



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P. (MD)No.3848 of 2022
and W.M.P. (MD) .No.3330 of 2022

P.Yesudhas

.. Petitioner

Vs

1.The State Information Commissioner,
Tamil Nadu State Information Commission,
No:2, Thiyagarayar Road,
Teynampet, Chennai - 600 018.

2.The Appellate Authority/Assistant Director of Town Panchayat,
Nagercoil Zone,
Office of Assistant Director of Town Panchayat,
Collectorate, Nagercoil.

3.The Public Information Officer/Executive Officer,
Kaliakavilai Town Panchayat,
Kaliakavilai,
Kanyakumari District.

4.C.Yesubalan

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 1st respondent in case No.NC.3695/D/2021(SA.9841/D/2020), dated 30.12.2021 and quash the same and consequently, direct the 1st respondent to initiate appropriate action against the 3rd and 4th respondents u/s.20 of Right to Information Act, by considering the petitioner's application, dated 30.09.2021 and addendum, dated 09.02.2022.

For Petitioner : Mr.N.Mohideen Basha

For Respondents : Mr.B.Saravanan for R1
Standing Counsel

Mr.M.Lingadurai for R2 to R4
Special Government Pleader

ORDER

This writ petition has been filed challenging the order, dated 30.12.2021, passed in the second appeal filed under the Right to Information Act, 2019.
<https://hcservices.ecourts.gov.in/hcservices/>



Information Act, on the ground that though the first respondent has directed the fourth respondent to furnish the information sought for by the petitioner, he has not imposed any penalty for the non furnishing of the information.

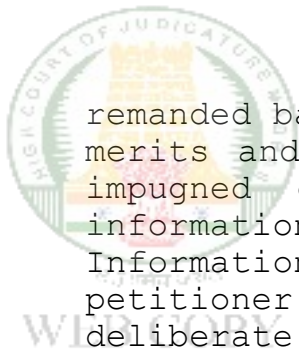
2.It is the case of the petitioner that without affording an opportunity of hearing, the impugned order has been passed and therefore, it is the case of the petitioner that the first respondent has violated the principles of natural justice.

3.It is the case of the petitioner that she is an illiterate person and is a vegetable vendor. According to him, in respect of an auction, he has sought for information from the fourth respondent, who was earlier the Public Information Officer/Executive Officer. But his representation was not considered by the fourth respondent and it is his case that unparliamentary language was used by him in the proceedings before the fourth respondent. Thereafter, he has filed the first appeal under the Right to Information Act, before the second respondent. The second respondent has directed the fourth respondent to provide information as sought for by the petitioner. But, it is the case of the petitioner that despite the said direction, the fourth respondent did not provide the information. Thereafter, the petitioner filed the second appeal before the first respondent. Under the impugned order, dated 30.12.2021, the first respondent has directed the third respondent to furnish the information sought for by the petitioner, but has not imposed any penalty against the fourth respondent, who was earlier the Public Information Officer. Aggrieved by the same, the petitioner has filed this writ petition. According to him, the first respondent ought to have imposed penalty under Section 20 of the Right to Information Act, against the third and fourth respondent for non furnishing of information earlier to the petitioner. He is also aggrieved by the impugned order, on the ground that without hearing him the said order has been passed.

4.Heard Mr.N.Mohideen Basha, learned counsel appearing for the petitioner, Mr.B.Saravanan, learned Standing Counsel, who accepts notice on behalf of the first respondent and Mr.M.Lingadurai, learned Special Government Pleader, who accepts notice on behalf of the respondents 2 to 4.

5.As seen from the impugned order, no personal hearing has been afforded to the petitioner. It is the case of the official respondents that the first respondent had sought for documentary evidence from the petitioner to prove that he is an illiterate person. Since the same was not produced, the petitioner was not heard in the impugned proceedings.

6.The learned counsel for the petitioner now submits that the petitioner is willing to submit an affidavit stating that he is an illiterate person before the first respondent, if the matter is



remanded back to the the first respondent for fresh consideration on merits and in accordance with law. The first respondent under the impugned order has directed the third respondent to furnish information as sought for by the petitioner under the Right to Information Act, but has not imposed any penalty, which the petitioner insists will have to be imposed on account of the deliberate act of the fourth respondent in not furnishing the information sought for by the petitioner earlier.

7.No prejudice will be caused to the respondents, if the matter is remanded back to the first respondent for fresh consideration on merits and in accordance with law, after affording a fair hearing to the petitioner and the fourth respondent. Admittedly, the petitioner was not heard in the impugned proceedings of the first respondent. The petitioner has also undertaken to file an affidavit before the first respondent stating that he is an illiterate person and therefore, the assistance of lawyer is required. The said undertaking is also recorded.

8.After hearing the submissions of the respective counsels and on the ground that the petitioner was not heard in the impugned proceedings of the first respondent, the impugned order dated 30.12.2021, passed by the first respondent is hereby quashed and the matter remanded back to the first respondent for fresh consideration on merits and in accordance with law, after affording a fair hearing to the petitioner and the fourth respondent, on receipt of the affidavit from the petitioner. The petitioner shall file his affidavit referred to supra, within a period of one week from the date of receipt of a copy of this order. The first respondent on receipt of the same, shall pass final orders on merits and in accordance with law, after affording a fair hearing to the petitioner and the fourth respondent, within a period of four weeks, thereafter. The petitioner, on filing of the affidavit that he is an illiterate, is permitted to seek assistance of the lawyer in the enquiry proceedings to be conducted by the first respondent, pursuant to the directions given by this Court today.

9.With the aforesaid directions, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(A/Cs)

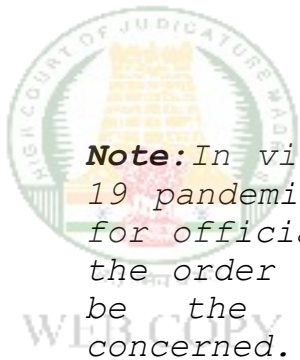
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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

- 1.The State Information Commissioner,
Tamil Nadu State Information Commission,
No:2, Thiyagarayar Road,
Teynampet, Chennai - 600 018.
 - 2.The Appellate Authority/Assistant Director of Town Panchayat,
Nagercoil Zone,
Office of Assistant Director of Town Panchayat,
Collectorate, Nagercoil.
 - 3.The Public Information Officer/Executive Officer,
Kaliakavilai Town Panchayat,
Kaliakavilai,
Kanyakumari District.
- +1 CC to M/s.N.MOHIDEEN BASHA, Advocate (SR-9853[F] dated 03/03/2022)
+1 CC to M/s.B.SARAVANAN, Advocate (SR-10097[F] dated 04/03/2022)
+1 CC to M/s.SPL GP (SR-10166[F] dated 04/03/2022)

W.P. (MD)No.3848 of 2022
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KS (CO)
TR(17.03.2022) 4P 7C