



W.P(MD)No.10845 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 19.10.2022

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.10845 of 2015

and

M.P(MD)No.1 of 2015

The Bishop Heber College,
Represented by its Principal,
Trichy-17.

... Petitioner

Vs.

1.The Tamil Nadu Information Commission,
Represented by its Assistant Registrar,
No.2, Thyagaraya Road,
Teynampet, Chennai-600 018.

2.The Regional Joint Director of Collegiate Education,
Trichy.

3.S.Manikandan

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order of the first respondent in Case No. SA 4012/ Enquiry/ D/ 2015, dated 15.06.2015 and quash the same.



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For Petitioner : M/s.C.Jegannathan
for M/s.S.Ramsundarvijayaraj

For R-1 : M/s.K.K.Senthil
For R-2 : M/s.S.Kameswaran
Government Advocate
For R-3 : No appearance

ORDER

The present Writ Petition has been filed by the Principal of an Aided Minority Institution challenging the order passed by the State Information Commission.

2. The third respondent herein has filed an application under the Right to Information Act to the writ petitioner College, seeking certain information about the candidates, who had applied for M.Phil., degree. Admittedly, the information seeker is not an applicant for the said M.Phil., degree for the said academic year. Since the information was not furnished, the petitioner had approached the Appellate Authority. The Appellate Authority had directed the petitioner College to furnish information on 09.02.2015. Since the information was not furnished, the petitioner has approached the first respondent Commission by way of a second appeal.



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3. The first respondent Commission had directed the Public Information Officer of the petitioner College to appear and since they have engaged a Counsel to appear during the first hearing, the Commission has not entertained the Advocate and declared that the petitioner is absent. Thereafter, has proceeded to pass the impugned order.

4. The first respondent Commission has issued a show cause notice under Section 20(1) of the Right to Information Act, calling for explanation why a penalty up to a maximum amount of Rs.25,000/- cannot be imposed for not furnishing information within time as sought for by the information seeker. Apart from the said order, the Commission has also directed the First Appellate Authority to visit the College and collect all the information that was sought for by the information seeker and provide the said information to the third respondent herein. These two portions of the order are under challenge in the present writ petition.



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5. The learned Counsel appearing for the writ petitioner had contended that the third respondent information seeker is noway connected with the Institution and he has not applied for the M.Phil., course. The entire information sought for by the writ petitioner relates to various students, who have got admitted to the M.Phil., degree in the said academic year. Hence, the information sought for, is a third party information. Unless and until their views are obtained as contemplated under Section 11 of the RTI Act, the same cannot be disclosed by the College. However, the first respondent Commission has proceeded to direct the First Appellate Authority to almost seize all the documents and hand it over to the information seeker, without considering the purport of Section 11 of the RTI Act.

6. The learned Counsel for the petitioner had further contended that the petitioner was duly represented by a Counsel in the first hearing. However, the learned Counsel was directed by the Commission to be a spectator and the petitioner was treated as an absentee and the present order has been passed, without affording any opportunity to the writ petitioner.



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7. I have carefully considered the submissions and perused the order impugned in the writ petition.

8. Admittedly, the information seeker has not filed any application to get himself admitted to M.Phil., course for the said academic year in the petitioner College. He is seeking information relating to various students, the date of their viva-voce examination, the title of their dissertation, which was approved by the College for the M.Phil., course. These informations are clearly third party information, attracting Section 8(1)(j) of the RTI Act. Unless and until, the Public Information Officer finds that the disclosure of the same is called for in public interest, these informations cannot be disclosed. Even, in cases, where the Public Information Officer arrives at a finding that these informations have to be disclosed, without obtaining the views of the third parties, namely, the concerned students, the said information cannot be divulged. But without even considering the purport of Section 8(1)(j), Section 11 and Section 19(4) of the RTI Act, the first respondent Commission has proceeded to direct the First Appellate Authority to seize all these documents and to hand over the information to the third respondent herein, who is in



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noway connected with the admission process or a candidate for the said M.Phil., course. Hence, I find that this portion of the order is clearly without jurisdiction, illegal, arbitrary and the same is liable to be set aside.

9. As far as the show cause notice relating to the imposition of fine is concerned, the petitioner was duly represented by an Advocate. The Information Officer should have given respect to the said Advocate, who had appeared on that day and he should not have passed remarks in the impugned order that he should remain as a spectator. When the petitioner was duly represented by a Counsel, the Commission should have entertained the said Counsel and granted time or heard him before passing the impugned order. Without doing so, the Commission has proceeded to hold that the petitioner had remained *exparte* and proceeded to issue the show cause notice. Unless and until the Commission arrives at a finding that the Public Information Officer has remaining absent, without any reasonable cause, the question of issuing show cause notice will not arise. Hence, I find that the show cause notice has been issued, without any application of mind.



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10. Normally, this Court will not entertain a writ petition challenging the show cause notice but in view of the peculiar circumstances as stated supra, this Court finds that the show cause notice is clearly a result of non application of mind and without jurisdiction. In view of the above said facts, the writ petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

19.10.2022

Index : Yes / No
Internet : Yes / No
btr

To

- 1.The Assistant Registrar,
The Tamil Nadu Information Commission,
No.2, Thyagaraya Road,
Teynampet, Chennai-600 018.
- 2.The Regional Joint Director of Collegiate Education,
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R.VIJAYAKUMAR, J.

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