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W.P.No.18536 and 19814 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: **28.9.2022**

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THE HONOURABLE Mr.JUSTICE N.SATHISH KUMAR

W.P.No.18536 and 19814 of 2014

The Association of St.Christophers College of Education
Rep. by its Secretary Dr.(Mrs) P.Nithila Devakarunyam,
63, EVK Sampath Road, Vepery, Chennai-7. .. Petitioner

Vs.

- 1 The State Information Commissioner,
The State Information Commission,
No.2, Theyagarayar Road,
Thenampet Chennai-18.
- 2 The Assistant Registrar,
The State Information Commission,
No.2, Theyagarayar Road,
Thenampet, Chennai-18.
- 3 C.Selvaraj ... Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records pertaining to the Order dated 23.6.2014 in Case No.54671/Enquiry/C/2013 on the file of the 1st and 2nd respondent and quash the same and directing the same respondents to apply the provisions of Sec. 8(1)(i) of the RTI Act for certain queries in the RTI Application in Case No.54671/Enquiry/C/2013 filed by the 3rd respondent in respect of the petitioner institution.

For Petitioner	: Dr.FR.A.Xavier Arulraj Senior Counsel for FR.K.Ignaci Muthu
For Respondents 1 & 2	: Mr.Niranjan Rajagopal for M/s.G.R.Associates
For Respondent No.3	: Mr.S.Natarajan



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ORDER

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The writ petition challenging the impugned order passed by the first respondent recommending disciplinary proceedings against the Public Relation Officer concerned; to communicate the same to the commission by forwarding the copy of charge memo served to the Officer concerned and also directing the District Education Officer to go to the writ petitioner Institution; to scrutinise the documents of the petitioner's institution; furnish the information as sought for by the third respondent and file a report to the commission to that effect.

2. The brief facts leading to filing of the present writ petition is as follows:

The third respondent has sought for certain information more particularly, the following information;

Association of Transparency and Anti-Corruption by letter dated 2.9.2013 addressed to the Public Information Officer of the petitioner Institution wherein it is stated as follows:

The following information may be furnished under RTI Act, 2005.

1. Copy of the order/rules from the Government prescribing Educational Qualification and experience for the post of Head Mistress in Higher Secondary School.



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2. Copy of rules/decision of meeting / minutes in respect of filling up of post of teaching staff by promotion in Bentinck Higher Secondary School for Girls.
3. Copy of procedures prescribed for filling up of post of teaching staff by promotion or recruitment including the post of Headmistress at Bentinck Higher Secondary School for Girls.
4. Copy of the relevant portion of the act/rules prescribing to treat the applications and details as private information in respect of the application filed by applicants seeking appointment in at Bentinck Higher Secondary School for Girls.
5. Copy of trust deed/ by-laws/constitution under which St.Christopher's College of Education and Bentinck Higher Secondary School for Girls, stands registered.
6. List of teachers in Bentinck Higher Secondary School for Girls along with details such as Educational qualification, date of entry, date of promotion, extracurricular achievements in Bentinck Higher Secondary School for Girls.
7. Copy of M.A. Literature course completion / degree certificate of Marian Usha Rani along with details of permission for pursuing the degree under correspondence course/period of leave availed during the pursuing the course.
8. The details about the classes/standard and subjects taught and allowed to handle by Marian Usha Rani during her entire service period in Bentinck



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Higher Secondary School for Girls.

Thereafter, the third respondent has filed an appeal before the first respondent stating that the information has not been properly furnished. The first respondent in his proceedings dated 19.5.2014 having found that information in respect of the 7 items have been furnished, however, come to the conclusion that the entire information has not been furnished. It is also found that the Public Information officer has not deputed the senior officer to the Commission. Thereafter, show cause notice was issued to the writ petitioner and final order passed directing the petitioner Institution to take disciplinary proceedings against the Public Information Officer besides direction to the Joint Director of School Education to conduct search, collect information and furnish the same to the third respondent. The said order is impugned in the present writ petition.

3. The learned Senior counsel appearing for the petitioner would submit that the first respondent viz., State Information Commissioner without having requisite power, the impugned order has been passed. In fact the information as sought for by the third respondent has been furnished and the same has been recorded by the first respondent. Despite, the first respondent Commission on its own pursuing itself stating that the information furnished by the petitioner Institution is not sufficient. Even without any grievance by either side, proceeded to issue direction for disciplinary action against the Public Information



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Officer and also directed the Joint Director of School Education to conduct search

which is against provisions of law. No such power is vested with the first respondent Commission. According to the learned counsel appearing for the petitioner, in an identical issue, the Division Bench of this Court 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 [(2019) 4 MLJ 621]** has held that the Commission has no such power conferred to direct the officials of the Education Department to go to the petitioner Institution, search the premises and take over the documents and furnish to the third respondent who is the information seeker. Therefore, the impugned order is liable to be set aside.

