IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2022

CORAM:

THE HON'BLE MR. JUSTICE M.GOVINDARAJ

W.P.No.27310 of 2010
and
M.P.Nos.1 and 2 of 2010

P.Soundararajan (retired) ... Petitioner

vs.

1.The Superintendent of Police,
Erode.

2.Vijayalakshmi, Advocate ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order made in Case No.16897/O-8/10 dated 24.08.2010 passed on 30.08.2010 by the State Information Commission and quash the same and consequently forbear the respondents from recovery the penalty amount from the petitioner.

For Petitioner : Mr.G.Ethirajulu

For Respondents : Mr.M.Rajendiran,
Additional Government Pleader for R1

No appearance for R2

O R D E R

This Writ Petition has been filed seeking a Writ of Certiorarified Mandamus calling for the records relating to the order made in Case No.16897/O-8/10 dated 24.08.2010 passed on 30.08.2010 by the State Information Commission and quash the same and consequently forbear the respondents from recovery the penalty amount from the petitioner.

2. The petitioner while in service, working as Public Information Officer, the 2nd respondent sought for certain

information under the Right to Information Act by an application dated 31.07.2009 for which the petitioner replied on 28.08.2009, wherein, it is stated that by virtue of G.O.Ms.No.1043 Public (Est.1 & Leg) dated 14.10.2005 No.II(2) PUEL/778/(c)/2005 the respondent is exempted from purview of the Right to Information Act. A perusal of the Government Order issued under G.O.Ms.No.1043 dated 14.10.2005 disclose that the Economic Offenses Wing II at Sl.Nos.6 and 7 were exempted from the purview of the Right to Information Act.

3. In spite of the reply, the 2nd respondent had preferred an appeal before the Tamil Nadu Information Commission in case No.16897/Enquity/2009 and the Commission passed an order on 28.10.2009. According to the Information Commission, as per Section 24(4) of the Right to Information Act, proviso (I) provides that the information pertaining to the allegation of corruption and human rights violation shall not be excluded under this sub-Section. Therefore, directed the petitioner to furnish the information sought for by the applicants. Pursuant to that the petitioner sent a reply to the Information Commission and appeared before them for enquiry. Not being satisfied with the reply, the Tamil Nadu Information Commission by its order dated 24.08.2010 directed the Superintendent of Police, Erode to recover the maximum penalty of Rs.25,000/- from the Public Information Officer within 6 weeks of the order. It is pertinent to note that in the mean while the petitioner retired from service with effect from 28.02.2010. However, he challenged the impugned order as it was passed against him.

4. Heard the submissions of the petitioner and there is no appearance for the 2nd respondent.

5. From a perusal of the application filed under the Right to Information Act, the informations that were sought for by the 2nd respondent are as follows:

a) Did the SP Erode or IGP EOW or any other police officer attempt to investigate or find out, as to which corrupt police officers were responsible for committing forgery?

b) Who was the honest police officer who filed the petition before the special judge under TNPID Act, Chennai in Crl.M.P.No.1630/03 (Which was challenged by way of revision in Criminal Revision case No.53/04 in Madras High Court) seeking to send all deposit cards to the security press at Nasik?

c) Why did the said honest police officer file the said petition, and under whose authorization was the said petition filed?

d) Who was the police officer who was the supervisory officer of the said case (Crime No.1098/98)?

e) Did the honest police officer who filed the said petition make any oral or written allegations against his predecessors to the superior officers regarding the forgery of the said 212 deposit receipt, and if so what action was taken thereupon?

f) How much money is lying as cash security in the TNPID court in the above case, and what are the properties attached in the said case?

g) How much money was settled between the parties in the above case, and between whom was it settled?

h) Provide certified copies of the entire records pertaining to the said forgery of deposit receipts and all files relating to the same.

i) Provide a certified copy of the service books of the officers who investigated the above case, and the officer who filed the Miscellaneous petition in the TNPID court namely Crl.M.P.No.1630/03 and caused the scrutiny of the receipts at Nashi and the other questions are pertaining to the investigation and case details.

6. Under section 8(g) and (h) of the Right to Information Act provides exemption from disclosure of information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes and the information which would impede the process of investigation or apprehension or prosecution of offenders. Apart from this as per Section 24(4) of the Right to Information Act, the Act shall not apply to intelligence and security organizations, being organizations established by the State Government and the Economic Offenses Wing is one of the law investigating agency exempted under the purview of Right to Information Act.

7. It is true to state that providing information about allegations of corruption and human rights violation shall not be excluded, but there shall be a specific instance of allegation of corruption and human rights violation, but, the queries made under assumption cannot be provided and it will not fall within the exclusion clause provided under Section 24 of the Act. The applicant under the Right to Information Act had decided by herself that there were forgeries and corruption on the part of the police officials without any material and sought for information pertaining to specific case which were in progress. In such cases, the exemption under Section 24(4) of the Act will apply to the Economic Offenses Wing as notified

under G.O.Ms.No.1043 dated 14.10.2005.

8. Further in respect of Court cases, the parties can secure information from the Court itself, but, the opposite party cannot try to get information with regard to the prosecution and confidential matters. The prosecution is entitled to maintain secrecy with regard to the actions taken and information collected by them as it is their intellectual property and that cannot be demanded by the opposite side under the guise of getting information under the Right to Information Act. Thus, the information sought for by the applicant is exempted under Section 8(g) and (h) of the Right to Information Act and also Economic Offenses Wing is exempted from the purview of Right to Information under Section 24(4) and information with regard to confidential and intellectual strategies which would harm the prosecution. In such circumstances the opposite party need not be divulged of any information.

9. Hence, the order of the Information Commission directing the petitioner to provide the information itself is erroneous further the order directing the Superintendent to recover a sum of Rs.25,000/- from the petitioner who had already retired before the date of order automatically becomes unenforceable and illegal. The order passed by the Information Commission dated 28.10.2009 and the consequential order passed on 30.08.2010 are set aside and the writ petition stands allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

dsa

To
The Superintendent of Police,
Erode.

+1cc to Mr.G.Ethirajulu, Advocate SR.No.15437
+1cc to the Government Pleader, SR.No.15879

W.P.No.27310 of 2010

KJ(CO)
CB(03/06/2022)