



W.P(MD)No.4521 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2022

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.4521 of 2014

and

M.P(MD)No.1 of 2014

A.Annamalai (Public Information Officer),
Tamil Nadu Water and Drainage Board,
Drinking Water Supply Division,
Madurai.

... Petitioner

Vs.

1.The State Information Officer,
The Tamil Nadu State Information Office,
No.2, Thiagaraya Salai,
Teynampettai,
Chennai-18.

2.The Kudalnagar Consumer Protection Movement,
Represented by its Secretary,
J.S.Arthur.

... 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 pertaining to the proceedings made in case No. 22887/Enquiry/D/2013 dated 31.01.2014 issued by the first respondent and quash the same.



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For Petitioner : Mr.P.R.Prithiviraj
for T.K.Gopalan

For R1 : Mr.K.K.Senthil

For R2 : Mr.M.Mohamed Ajees Dheen

ORDER

The present writ petition has been filed challenging an order passed by the 1st respondent Commission, under which the petitioner has been imposed with a penalty of Rs.25,000/- (Rupees Twenty Five Thousand only) and the 1st respondent has also directed the higher officials to initiate departmental action as against the petitioner.

2. The 2nd respondent herein has sought for information from the petitioner by his letter, dated 15.03.2013. A perusal of the said letter indicates the following:

(i) The 2nd respondent has alleged certain irregularities in the implementation of combined water supply scheme to Villangudi Town Panchayat and Samayanallur Village Panchayat.

(ii) The 2nd respondent has raised a query whether the Public Information Officer is intending to form Fact Finding Committee or not.



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(iii) The 2nd respondent has sought for certain details about the audited income and expenditure report relating to the period between 01.05.2006 to 15.04.2013 relating to the expenses incurred for implementing the said scheme.

(iv) The 2nd respondent has further sought for information relating to Bore Wells and the maintenance of those Bore Wells lies with which authority and how many litres of water are being distributed from Madurai overhead Tanks.

(v) The 2nd respondent has further sought for information whether it is true that there is breakage of water pipelines on several occasions and due to the same, there is wastage of drinking water. The 2nd respondent has further sought for expenses incurred for maintaining the said pipelines.

3. For the said information sought for by the 2nd respondent, the petitioner, who is a Public Information Officer had written a letter to the concerned authority, namely the Executive Engineer, TWAD Board, Maintenance Division at Madurai on 26.03.2013 seeking information, which was sought for by the 2nd respondent herein. Based upon the request made by the writ petitioner, the said authority has given a reply



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on 07.05.2013. The reply was promptly informed to the 2nd respondent on 10.05.2013.

4. The Executive Engineer/The Appellate Authority has also directly sent a reply to the information seeker on 14.05.2013 by way of a registered post. However, not being satisfied with the reply given by the Public Information Officer and the Appellate Authority, the 2nd respondent had approached the 1st respondent information Commission by way of a second appeal, dated 22.05.2013.

5. The 1st respondent herein had issued a notice on 03.12.2013 directing the Public Information Officer to appear on 16.12.2013. The petitioner/Public Information Officer has addressed a letter on 10.12.2013 seeking some more time to appear before the 1st respondent herein.

6. The 1st respondent by an order, dated 16.12.2013 issued a show cause notice to the writ petitioner why action should not be initiated as against him under Section 20 (1) of the Right to Information Act. The 1st respondent herein has further called for an explanation from the writ



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petitioner why departmental proceedings cannot be recommended as against the petitioner as contemplated under Section 20 (2) of the Right to Information Act. Under the said order, the 1st respondent Commission has given a specific finding that the answer relating to queries 2,3 and 4 are with the Executive Engineer, Maintenance Division, TWAD Board, Madurai and the said authority, who is also the appellate authority was directed to furnish the reply within a period of 15 days.

7. The petitioner has submitted a detailed reply to the 1st respondent herein on 09.01.2014. In the said reply, the petitioner has pointed out that the writ petition filed by the information seeker relating to the same issue has already been dismissed and hence, the question of appointing of Fact Finding Committee has not arisen. This was mentioned as an answer to the Query No.1. The petitioner has explained in detail why there was a delay in furnishing the information and also the information, which were already furnished by the writ petitioner.

