IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **26.10.2022**

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.8896 of 2009
&
M.P.Nos.1 and 2 of 2009

Thanthi Trust
represented by its
Trustee- Director B.S.Adityan
46, EVK Sampath Road
Chennai-7 ... Petitioner

Vs.

1.The Central Information Commission
Bhikaji Cama Place
New Delhi-110066

2. The Joint Director of Income Tax
(Exemption)
M.G.Road, Nungambakkam
Chennai-600 034

3.The Assistant Director of Income Tax
(Exemption)
M.G.Road, Nungambakkam
Chennai-600 034

4.R.Appu Natesan Ex.M.L.A
M/s. Coastal Environment and
Ecological Conservation Committee
Keeraikaranthattu Thisayanvillai
Tirunelveli District ... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in CIC/LS/A/2009/00160 on his file and to quash the order dated 06.04.2009.

For Petitioner : Mr.V.Shanmugam

For Respondents : Mr.Venkataswamy Babu, SPC for R1

Mrs.Hema Muralikrishnan and

Mr.D.Prabhu Mukund Arunkumar,

SC for IT for R2 and R3

Mr.V.Perumal for R4

ORDER

Writ Petition is filed challenging the order of the 1st respondent remanding the matter to the 2nd respondent setting aside the order passed by the 2nd respondent to furnish certain information sought under the Right to Information Act.

2. The crux of the Writ Petition is that the petitioner is a Public Charitable Trust and income tax assessee and and have been submitting their bills regularly and authorities have been granting exemption. When the

matter stood thus the 4th respondent sought certain information with regard to the Permanent Account Number from Dailty Thanthi Tamil News Papers, copy of balance sheet and profit of loss account for Daily Thanthi Trust for the year 200-01 to 2007-08.

3. The above information was rejected by the 3rd respondent since it affects the rights of the petitioner and is exempted under Sec. 8 of the right to Information Act. As against which, appeal is filed before the 1st respondent. The 1st respondent Central Information Commission passed an impugned order setting aside the orders of the 2nd respondent and remanded the matter to the 2nd respondent. Challenging the same the Writ Petition has been filed.

4. The 4th respondent has filed a counter. It is now stated in the counter that though larger information has been sought now they have restricted the information as to how much income was exempted by the Income Tax department for the petitioner Trust and how much amount was utilized by the Trust for charitable purposes. Therefore, the information sought in the public interest and not for any personal use.

5. Heard the learned counsel appearing for the petitioner.

6. It is the contention of the learned counsel for the petitioner when the information with regard to the third party involved, the State Information Commission ought to have issued notice to the writ petitioner and writ petitioner should have been heard before passing any order. As per Sec. 19(4) of the Right to Information Act, 2005, which is totally violated in this case. It is his contention that the 4th respondent is neither a beneficiary nor having any connection with the Trust. At the behest of the somebody he has sought such information, hence his contention that as the very mandatory provisions U/s. 19(4) of the Right to Information Act has been violated and the order of the 1st respondent cannot be sustained in the eye of law. Learned counsel appearing for the 4th respondent would submit that the information is only with regard to the exemption obtained from the Income Tax authorities and the nature of the charities. Therefore, it cannot be said that it is only a third party information.

7. I have perused the entire materials.

8. As rightly pointed out by the learned counsel for the petitioner, the information sought with regard to the charitable activities of the Trust and its expenditure the same was rejected by the original authority viz., the 3rd respondent. As against which appeal has been filed before the 2nd respondent wherein also after hearing the petitioner Trust information has not been furnished. As against which the Second Appeal has been filed before the 1st respondent. It is relevant to note that both the authorities viz., Original authority and Appellate authority have rejected the information after hearing the petitioner. Since the information relate to the Petitioner Trust alone. When the appeal has been filed as against such order particularly third party information has been involved, the Information Commission ought to have followed the procedure as contemplated U/s. 19(4) of the Right to Information Act. Sub Clause 19(4) of the Right to Information Act, 2005 reads as follows:

> *19. Appeal.*
>
> ....
>
> *(4) If the decision of the Central Public Information Officer or State Public information Officer, as the case may be, against which an appeal is preferred relates to information of a third party,*

the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

9. In such view of the matter, above provision makes it clear that when appeal is relating to the information of the third party, such party ought to have been heard by the Information Commission. On perusal of the impugned order the order has been passed setting aside the order passed by the 2nd and 3rd respondent without hearing the writ petitioner. In such view of the matter, when the 1st respondent has failed to comply with the mandatory procedure provided under the Act, such order cannot be sustained in the eye of law. Accordingly, the order passed by the 1st respondent is set aside. The 1st respondent shall decide the appeal afresh after giving proper opportunity to the Writ Petitioner and the appeal shall be disposed of within a period of three months from the date of receipt of a copy of this order.

10. With the above direction the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

26.10.2022

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Internet:Yes
Speaking/Non speaking order

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N. SATHISH KUMAR, J.

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