



W.P. Nos. 19232, 19236, 19240, 19745 and 19750 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. Nos. 19232, 19236, 19240, 19745 and 19750 of 2021
and**

**W.M.P. Nos. 20532, 20535, 20536, 20539, 20541, 20542, 20549, 20551,
20552, 21022, 21023, 21025, 21029 to 21031 of 2021**

T.K.Kumar ... Petitioner in W.P. No. 19232 of
2021

D.Kamalam ... Petitioner in W.P. No. 19236 of 2021

R.Vijayan ... Petitioner in W.P. No. 19240 of 2021

K.Srinivasan ... Petitioner in W.P. No. 19745 of 2021

T.Anbazhagan ... Petitioner in W.P. No. 19750 of 2021

-VS-

1. The Tamil Nadu Information Commission,
Represented by its Registrar
No.2, Theyagaraya Salai,
Teynampet,
Chennai – 600018.

2. The Appellate Authority,
Superintending Engineer (Highways)
Construction & Maintenance Highways Department,
Villupuram.

3. The Public Information Officer,
Deputy Superintending Engineer (Highways)
Construction & Maintenance Highways Department,
Villupuram Circle,



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Villupuram.

4. Nalvinai Viswaraju

... Respondents in all W.P.s

Common Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records in the impugned order No. SA10117/F/2020 dated 18.08.2021 passed by the First Respondent herein, quash the same as illegal and void and restrain the Second and Third Respondents from divulging any third-party information of the Petitioner to the Fourth Respondent herein under the Right to Information Act, 2005.

For Petitioners : Mr. A.P.Balaji
(in all W.P.s) for Mr. AK.Athiban Vijay

For Respondents : Mr. S.J.Mohamed Sathik,
(in all W.P.s) Government Advocate (for R2 & R3)

Mr. C.Vigneswaran (for R1)

No appearance (for R4)

COMMON ORDER

Heard Mr. A.P.Balaji, Learned Counsel assisted by Mr. AK.Athiban Vijay, Learned Counsel for the Petitioners, Mr. C.Vigneswaran, Learned Counsel appearing for the First Respondent and Mr. S.J.Mohamed Sathik, Learned Government Advocate appearing for the Second and Third Respondents and perused the materials placed on record, apart from the



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pleadings of the parties.

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2. The Fourth Respondent had made an application dated 15.06.2020 under Section 6(1) of the Right to Information Act, 2005 (hereinafter referred to as the 'RTI Act' for short) to the Third Respondent seeking information relating to pre-qualification documents of tenderers of contracts exceeding the value of Rs. 2,00,00,000/- in Villupuram Highways Circle from the year 2015 for a period of six financial years, which was declined by the Third Respondent quoting that it related to 'commercial confidence' and 'trade secrets' exempted from disclosure under Section 8(1)(d) of the RTI Act, in the Order in Na. Ka. No. 1900/2020/EVaA-1 dated 07.07.2020. The Fourth Respondent then preferred first appeal under Section 19(1) of the RTI Act before the Second Respondent, and in response to the separate letters dated 07.08.2020 sent by the Third Respondent in terms of Section 11 of the RTI Act, the Petitioners raised their objections for divulging the information relating to them, which had to be treated as confidential affecting their business interests. The said contentions of the Petitioners were accepted by the Second Respondent in the Order in Na. Ka. No. 2336/2020/EVaA-1 dated 25.08.2020 by declining to furnish the information relating to the Petitioners sought by the Fourth Respondent. Thereafter, the Fourth Respondent preferred second appeal in Case No. SA



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10117/F/2020 under Section 19(3) of the RTI Act before the First Respondent, who had by order dated 18.08.2021 required the Third Respondent to furnish the information sought by the Fourth Respondent by 06.09.2021 and further held that in the event of such failure, the Fourth Respondent may in writing inform the First Respondent so as to impose penalties under Section 20 of the RTI Act. Aggrieved thereby, each of the Petitioners have preferred these Writ Petitions challenging the said order passed by the First Respondent.

3. The primordial attack of Learned Counsel for the Petitioners on the impugned order is that it entails adverse civil consequences to the Petitioners and despite the mandate in Section 19(4) of the RTI Act that reasonable opportunity of being heard shall be given to a third party in an appeal under Section 19(3) of the RTI Act, it has not been followed in this case.

4. In this regard, clauses (3) and (4) of Section 19 of the RTI Act are extracted below:-

“19. Appeal:-

....

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision



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should have been made or was actually received, with the Central

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Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.”

There is nothing to show from the materials placed on record that the requisite notice with opportunity of hearing has been afforded by the First Respondent to the Petitioners before passing the impugned order, which consequently vitiates it.

5. At this juncture, reference may be made to the relevant passages in the decision of the Constitution Bench of the Hon'ble Supreme Court of India in



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Chief Public Information Officer, Supreme Court of India -vs- Subhash

Chandra Agarwal [(2020) 5 SCC 481] on the interplay of Sections 8 and 11 of

the RTI Act as extracted below:-

“Scheme of Sections 8 and 11:-

257. Section 8(1) begins with a non obstante phrase “Notwithstanding anything contained in this Act”. The import of this phrase is that sub-section (1) of Section 8 carves out an exception to the general obligation to disclose under the RTI Act. Where the conditions set out in any of the sub-clauses to clause (1) of Section 8 are satisfied, the Information Officer is under no obligation to provide information to the applicant. By expressly enumerating the circumstances in which the disclosure of information may be restricted on the grounds of certain identified harms, the RTI Act negates the notion that information may be withheld on the grounds of confidentiality simpliciter. A harm under clause (1) of Section 8 must be identified and invoked to justify the non-disclosure of a document requested for under the RTI Act.

