



W.P.No.13910 of 2016 &
WMP.No.12189 of 2016

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.01.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.13910 of 2016 &
WMP.No.12189 of 2016

P.N.Prabakaran

... Petitioner

Vs

1.The State of Tamil Nadu

Rep. by its Secretary to State Public Department,
Secretariat, Fort St.George, Chennai - 600 009.

2.The State Information Commissioner,
C/o.The State Information Commission,
Door No.2, Thiyagaraya Salai,
Teynampet, Chennai - 600 018.

3.The Collector,
Office of the Collector,
Tiruppur District, Tiruppur.

4.The Deputy Commissioner,
Corporation of Coimbatore,
Coimbatore - 641 005.

5.S.P.Thiyagarajan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
praying to issue a writ of Certiorari, calling for the records from the file of the



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2nd respondent with respect to the case No.32770/enquiry/D/14 dated 09.03.2016 and quash the same.

For Petitioner : Dr.C.Ravichandran
for Mr.S.B.Viswanathan

For Respondents : Mr.B.Vijay
Additional Government Pleader - R1 & R3

Ms.S.Sowjanya
for Mr.Niranjan Rajagopalan - R2

Mr.M.Elumalai
for Mr.K.Magesh - R4

ORDER

The petitioner was appointed as a Junior Assistant on compassionate ground and thereafter as a Tahsildar in the Revenue Department in Salem District. He was transferred as Deputy Collector (Foreign Service) on 24.07.2013 joining service as Assistant Commissioner, East Zone, Corporation of Coimbatore. He served in that capacity between 24.07.2013 to 20.03.2015, after which, he was promoted to the post of Additional Personal Assistant to Collector (Land), Tiruppur District.

2.While in service in the Coimbatore Corporation, R5 had sought certain information under the provisions of the Right to Information Act, 2005 (in short 'Act') vide an application dated 23.12.2013. The sum and substance of the



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information sought relates to a file pertaining to land vide ROC 3725/2004/East-H1, dated 24.07.2006.

3.The petitioner claims that despite best efforts, the file was not traceable. However, he would also confirm that since the file was of 2006 vintage, he had had no occasion to deal with the same and had never encountered that file after his appointment in the Coimbatore Corporation. He thus communicated to the petitioner on 21.01.2014 that the file was untraceable and that the information sought could be furnished only after, and subject to it being found.

4.An appeal was filed by R5 before R4/the Deputy Commissioner, Corporation of Coimbatore, who reiterated the finding that the file could not be traced vide his order dated 11.03.2014. As against the order passed by R4, R5 instituted an appeal before the State Information Commissioner/R2. After considering the documents on file as well as the reports filed by the petitioner and R4, R2 had passed an order on 07.10.2015 asking the petitioner to show cause why fine of Rs.25,000/- not be imposed under Section 20(1) of the Act. He also sought an explanation from R4 as to why disciplinary action not



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initiated as against him for non-furnishing of information within the time provided under Statute.

5.Learned counsel concur on the position that pursuant to the order of R2, a complaint has been preferred before the Inspector of Police, Singanallur Police Station, Coimbatore District regarding the missing file. In the meanwhile, the present writ petition has been filed by the petitioner assailing the conclusion of R2 vide impugned order dated 09.03.2016 imposing penalty of a sum of Rs.25,000/- as proposed.

6.Having heard the learned counsel, I am of the considered view that no penalty is liable to be imposed in this case. The authorities of the Corporation, both the petitioner as well as R4 have categorically confirmed that the file which is of the year 2006 was not traceable. In such circumstances, they cannot be faulted for non-furnishing of the information.

7.It would no doubt have been appropriate that the missing file had been noticed earlier and steps taken by the authorities to locate the same or to take action for the negligence in handling of that file. This has not been done till such time R2 passed the impugned order.



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8.Be that as it may, the provisions of Section 20 of the Act which provide for penalties would only relate to situations where the Public Information Officer has (i) refused to receive an application for information; (ii) has not furnished information within the time specified statutorily; (iii) malafidely denied the request for information; (iv) knowingly given incorrect, incomplete or misleading information; (v) destroyed information which was the subject of the request and (vi) obstructed in any manner in furnishing the information.

9.In the present case, the furnishing of the information was an impossibility seeing as the file containing the information sought is admittedly missing and a police complaint has also been instituted in this regard.

10.Hence, the penalty imposed is set aside and this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

kbs

24.01.2023

Index : Yes
Speaking Order



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Dr.ANITA SUMANTH, J.

kbs

To

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