



W.P.No.23578 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 15.11.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.23578 of 2013

and

M.P.No.1 of 2013

Public Information Officer and
Senior Grade Town Planning Officer,
Thanjavur Municipality,
Thanjavur Post and District - 613 001.

... Petitioner

Vs.

1. The Registrar,
The Tamil Nadu State Information Commission,
No.2, Thagaraja Salai,
Near Aalayamman Koil,
Teynampet, Chennai - 600 018.
2. T.R.Narayanan
Retired Employee of Tamil Nadu Electricity Board
No.792, Kondirajapalayam,
East Road,
Thanjavur Post and District.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, for



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issuance of a Writ of Certiorari, calling for the records of the 1st respondent culminating in his records No.43159/D/2012 dated 04.07.2013 of the 1st Respondent / Tamil Nadu State Information Commission and quash the same.

For Petitioner : Mr.V.Raghupathi

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

R2 - No Appearance

ORDER

This Writ Petition has been filed challenging the impugned order of the 1st respondent dated 04.07.2013 imposing a penalty under Section 20(1) of the Right to Information Act, 2005.

2. The case of the writ petitioner is that the 2nd respondent sent a petition under Right to Information Act on 05.03.2012 to the then Public Information Officer who was the Executive Engineer of their Municipality. He also sent a petition to the Chief Minister's Cell on 05.03.2012 requesting to take action against encroachment made by his neighbour Thiru.Saravanan in Town Survey No.796, Thanjavur and to provide information about any



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permission granted to him by Municipality for putting up advertisement. The then Public Information Officer due to typing mistake has sent information on 05.04.2012 to the 2nd respondent that encroachments have been removed in T.S.No.798 instead of correct T.S.No.796. Hence, the 2nd respondent has filed an appeal dated 16.05.2012 to the Commissioner of Municipality about the mistake done in respect of Survey No.796. Unfortunately, the 1st Appellate Information Officer also omitted the correct Survey Number but informed that encroachment has been removed in T.S.No.795 & 798. Therefore, once again the 2nd respondent filed an appeal before the 1st respondent.

3. It is the further case of the petitioner that the 1st respondent has issued a notice on 07.01.2013 under Section 18(3) of Right to Information Act 2005 to the Public Information Officer of Thanjavur Municipality for the enquiry on 04.02.2013. The Information Officer has attended the enquiry and given his explanation. However, without considering the same, an impugned order has been passed imposing a penalty of Rs.25,000/-. Therefore, it was sought to be quashed.



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4. This Writ Petition is filed mainly on the ground that the impugned order has been passed without any justification and explanation has not been properly considered and also that there is no wilfull and deliberate attitude on the part of Public Information Officer while giving the information sought by the 2nd respondent.

5. Though notice has been served, none appeared for the 2nd respondent.

6. The learned counsel appearing for the petitioner would submit that the impugned order imposing penalty of Rs.25,000/- is against law and procedure contemplated under the Right to Information Act, 2005. He would further submit that the penalty has been imposed despite the fact that the information has been already provided. The explanation has not been considered. Whereas, the learned counsel appearing for R1 would submit that the penalty has been imposed taking note of the fact that there was a delay in furnishing the information and therefore the order does not suffer any



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infirmity.

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7. I have gone through the entire proceedings of the 1st respondent and other documents which led to be imposition of the penalty.

8. Originally, the 2nd respondent in the name of seeking information by his proceedings dated 05.03.2012 has sought action for removal of the alleged encroachment made by his neighbour in Survey No.796. While seeking such information, he has addressed the Survey Number as 796, besides, he has sought information as to any permission was granted to erect the advertisement board. On 05.04.2012, the Public Information Officer has replied stating that the encroachments have been removed in T.S.No.798 on 07.02.2012 itself. Again, not satisfied with the reply, the 2nd respondent filed an appeal before the Appellate Authority namely Commissioner of Municipality indicating that no information with regard to Survey No.796 is given.

9. It is relevant to note that the proceedings of the Commissioner dated 13.06.2012 itself indicate that the encroachments in Survey No.796 and 798



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have been removed. However, challenging the same, the 2nd respondent filed an appeal before the 1st respondent. The main grievance of the 2nd respondent is that the entire encroachment has not been removed and only in few areas, it has been removed. Therefore, he sought action against the petitioner / Public Information Officer.

10. The 1st respondent without going into the merits of the appeal grounds which are primarily made with regard to partial encroachment issued a summon on 07.01.2013 to the petitioner for the enquiry on 04.02.2013. At the time of enquiry, a letter addressed to the 2nd respondent was submitted by the petitioner along with some photocopies to show that the encroachment has been removed. However, the 1st respondent has issued a show cause notice on the same day why penalty should not be imposed under Section 20(1) of the Act and thereafter passed an impugned order stating that the above information has been furnished belatedly and imposed a penalty of Rs.25,000/-.

11. It is relevant to note that the main grievance of the 2nd respondent



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even in the appeal filed before the 1st respondent appears to be not removing the entire encroachment. Whether such grievance will fall within the ambit of the Right to Information Act itself has not been gone into by the 1st respondent. On the other hand, the 1st respondent besides directing the petitioner to provide necessary information as sought for by the 2nd respondent and also issued a show cause notice as to why penalty under Section 20(1) of the Act should not be imposed.

12. It is also relevant to note that before imposing any penalty, it must be established on record that the Information Officer has acted without any reasonable cause or refused to receive application for information or not furnished information within time or otherwise the entire act in denying the information was on the basis of malafide on the part of the Information Officer. Only if these grounds are satisfied, the question of imposing penalty will arise. Therefore, when the very information itself is explained by the petitioner, the imposition of penalty does not arise. The main grievance of the 2nd respondent with regard to removal of the encroachment also appears to be explained at very beginning point. The only mistake committed by the



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petitioner is, they omitted the Survey No.796. The survey number mentioned in the application is 796 whereas the survey number indicated by the petitioner is 798 viz., neighbouring survey number of the alleged encroachment area. Therefore, when the encroachment has been removed and reply has been submitted by the petitioner, the 1st respondent ought not to have formed a opinion that there was a delay in furnishing the information and therefore it warrants imposition of penalty.

13. As the imposition of penalty leads to serious consequences, before imposition of such penalty, it must be established on record that the Information Officer has acted without any reasonable cause or malafidely. This aspect is totally absent on perusal of the records.

14. In such view of the matter, the very imposition of the penalty by the 1st respondent cannot be sustained in the eye of law.

15. Accordingly, this Writ Petition is allowed and the impugned order



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dated 04.07.2013 passed by the 1st respondent is set aside. No costs.

Consequently, connected miscellaneous petition is closed.

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Internet : Yes / No

Index : Yes / No

Speaking order / Nonspeaking order

To

The Registrar,
The Tamil Nadu State Information Commission,
No.2, Thagaraja Salai,
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N.SATHISH KUMAR, J.

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