4. The learned counsel appearing for the first respondent would submit that information furnished to the third respondent is not sufficient and therefore, the impugned order has been passed and the same does not require interference by this Court. The learned counsel appearing for the third respondent would also submit that entire information has not been furnished to the third respondent and therefore, the impugned order has been passed.

5. Heard the learned counsel appearing for the petitioner and the



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learned counsel appearing for the respondents and perused the materials available on record.

6. According to the counsel appearing for the third respondent, the third respondent has taken over the entire papers from him.

7. It is relevant to note that as indicated above, 8 specific information has been sought for by the petitioner for which by communication dated 1.10.2013 information has been furnished to the third respondent. The commission though having recorded the fact that information in respect of the item No.1 to 7 has been furnished, however come to the conclusion that the information is not fully furnished. The first respondent Commission before passing the impugned order has not enquired as to what was the nature of information sought for, information not provided to the Information seeker. Further, the information seeker himself not demonstrated the manner in which the information provided to him is insufficient. The Commission itself has come to the conclusion that the information provided to the third respondent by the petitioner Institution is not sufficient. Be that as it may. The Commission further directed disciplinary proceedings against the Public Information Officer by invoking power under Sec.20(2) of the Right to Information Act for the reason that senior officer was not deputed to the Commission. It is relevant to note that object of the R.T.I. Act is to provide information to the Information seeker. The Commission being the



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Appellate Authority cannot insist for deputing senior officer in all occasions. What

is required to be seen is that only necessary information sought for by the Information seeker has been furnished by the concerned Public Information Officer.

It will not make any difference whether senior officer or Junior officer appeared before the Commission. What is relevant is, "Information sought for by the

Information seeker is furnished. Therefore, merely because senior officer was not deputed by the Public Information Officer, that cannot be a ground to hold that the

information is not fully furnished and there was deliberate inaction on the part of the Public Information Officer to provide such information. This Court had seen

the tenor of the order contained in the first direction to see the element of bias in the order. The proceedings dated 19.5.2014 captured in the final order indicate

that grievance of the Commission is that non appearance of the senior officer. It is relevant to note that to invoke power under Sec.20(2) of the Act, there must be

evidence to show that Public Information Officer without any reasonable cause and persistently, failed to receive an application for information or has not furnished

information within the time specified under sub-section (1) of Section 7 or malafidely denied the request for information or knowingly given incorrect,

incomplete or misleading information or destroyed information which was the subject of the request. The Commission only on the above grounds can recommend

for disciplinary action against any Public Information Officer. Before directing disciplinary action, the Commission must satisfy that the act of the Public



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Information Officer persistently failed to receive an application for information or has not furnished information within the sub-section (1) of Section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information. The Commission cannot proceed against the Information Officer merely on the ground that senior officer was not present and entire information has not been fully furnished. The power under Sec.20(2) of the Act cannot be mechanically exercised. The order of the Information Commission makes it clear that the information as sought for by the Information seeker/third respondent herein was furnished, however, the Commission has come to the conclusion that the entire information has not been furnished. Therefore, without any evidence to show that the information furnished is misleading or incorrect or deliberately withheld or the Information officer persistently failed to furnish such information, merely on the basis of inference, the first limb of the impugned order has been passed. Insofar as the direction to the Joint Director of School Education to conduct search in the petitioner Institution, collect documents and find out the nature of information and furnish the same to the Information seeker, this Court is of the view that no such power is conferred with the Commission to give such direction.

8. The Division Bench of this Court in an identical issue and also very



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same parties viz., 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 [(2019) 4 MLJ 621]

has held as under:

"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:-

(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



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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. 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



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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 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



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earlier, no such reasons have been recorded by the Commission. Therefore, the order is a non-speaking order and consequently, liable for interference.

The Division Bench of this Court while passing the aforesaid judgment, also taken note of the pendency of the present two writ petitions in paragraph 24 of the said judgment.

9. In the light of the decision cited supra, the direction issued by the Commission in the impugned order is contrary to the provisions under Sec.18(3) of the RTI Act and the same is liable to be set aside.

10. Accordingly, the W.P.No.18536 and 19814 of 2014 stands allowed.

No costs.

28.09.2022

Speaking/Non Speaking order

Index: Yes/No

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N.SATHISH KUMAR, J.



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