



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.04.2022

Delivered On: 02.06.2022

CORAM:

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.17632 of 2014

and M.P. (MD) .No.1 of 2014

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Ponvelraj

.. Petitioner

Vs.

1.The State Information Commissioner,
No.2, Thiyagaraja Salai,
Teynampet, Chennai - 600 018.

2.The Municipal Commissioner,
Kayalpattinam Municipality,
Kayalpattinam,
Thoothukudi District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the 1st respondent in Case no.47150/Enquiry/D/2011, dated 06.08.2014 and the consequential order passed by the 2nd respondent in Na.Ka.No.1308/2011/A1, dated 25.08.2014, quash the same.

For Petitioner

: Mr.S.S.Thesigan

For Respondents

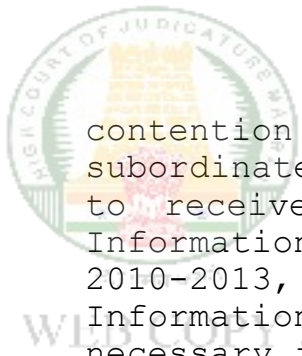
: Mr.K.K.Senthil for R1

No Appearance for R2

ORDER

This writ petition has been filed to quash the impugned order dated 06.08.2014 and the consequential order, dated 25.08.2014.

2.The petitioner is working as Sanitary Inspector in Kayalpattinam Municipality. The nature of job assigned to the petitioner is to keeping the public health and maintain sanitation in the locality comes under the Municipality. Under the Right to Information Act, 2005, every public authority should designate Public Information Officers within 100 days of the enactment of the Act. Accordingly, the State of Tamil Nadu designated the competent authorities as Public Information Officers. In the Municipal Corporation, the Manager was designated as Public Information Officer and as such they are competent to receive applications and furnish information under the Right to Information Act. In Kayalpattinam Municipality the post of Manager was vacant for a long time and no one was even acting as "In-charge Manager". The



contention of the petitioner is that the petitioner's post is subordinate to the post of Manager and the petitioner is incompetent to receive applications and provide information under Right to Information Act. As the post was kept vacant for a period from 2010-2013, the other officials who were not designated as Public Information Officers had been advised by their superiors to provide necessary information under the Right to Information Act.

3. One P.M.M.Mohideen of Changanacherry of Kerala State had sought information under the Right to Information Act, regarding the property tax. The applications were addressed to the Public Information Officer, Kayalpattinam Municipality as well as the Public Information Officer cum Municipal Commissioner, Kayalpattinam Municipal Corporation. The information sought was furnished by the Municipal Corporation on 15.03.2011. Not satisfied by the information provided by the Municipality, the above said P.M.M.Mohideen, preferred the appeal in Case No.47150 of 2012 before the first respondent. After enquiry, the first respondent directed the Public Information Officer to provide all the documents sought under the application. Accordingly, the copies of the relevant documents were furnished to P.M.M.Mohideen through his brother. Since the documents were not sent to him directly, the first respondent issued show cause notice to the petitioner and the second respondent, directed the petitioner to reply as to why maximum punishment should not be imposed. As per the instructions of the second respondent, the petitioner appeared before the first respondent and made oral submissions regarding the issue raised in the show cause notice on 22.01.2013. But the first respondent vide his order, dated 06.08.2014, rejected the petitioner's explanation and imposed the maximum penalty of Rs.25,000/- and directed the 2nd respondent to recover the same from the petitioner's salary. Pursuant to the order of the first respondent, dated 06.08.2014, the second respondent vide proceedings, dated 25.08.2014, ordered to recover the penalty amount in five installments.

4.The contention of the petitioner is that the second respondent has passed the above order without affording sufficient opportunity to the petitioner to put forth his case. The specific contention of the petitioner is that he was not the person designated as Public Information Officer in the Municipality and therefore, the said impugned order is in violation of Right to Information Act, 2005.

5.The respondents have not filed any counter and relied on the impugned order.

6.Heard Mr.S.S.Thesigan, the learned counsel appearing for the petitioner and Mr.K.K.Senthil, the learned Counsel appearing for the first respondent.



7.The contention of the petitioner is that the applicant under the Right to Information Act namely P.M.M.Mohideen had sought certain clarification regarding the property tax levied in the name of Mohideen. The rival claimant namely Mumtaj Begam has filed a suit in O.S.No.179 of 2011 on the file of the District Munsif Court, Thiruchendur. The claim of the Mumtaj is that the property tax for the suit property cannot be changed to the first defendant namely Mohammed Mohideen. The said Mohammed Mohideen has sought information, on what basis the property was transferred in the name of Mumtaj Begam. The contention of the petitioner is that he was not appointed as Public Information Officer and he is serving only as Sanitary Inspector in the Kayalpattinam Municipality. If that is so, the respondents cannot levy any penalty on the petitioner. The respondents have not filed any counter to refuse that the petitioner was not appointed as a Public Information Officer.

8.It is seen from the records that the Right to Information application was submitted to the Commissioner of Municipality and the petitioner was directed to furnish information. The petitioner has furnished all the information and has submitted the records to the brother of the said Mohideen and also has furnished the copies through courier. According to the petitioner, all the available papers were furnished to the petitioner. Moreover, the issue between the parties is pending before the Civil Court and the property tax dispute cannot be resolved until the judgment is delivered in the suit. In such circumstances, the imposing penalty of Rs.25,000/-, which is maximum punishment prescribed under the Act, cannot be levied. Since according to the petitioner, the relevant documents and other particulars were already furnished, the Appellate Authority cannot impose any punishment to the petitioner. Moreover, the issue is pending before the Civil Court and any rights that is claimed between the rival parties can be considered after the disposal of the suit in O.S.No.171 of 2014.

9.Therefore, this Court is of the considered opinion that the petitioner was not designated as Public Information Officer and has not acted as in-charge Public Information Officer. In such circumstances, the information furnished by the petitioner is only based on the direction of the Municipal Commissioner that is the second respondent, without assigning any designation as in-charge Public Information Officer. Therefore, the punishment imposed on the petitioner to pay a sum of Rs.25,000/-, as penalty, which is the maximum punishment that is prescribed under the Act is liable to be interfered and the impugned order is quashed. If any amount is recovered based on the impugned order, the same shall be refunded to the petitioner.



10.This writ petition is allowed and the impugned orders dated 06.08.2014 and 25.08.2014 are hereby set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD II)

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// True Copy //

/ /2022

Sub Assistant Registrar(CS)

TM

To

1.The State Information Commissioner,
No.2, Thiyagaraja Salai,
Teynampet, Chennai - 600 018.

+1 CC to M/s.S.S.THESIGAN, Advocate (SR-24272[F] dated
02/06/2022)

W.P. (MD) No.17632 of 2014

02.06.2022

MGJ(10.06.2022) 4P 3C