



W.A.No.1124 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2023

CORAM :

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

AND

THE HON'BLE MR.JUSTICE P.B.BALAJI

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1. Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009
 2. Public Information Officer and
Deputy Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009
 3. Superintendent of Police
Kanniyakumari District at Nagercoil
 4. Additional Superintendent of Police
and Public Information Officer
Kanniyakumari District at Nagercoil
- .. Appellants

v.

1. Mr.S.Suresh Babu
2. Mr.M.Swamiyadiyan
3. Thiru C.Devarajan



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4. The State Chief Information Commissioner
Tamil Nadu Information Commission
P.B.No.6405, New No.378, Anna Salai
Teynampet, Chennai 600 018

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 13.04.2010 made in W.P.No.14461 of 2007.

For Appellants :: Mr.J.Ravindran
Additional Advocate General
assisted by
Mrs.Geetha Thamaraiselvan
Special Government Pleader

For Respondents :: Mr.V.Perumal for R1 & R3
Mr.Niranjan Rajagopal for R4
No appearance for R2

JUDGMENT

(Judgment of the Court was made by D.KRISHNAKUMAR,J.)

The instant intra-Court appeal, at the instance of the State, is directed against the order dated 13.04.2010 passed in Writ Petition No.14461 of 2007.

2. The facts in brief leading to the filing of the intra-Court appeal are as follows:-



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(a) The respondents 1 & 2 herein filed applications dated 27.11.2006 and 25.11.2006 respectively before the Public Information Officer and Deputy Secretary to Government, Home, Prohibition and Excise Department, the second appellant herein and the third respondent herein filed an application dated 25.11.2006 before the Superintendent of Police, Kanniyakumari District, the third appellant herein under Section 6(1) of the Right to Information Act, 2005 seeking to furnish the following documents:-

(a) Petitions received for withdrawal of the cases in C.C.No.450 of 2004, C.C.No.449 of 2004 and C.C.No.268 of 2005 on the file of Judicial Magistrate, Eraniel.

(b) Opinion of the Public Prosecutor received in this regard.

(c) The reports of Inspector General of Police, South Zone, Superintendent of Police and District Collector.

(d) The report of Deputy Inspector General of Police.

(e) Government Orders passed in this regard.

(b) By communications dated 13.12.2006, the second appellant refused to furnish the information sought for by the respondents 1 and 2 herein on the ground that the same is exempted from disclosure under



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Section 8(h) of the Right to Information Act. Similarly, the third appellant, by a communication dated 20.12.2006, informed the third respondent to obtain the information directly from the Government since the same was confidential in nature.

(c) The appeals filed by the respondents 1 & 2 against the said orders came to be rejected by the appellate authority by orders dated 20.1.2007 and 24.1.2007 respectively, confirming the orders passed by the Public Information Officer. However, the appeal filed by the third respondent was disposed of by the appellate authority by order dated 10.3.2007.

(d) Not satisfied with the aforesaid orders, the private respondents approached the State Information Commission by way of second appeals. After hearing the parties, by order dated 4.4.2007, the State Information Commission directed the appellants to provide the information sought for by the private respondents within a week therefrom and report compliance.

(e) Challenging the aforesaid order passed by the State Information



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Commission, the appellants filed the Writ Petition No.14461 of 2007. The writ Court, after considering the contentions of the parties, dismissed the writ petition and confirmed the order passed by the State Information Commission. Assailing the said order, the appellants have filed the present intra-Court appeal before this Court.

3. According to the appellants, the State Information Commission cannot direct the Government to furnish the information sought for by the respondents, as the same are confidential in nature and would also affect the investigation, in terms of the exemption provided under Section 8(h) of the Right to Information Act. Secondly, one such information sought for by the private respondents relates to the opinion of the Public Prosecutor, which is a privileged document and the same cannot be disclosed in terms of Section 126 of the Evidence Act. Thirdly, the Home Department is exempted under Section 24 of the Right to Information Act and hence the information cannot be furnished.

4. The learned Additional Advocate General appearing for the



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appellants, reiterating the aforesaid grounds, placing reliance upon Section 8(h) of the Right to Information Act, submitted that the writ Court has not analyzed their case in proper perspective and has erroneously confirmed the order passed by the State Information Commission by directing the appellants to furnish the information sought for by the respondents. Therefore, he prayed that the order of the State Information Commission as well as the order passed by the writ Court are liable to be set aside.

5. The learned counsel appearing for the respondents 1 & 3, objecting to the plea raised by the appellants, submitted that the order passed by the State Information Commission and the writ Court do not call for any interference, as the documents sought for by the respondents do not relate to the investigation of any pending cases, as it is the admitted case of both parties that the investigation was already over and the charge sheets had also been filed before the learned Judicial Magistrate Court, Eraniel. Therefore, the appellants cannot take shelter under Section 8(h) of the Right to Information Act on the ground that the information is confidential in nature, as the object and reasons for which the Right to Information Act



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came to be passed is only for providing the information to the respondents, who are none other than the complainants in the respective calendar cases.

6. We have heard the learned counsels appearing for the parties and also gone through the materials on record. The primordial defence taken by the appellants is that the information sought for by the private respondents cannot be furnished to them, in terms of Section 8(h) of the Right to Information Act, as the same are confidential in nature, more particularly, when one such information relates to the legal opinion of the Public Prosecutor, which is a privileged document that cannot be disclosed, as contemplated under Section 126 of the Evidence Act. In this context, Section 126 of the Evidence Act is extracted hereunder:-

“S.126. Professional communications. — No barrister, attorney, pleader or vakil, shall at any time be permitted, unless with his client’s express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:



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Provided that nothing in this section shall protect from disclosure — (1) any such communication made in furtherance of any [illegal] purpose,

(2) any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment. It is immaterial whether the attention of such barrister, [pleader], attorney or vakil was or was not directed to such fact by or on behalf of his client.”

Mere reading of the above provision clearly shows that the attorney or pleader is not permitted to disclose any advice or state the contents of any document with which he has become acquainted in the course of his professional employment. In our considered opinion, the advice or legal opinion given by the Public Prosecutor, which is a privileged document, is clearly exempted from disclosure under Section 126 of the Evidence Act. The learned counsel appearing for the private respondents also fairly agreed that they are entitled for the other documents excluding the legal opinion given by the Public Prosecutor.

7. In the light of the above, while modifying the order passed by the writ Court as well as the order passed by the State Information Commission to the effect that the private respondents are not entitled to the receipt of information relating to the legal opinion given by the Public Prosecutor as



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requested in para (b) of their application on the ground that it is a privileged document, the appellants are directed to furnish the information sought for by the respondents in regard to paras (a), (c), (d) and (e) of their application, as the investigation has already been completed in the cases, within a period of twelve weeks from the date of receipt of a copy of this order. In fine, the writ appeal stands partly allowed to the extent indicated above. Consequently, M.P.No.1 of 2010 stands closed. There shall be no order as to costs.

(D.K.K.,J.) (P.B.B,J.)
24.08.2023

Index : yes/no
Neutral citation : yes/no

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To

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Home, Prohibition and Excise Department
Secretariat
Chennai 600 009
2. The Public Information Officer and
Deputy Secretary to Government



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