8. The 1st respondent by way of impugned order, dated 31.01.2014, has arrived at a finding that despite having information about the formation of a Fact Finding Committee, the petitioner has refused to



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divulge the said information to the 2nd respondent herein. The 1st respondent further passed an order, imposing a maximum penalty of Rs.25,000/- (Rupees Twenty Five Thousand only) as against the writ petitioner. The 1st respondent Commission further directed the higher officials of the writ petitioner to initiate departmental action as against the writ petitioner for not furnishing the information, even after a delay of 9 months. This order is under challenge in the present writ petition.

9. The learned counsel for the petitioner submitted that some information was sought for by the 2nd respondent by his letter, dated 15.03.2013. Immediately on 26.03.2013, he has addressed a letter to the Executive Engineer, TWAD Board, Maintenance Division (who was having the said information) to furnish the information to the 2nd respondent herein. The said authority has also furnished the information by his letter, dated 07.05.2013 and the petitioner had promptly communicated the same to the 2nd respondent herein on 10.05.2013. Hence, there is no delay on the part of the writ petitioner in furnishing the information to the 2nd respondent herein.



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10. The learned counsel for the petitioner has further contended that in the show cause notice, dated 16.12.2013, the 1st respondent Commission has categorically found that information relating to Query Nos.2,3 and 4 are only with the Executive Engineer, TWAD Board, Maintenance Division. After arriving at such a finding, the 1st respondent Commission ought not to have imposed the penalty upon the petitioner and directed departmental proceedings as against the writ petitioner. Hence, he prayed for setting aside the said orders and to allow the writ petition.

11. Per contra, the learned standing counsel appearing for the 1st respondent had contended that despite having information relating to the Fact Finding Committee, the petitioner has refused to divulge the said information. The petitioner has also committed 9 months delay in furnishing the information to the 2nd respondent herein. In such an event, the order impugned in the writ petition cannot be said to be illegal and the same has to be sustained.

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



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13. As far as the 1st query raised by the 2nd respondent is concerned, the 2nd respondent had sought for the opinion of the Public Information Officer whether they are willing to form a Fact Finding Committee or not. Section 2 (f) of the Right to Information Act defines information as follows:

“(f) “information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;”

14. A perusal of the definition will clearly disclose that whatever available on record already should be furnished to the information seeker, if the same is not exempted under Section 8 of the Act. In the present case, the information seeker has sought details about the proposed action of the authorities. Whether the authorities would form a Fact Finding Committee in future is the query. This cannot be considered to be an information under Section 2 (f) of the Right to Information Act.



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Hence, not answering the said query or delay in answering the said query would not attract any one of the penal provisions under the Right to Information Act.

15. The 1st respondent Commission, by their show cause notice, dated 16.12.2013, have arrived at a categorical finding that the answer to the remaining queries are available only with the Executive Engineer, TWAD Board, Maintenance Division at Chennai. The only allegation that is made as against the Public Information Officer is that he had not taken any steps to get the said information from the Executive Engineer and furnish the same to the 2nd respondent. However, the said finding of the 1st respondent Commission is contrary to the facts. The 2nd respondent has sought for these information on 15.03.2013. Within a period of 10 days, namely on 26.03.2013, the petitioner has addressed a letter to the Executive Engineer calling for the information. The Executive Engineer has furnished the information on 07.05.2013 to the writ petitioner. The writ petitioner, by his communication, dated 10.05.2013, had immediately communicated the same to the 2nd respondent. Hence, the writ petitioner cannot be found fault with, for any delay on his part or not transferring the application to the concerned authority. The entire finding



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of the 1st respondent Commission is a clear case of non-application of mind.

16. The maximum penalty of Rs.25,000/- (Rupees Twenty Five Thousand only) has been imposed upon the writ petitioner only for not providing the information relating to Query Nos.2,3 and 4 in time. Only for the same reason, the 1st respondent Commission has directed departmental action as against the writ petitioner. In view of the deliberations as stated above, the petitioner cannot be found fault with for refusing to furnish information or delay in furnishing the information. Therefore, I find that the order impugned in the writ petition is illegal and it is not in consonance with the Right to Information Act.

17. In view of the above said facts, the order impugned in the writ petition is set aside insofar as the writ petitioner is concerned and the writ petition stands allowed. No costs. Consequently connected Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
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To

1. The State Information Officer,
The Tamil Nadu State Information Office,
No.2, Thiagaraya Salai,
Teynampettai,
Chennai-18.



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R.VIJAYAKUMAR ,J.

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