities, directed inspection of the college by Anna University.

8.It is relevant to note that disbursement of scholarship is the scheme of the Government and the applications which are sent by the students for scholarship are collected and forwarded to the Director, Adi Dravida and Tribal Welfare Department, Chepauk, Chennai and the scholarship amount also will be disbursed only by the Director, Adi Dravida and Tribal Welfare Department, the records and information pertaining to the disbursement of scholarship will be maintained only by them. Therefore, this Court is of the view that, the 1st respondent, directing the Anna University for inspection of the college is beyond the scope of R.T.I. Act. The 1st appellate authority ought to have directed the Government authorities to collect information from the Head of the concerned department, who had disbursed the scholarship amount.



W.P.No.10644 of 2016

WEB COPY

9.It is also relevant to note that the Division Bench of this Court in ***[(2019) 4 MLJ 621] in Association of St. Christopher's College of Education, Rep. by its Secretary, Dr.(Ms.) P.Nithila Devakarunyam, 63, EVK Sampath road, Vepery, Chennai – 7 vs. State Information Commissioner and others*** has held that such inspection cannot be possible and that apart in W.P.No.18536 and 19814 of 2014 dated 28.09.2022, this Court also took a similar view holding that, power to direct inspection is not available under Section 18 of the R.T.I Act. The Division Bench in the above referred judgment has held as follows;

"7. We have carefully perused the order impugned in the writ petition. On a reading of the said order, it is evidently clear that it is not a show cause notice simpliciter, but it is an order holding that the Public Information Officer is guilty for being proceeded against. The first respondent/ State Information Commission has invoked Section 18(3) (b) by directing the District Educational Officer requiring the discovery and inspection of documents and furnish the same to the third respondent who sought for information and the said provision, namely, Section 18(3) gives power to the Central Information Commission or State Information Commission, as the case may be, and shall while inquiring into any matter under the said Section [18(3)], have the same powers as vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908 in respect of the following procedure:-



WEB COPY



W.P.No.10644 of 2016

(i) 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;

(ii) Requiring the discovery and inspection of documents;

(iii) Receiving evidence on affidavit;

(iv) Requisitioning any public record or copies thereof from any court or office;

(v) Issuing summons for examination of witnesses or documents; and

(vi) Any other matter which may be prescribed.

"8 . In the light of the above legal position, it can hardly be stated that the impugned proceedings in the writ petition is a show cause notice. The power under Section 18(3) of the RTI Act could have been invoked by the first respondent/ Commission while inquiring into the matter under Section 18(3) on the contrary, the Commission has directed the District Educational Officer to go to the appellant's institution, search the premises, takeover the records and other documents and furnish information to the third respondent who is the applicant seeking information. We find that there is no such power vested with the Commission to exercise the powers conferred under Section 18(3) of the RTI Act in the manner done by the Commission. Therefore, we are of the clear view that the impugned proceedings is not a show cause notice simpliciter, but an order by itself. In this regard, a decision of the Division Bench of this Court in the case of Registrar General, High Court of Madras v. A. Kanagaraj and Another will come to the aid and assistance of the appellant.



WEB COPY



W.P.No.10644 of 2016

Therefore, we, accordingly, hold that the learned Single Bench was not right in coming to the conclusion that the proceedings, which was impugned in the writ petition is a show cause notice and the said finding needs to be set aside. Accordingly, the same stands set aside.

21. The next aspect which has to be seen is whether the Commission could have issued a direction directing the Officials of the Education Department to go over to the appellant-institution to collect (search and seize) the records and furnish the same to the third respondent. We see no such power conferred on the first respondent/Commission and as pointed out by us earlier, the first respondent/ Commission cannot take umbrage under Section 18(3) of the RTI Act. A Hon'ble Division Bench of this Court in the case of Tamil Nadu Nursery, Matriculation and Higher Secondary Schools Association (Regd.) v. State of Tamil Nadu 209 considered the validity of sub-Clauses (4) and (5) of Rule 4 of the Tamil Nadu Schools Regulation of Collection of Fees Rules, 2009. The said Rule was inserted to carry out search and seizure provided under Section 11 of the Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009. The Hon'ble Division Bench in the said judgment, had struck down the Rule as unconstitutional and violative of Article 14 of the Constitution of India. The following reasons were assigned to strike down the Rule.

"34..... This Rule gives unbridled, un-channeled and unregulated powers to the officers and as such, poses a perennial threat to the very functioning of private schools. Both Section 11 of the Act and Rule 4(4) leave the matter in entirety to the unregulated



WEB COPY



W.P.No.10644 of 2016

discretion of the authorized officers and District Committee Members. In view of our finding that Section 11 is ultra vires of Article 14 of the Constitution, the corresponding Rule as contained in Rule 4(4) and 4(5) are also liable to be struck off as unconstitutional, and violative of Article 14 of the Constitution of India."

22.....

23. With regard to the power to impose penalty on the Appellate Authority, the State Information Commission was required to record reasons in writing. As pointed out by us earlier, no such reasons have been recorded by the Commission. Therefore, the order is a non-speaking order and consequently, liable for interference.

10. Such view of the matter, the order directing the Anna University to appoint a responsible officer to conduct inspection in the petitioner's college is set aside. The 3rd respondent is hereby directed to collect the information from the Director, Adi Dravida and Tribal Welfare Department, Chepauk, Chennai, and furnish the same to the information seeker.

11. This Writ Petition stands allowed accordingly. Consequently, the connected miscellaneous petition is closed. No costs.

22.11.2022

kas



W.P.No.10644 of 2016

To
WEB COPY

1.The Assistant Registrar
Tamil Nadu Information Commission
No.2, Thiyagaraya Road
Near Alayamman temple
Eldams Road Junction
Chennai 600018

2.The Public Information Officer
Anna University
Guindy, Chennai 600025

3.The District Schedule Caste
and Schedule Tribes Welfare Officer
Karur District



WEB COPY



W.P.No.10644 of 2016

N.SATHISH KUMAR, J.
kas

W.P.No.10644 of 2016
and W.M.P.No.9336 of 2016

22.11.2022