



W.P.No.2701



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.27010 of 2010
and M.P.No.1 of 2015

The Tamil Nadu Public Service Commission,
Rep. by its Secretary,
No.1, Greams Road,
Chennai – 600 006.

...Petitioner

vs.

Tmt.R.Subbulakshmi

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned order dated 16.08.2010 issued by the Tamil Nadu Information Commission in Case No.7484/Enquiry/2010 on the file of the Tamil Nadu Information Commission, Chennai, and to quash the same as void, unlawful, unjust and unconstitutional.

For Petitioner : Mr.R.Bharanidharan
for TNPSC

For Respondent : Tmt.R.Subbulakshmi – served – no appearance

**ORDER**

The Writ Petition has been filed by the petitioner challenging the order passed by the Tamil Nadu Information Commission directing the petitioner to furnish information as regards to the query No.2 made by the respondent.

2.Mr.R.Bharanidharan, learned counsel appearing for petitioner/TNPSC. In spite of notice being served on the respondent, the respondent is neither represented by counsel nor the respondent present before this Court.

3.Mr.R.Bharanidharan, learned counsel appearing for petitioner/TNPSC would submit that the respondent herein had sought information by her application dated 07.01.2010. The request of the respondent was considered and as regards to the first query, the information was given to her within a prescribed time, inter alia intimating that the office note that is sought to be furnished under the second query, could not be furnished in view of protection available under Section 8(1)(e)(h).

4.Being aggrieved against the same, the respondent had preferred an appeal before the Tamil Nadu Information Commission and the said Commission by its order dated 16.08.2010 had directed the petitioner to furnish such information.



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5.He would submit that the information sought under query No.2 with regard to the Official Communication particularly, the opinion/notes that had been prepared for disposal of the appeal filed by the respondent. He would further submit that this office notice/notes prepared for disposal of appeal cannot be furnished under the RTI, Act, 2005 as it is an opinion on the file by the Officers of a Department for disposal of the appeal filed by the respondent to the Appellate Authority. Such notes cannot be said to prejudice the mind of the Appellate Authority, as the Appellate Authority would have to take an independent decision by application of its mind. Therefore, such notes do not reflect the mind of the Appellate Authority, but are prepared to aid the Appellate Authority to come to a just & reasonable conclusion.

6.Further, he would submit that such communications are fiduciary in nature and only if a large public interest warrants such disclosure, the same could be disclosed. In the present case, he would submit that there is no large public interest which would warrant such disclosure. These aspects have not been considered by the Information Commission and had mechanically passed an order. Therefore, he would pray to this Court to interfere with the order impugned in this Writ Petition.



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7.I have perused the materials placed before me. A perusal of the impugned order would explicitly show that there has been no application of mind by the Authority in directing the petitioner to furnish information. The Authority had simply without assigning any reason whatsoever had held that the refusal by the petitioner to grant information by seeking protection of Section 8(1)(e)(h) was not correct. Such a conclusion arrived at by the Authority is wholly arbitrary, without application of mind and on that ground itself is liable to be interfered with.

8.Section 8 of the Right to Information Act, 2005, exempts disclosure of certain information. One such exemption is with regard to an information that is available to a person in a fiduciary relationship. However, such an exemption is also subject to disclosure provided that the Competent Authority is satisfied that larger public interest would warrant disclosure.

9.In the present case, no attempt has been made by the Appellate Authority to come to a conclusion that disclosure of information sought for by the respondent warrants larger public interest.



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10. In such a view of the matter, I am constrained to set aside the order impugned in this Writ Petition and allow the Writ Petition. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Speaking order: Yes/No
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K.KUMARESH BABU, J.

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