



W.P(MD)No.19705 of 2014

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.10.2022

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.19705 of 2014

and

M.P(MD)No.1 of 2014

Schwartz Higher Secondary School,
Represented by its Public Information Officer /
Head Master,
T.Paul Maran.

... Petitioner

Vs.

1.The Tamil Nadu State Information Commission,
Represented by its Registrar,
No.2, Thiyagaraya Salai,
Tenampettai,
Chennai-18.

2.Mr.D.Devaraj Athisayaraj

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned order bearing order No.22356/C/2014, dated 27.10.2014, passed by the first respondent and quash the same.



W.P(MD)No.19705 of 2014

WEB COPY

For Petitioner : M/s.T.Antony Arul Raj
For R-1 : M/s.K.K.Senthil
For R-2 : M/s.D.Devaraj Athisayaraj
(Party in Person)

ORDER

The present Writ Petition has been filed challenging the order passed by the first respondent herein, under which, the first respondent has specifically held that the information sought for by the information seeker cannot be granted in view of Section 7(9) of the Right to Information Act. Thereafter, the Tamil Nadu State Information Commission has proceeded to direct the Public Information Officer to permit the information seeker to go-through the documents and the information seeker is entitled to get the relevant portions alone. The Information Commission has also directed the Public Information Officer to permit the information seeker to go-through the documents. This order is under challenge in the present writ petition.



W.P(MD)No.19705 of 2014

WEB COPY

2. According to the learned Counsel for the writ petitioner, the second respondent, who is a retired teacher from the petitioner School had sent a communication on 27.03.2014 under the Right to Information Act, seeking information relating to forty questions. This was answered by the writ petitioner by a communication, dated 30.04.2014, almost refusing all the information sought for by the second respondent. The second respondent has challenged this order before the first Appellate Authority. The first Appellate Authority had directed the Public Information Officer to furnish the information. However, the petitioner has not furnished the information. Hence, the second respondent was constrained to move the first respondent Information Commission.

3. The first respondent Information Commission has passed the order impugned in the writ petition on 27.10.2014, without issuing any notice or affording any opportunity to the petitioner School. Hence, the present writ petition.



W.P(MD)No.19705 of 2014

4. According to the learned Counsel for the petitioner, the information sought for by the second respondent herein was furnished to the writ petitioner in open Court on 29.06.2015. The said fact is also acknowledged by the second respondent herein, who appears party in person before this Court today. The learned Counsel for the petitioner further submits that thereafter, the same reply was furnished to the second respondent herein by way of a registered post on 20.10.2022. Hence, according to the learned Counsel for the petitioner, whatever information that was sought for by the second respondent herein has already been furnished.

5. Per contra, the second respondent, who is appearing party in person had contended that the attitude of the School Management has to be taken into consideration. The information that was sought for by him was not furnished by the Public Information Officer, despite a direction being issued by the Appellate Authority. Even though the first respondent Information Commission has directed the writ petitioner Management to furnish information, they have not complied with the said request in time. Only, belatedly, that too, after filing of the writ



W.P(MD)No.19705 of 2014

petition, the School Management has furnished the information on 09.07.2015 followed by a registered post on 20.10.2022, sending the same information. Hence, he further contended that the information has not been furnished fully as called for by him. The information is lacking in all details and hence, the order passed by the Information Commission has not been complied with in entirety. Hence, he prayed that the petitioner should not be given any further opportunity unless, he furnishes the entire information. He further contends that in view of the attitude of the writ petitioner Management and the delay in furnishing the information, they should be punished as contemplated under the Right to Information Act.

6. The order impugned in the writ petition has admittedly been passed without issuing any notice to the writ petitioner herein. The learned Counsel appearing for the first respondent herein had contended that as per, Tamil Nadu Information Commission (Appeal Procedure) Rules, 2012, the Commission is empowered to pass ex parte orders based upon the available documents or evidences on record, if the Commission is satisfied about the adequacy of such material. The learned Counsel



W.P(MD)No.19705 of 2014

drew the attention of this Court with regard to Rule 5(vii) to contend that such powers are conferred upon the State Information Commission. Hence, he prayed that the order passed by the first respondent herein is fully in compliance with the said rules.

7. I have carefully considered the submissions made on either side.

8. A perusal of the Rule 5(vii) of the Tamil Nadu Information Commission (Appeal Procedure) Rules, 2012, points out that the Commission is empowered to dispense with, only the personal enquiry and that too only when the Information Commission is satisfied about the adequacy of the material, which is already on record. Unless the Commission is satisfied about the adequacy of the materials on record, the Commission cannot dispense with even the personal enquiry. Hence, it is clear that without issuing any notice and calling for any explanation from the information provider, no orders could be passed by the Information Commission. What is permitted to be dispensed with under the Act is only the personal enquiry and not a show cause notice or an explanation from the information provider.



W.P(MD)No.19705 of 2014

WEB COPY

9. In the present case, the Information Commission has arrived at a finding that the information sought for by the information seeker cannot be granted in view of Section 7(9) of the Right to Information Act. After arriving at such a finding, the Information Commission cannot dispense with the personal enquiry. In view of the above said facts, the contentions on the side of the learned Counsel for the first respondent herein are not legally sustainable.

10. In view of the above said facts, the order impugned in the writ petition is set aside. The matter is remitted back to the file of the first respondent herein. The first respondent is directed to pass orders on merits and in accordance with law, after affording due opportunity to the writ petitioner and the second respondent herein. The first respondent shall also take into consideration of the alleged fact that the information provider has already provided certain information to the second respondent herein. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.



W.P(MD)No.19705 of 2014

11. With the above said observations, the writ petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

28.10.2022

Index : Yes / No
Internet : Yes / No
btr

To

The Registrar,
The Tamil Nadu State Information Commission,
No.2, Thiyagaraya Salai,
Tenampettai,
Chennai-18.



WEB COPY



W.P(MD)No.19705 of 2014

R.VIJAYAKUMAR, J.

btr

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