



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Writ Petition No.5234 of 2013

&

M.P.No.2 of 2013

P.Thirumal Selvam

... Petitioner

-Vs-

1. The State Information Commissioner,
Tamilnadu Information Commission,
No.2, Thiyagaraya Road,
(Near Aalaiaimman Koil),
Teynampet, Chennai - 600 018
2. The Commissioner, Hosur Municipality,
Hosur, Krishnagiri District,
3. N.Venkatesappa,
Association Of Consumer And Environment Protection
And Watch Sangam, No. 68/A-1,
Jaishankar Colony, Hosur 635 109
4. S.Manjunath
Association Of Consumer And Environment
Protection And Watch Sangam, No.68/A-1,
Jaishankar Colony, Hosur 635 109 .

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the 1st respondent order in No.29166/Enquiry/D/2012 dated 30.11.2012 and quash the same.

For Petitioner : Mr. P.Rajendran

For R-1 : Mr. Niranjan Rajgopal

For R-2 : Mr.N.Subbarayalu

For R-3 & R-4 : No appearance



O R D E R

The 3rd and 4th respondents, who claim themselves as Association of Consumer and Environment Protection and Watch Sangam, sought for certain information with the 2nd respondent, Hosur Municipality. The writ petitioner in the capacity of Public Information Officer provided the information to the 3rd and 4th respondents on 07.04.2011 and 18.04.2011. The 3rd and 4th respondents have acknowledged the receipt of the same on 18.04.2011. The 3rd and 4th respondents filed an appeal before the Tamil Nadu Information Commission on 27.05.2011. The Information Commission has conducted an enquiry on 16.07.2011. During the enquiry, the 3rd and 4th respondents and the Public Information Officer by name one Krishnan were present. The Information Commission not satisfied with the explanation, directed the Public Information Officer to provide the information sought for and to show cause as to why a penalty of Rs.25,000/- (Rupees Twenty Five Thousand only) should not be imposed under Section 21 of the Right To Information Act. Again the 3rd respondent made a representation to the 1st respondent for taking penal action against the 2nd respondent. The 2nd respondent submitted a detailed explanation on 23.12.2011. However, without considering the explanation, the 1st respondent by order dated 30.10.2012 passed strictures against the Public Information Officer and directed the 2nd respondent and higher authorities to show cause as to why a new Public Information Officer shall not be appointed and to initiate disciplinary proceedings under 19(8) (a) Rules. This order again followed by a proceedings Na.ka No.08532/2012/B3 dated 21.11.2012. The 2nd respondent submitted the information to the 1st respondent. However, the 1st respondent imposed the penalty of Rs.25,000/- (Rupees Twenty Five Thousand only) and issued directions to register the complaint sent by the 3rd and 4th respondents to take disciplinary action against the erring officials. Pursuant to the order of the Information Commission, the Commissioner of Hosur Municipality directed the petitioner by his order dated 28.12.2012 to deposit Rs.25,000/- (Rupees Twety Five Thousand only) into the account of State Information Commissioner. The said order is under challenge.

2. Heard both sides.

3. At the outset, the 1st respondent information Commission has failed to apply its mind with regard to the information provided on 18.04.2011 by the Public Information Officer. It is pertinent to note that the 3rd and 4th respondents as a self styled organisation have prejudged that some malpractice had taken place and that appointments were made to the Government Service in violation of Rules. If at all, there is any violation of Rules or procedures or selection or irregularities in selection method, there shall be a specific statement with



regard to the same. Mere making a vague statement that people were appointed illegally without following the employment seniority or not selected through a particular source is not enough. In the absence of proof of such irregularity, the reply will be that 'there was no irregularity' and the same was given by the Public Information Officer.

4. It is reiterated, 3rd and 4th respondents are not the judges and they cannot declare that there was irregularity without any material information and they cannot expect action to be taken on the basis of their judgment. Therefore, if at all, the 3rd and 4th respondents, who sought information were aggrieved, they have an right of intra departmental appeal to the First Appellate Authority. Without exhausting that they cannot prefer a second appeal to the 1st respondent/ Tamil Nadu Information Commission. When a second appeal is preferred directly to the 1st respondent, it is the duty of the Information Commission to return the papers with a direction to the applicant to avail the available appeal remedy. On the other hand, the 1st respondent has entertained the second appeal directly.

5. At the outset, the conduct of the 1st respondent in entertaining the second appeal without exhaustion of first appeal itself is erroneous and illegal. Secondly, the 1st respondent without applying his mind to the information provided by the Public Information Officer on 18.04.2011 and which was acknowledged by 3rd and 4th respondents on the same day has proceeded with predetermination that no information was provided as sought for by the 3rd and 4th respondents.

6. Be that as it may, the 1st respondent ought to have conducted the enquiry in the presence of the Public Information Officer, who provided the information. Even assuming that the 2nd respondent has not deputed the concerned Public Information Officer, but some other official to represent the department, the Tamil Nadu Information Commission/1st respondent and that it was not satisfied with the answer, should have directed the appearance of the concerned Public Information Officer. But unfortunately the 1st respondent proceeded with a preconceived notion that all is not well and that the Public Information Officer has failed to provide any information. The suppression made by the 3rd and 4th respondents with regard to the information provided on 18.04.2011 was not at all considered.

7. Secondly, even to the notice issued by the 1st respondent, a detailed explanation was submitted by the 2nd respondent on 23.12.2011, wherein it is specifically stated that the information sought for by the applicants were given or provided to them and further information that no irregularity



had happened. In respect of the delay, it was explained that caused it had happened for want of man power. Without considering the same, the 1st respondent has passed strictures against the Public Information Officer more particularly without hearing him. A perusal of the order passed by the 1st respondent appears that it is biased and with an vindictive intention to punish the Government officials. Therefore, the order passed by the 1st respondent is bad for biased approach, non application of mind and violation of principles of natural justice. Therefore, order of the 1st respondent dated 30.11.2012 in Case No. 29166/Enquiry/D/2012 is set aside and the Writ petition stands allowed.

8. It is made clear that the writ petitioner is not liable to pay any amount towards penalty imposed by the 1st respondent and as directed by the 2nd respondent in his proceeding Na.ka.No.138/2012/C1 dated 28.12.2012. Since, the amount has already been remitted, the petitioner is entitled to get a refund of the same. The 1st respondent is directed to refund the amount within a period of 4 weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sha/kpr

1. The State Information Commissioner,
Tamilnadu Information Commission,
No.2, Thiyagaraya Road,
(Near Aalaiaimman Koil),
Teynampet, Chennai - 600 018
2. The Commissioner, Hosur Municipality,
Hosur, Krishnagiri District,

+1cc to Mr.N.Subbarayalu, Advocate, S.R.No.11509

W.P.No.5234 of 2013 &
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GPL(CO)
CT 05/04/2022