258. It is also pertinent to note that clauses (a), (b), (c),



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(f), (g) and (h) to sub-section (1) of Section 8 provide an absolute

exemption from the obligation of disclosure under the RTI Act.

However, clauses (d), (e), (i) and (j) to sub-section (1) of Section 8 provide a qualified exemption from disclosure. For example, clause (a) to sub-section (1) of Section 8 provides an unconditional exemption where it is determined that disclosure of the information sought “would prejudicially affect the sovereignty and integrity of India”. On the other hand, while clause (d) to Section 8(1) similarly provides that information is exempt from disclosure where such disclosure “would harm the competitive position of a third party” the exemption is further qualified by the phrase, “unless the competent authority is satisfied that larger public interest warrants the disclosure”. Thus, the exemption under clause (d) is not absolute but is qualified and cannot be invoked where there exists a “larger public interest”. Where the Information Officer determines that the “larger public interest” warrants a disclosure, the exemption in clause (d) cannot be invoked and the information must be disclosed.

259. Clause (j) of Section 8(1) provides a qualified



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exemption from disclosure where the information sought relates to “personal information the disclosure of which has no relationship to any public activity or interest” or the disclosure of the information would cause an “unwarranted invasion of the privacy”. However, the exemption may be overridden where the Information Officer is “satisfied that the larger public interest justifies the disclosure”. Clause (j) is not an absolute exemption from the disclosure of information on the ground of privacy but states that disclosure is exempted in cases where “personal information” is sought and there exists no “larger public interest”. Where the Information Officer is satisfied that the existence of the “larger public interest” justifies the disclosure of the “personal information”, the information must be disclosed. The exact contours of the phrases “personal information” and “larger public interest” with respect to members of the judiciary, and the exact manner in which they relate to each other form the subject-matter of the third referral question and shall be analysed during the course of this judgment.

260. Sections 2(n) and 11 of the RTI Act read as under:-



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“2. (n) “third party” means a person other than the citizen making a request for information and includes a public authority.”

*

*

*

“11. *Third party information.*—(1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, *which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be,* shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:



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Provided that except in the case of trade or commercial

secrets protected by law, *disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.*

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.”

(emphasis supplied)

261. The definition of a “third party” includes a public authority. “Third party information” is information which “relates to or has been supplied by any other person (including a public authority) other than the information applicant and has been treated as confidential by such third party”. Where disclosure of “third party information” is sought, and such information has been prima facie treated as confidential by the third party in



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question, the procedure under Section 11 of the RTI Act is mandatory. The Information Officer shall, within five days of receiving the request for “third party information” notify the relevant third party to whom the information relates or which had supplied it. The notice shall invite the third party to submit reasons (in writing or orally) as to whether or not the information sought should be disclosed. Section 11(2) provides the third party with a right to make a representation against the proposed disclosure within ten days of receiving the notice. The provision expressly mandates the Information Officer to take into consideration the objections of the third party when making a decision with respect to disclosure or non-disclosure of the information. It encapsulates the fundamental idea that a party whose personal information is sought to be disclosed is afforded the opportunity to contest disclosure. The proviso to sub-section (1) of Section 11 permits disclosure where the “public interest” in disclosure “outweighs” any possible harms in disclosure highlighted by the third party.



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262. Sections 8 and 11 must be read together. Other than

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in a case where the information applicant seeks the disclosure of information which relates to the information applicant herself, information sought that falls under the category of “personal information” within the meaning of clause (j) of Section 8(1) is also “third party information” within the ambit of Section 11. Therefore, in every case where the information requested is “personal information” within the operation of clause (j) of sub-section (1) of Section 8, the procedure of notice and objections under Section 11 must be complied with. The two provisions create a substantive system of checks and balances which seek to balance the right of the information applicant to receive information with the right of the third party to prevent the disclosure of personal information by permitting the latter to contest the proposed disclosure.

....

264. The procedure under Section 11 must be complied with not only in cases where information has been supplied to the



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public authority by a third party, but equally when the information which is held by the public authority “relates to” a third party. Section 11 is not merely a procedural provision, but a substantive protection to third parties against the disclosure of their personal information held by public authorities, without their knowledge or consent. The mere fact that the public authority holds information relating to a third party does not render it freely disclosable under the RTI Act. A third party may have good reason to object to the disclosure of the information, including on the ground that the disclosure would constitute a breach of the right to privacy. By including the requirement of inviting objections and providing a hearing on the proposed disclosure of third party information to the very party who may be adversely impacted by the disclosure, Section 11 embodies the principles of natural justice.”

6. It is apparent from the face of the record of the impugned order that the decision-making process of the First Respondent in the present case has not been in accordance with the mandatory requirements of Sections 8 and 11 of the RTI Act in that authoritative pronouncement as required to be followed in terms



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of Section 19(4) of the RTI Act while deciding a second appeal under Section 19(3) of the RTI Act.

7. In view of the foregoing discussion, the impugned order dated 18.08.2021 in Case No. SA 10117/F/2020 passed by the First Respondent, which cannot be sustained, is set aside and the matter is remitted to the First Respondent to be decided afresh uninfluenced and uninhibited by the impugned order, and it is also made clear that no view has been expressed by this Court on the merits of the controversy involved. The case shall be listed for hearing before the First Respondent on 19.06.2024, and the Petitioners, the Second to Fourth Respondents and all other persons concerned shall appear on that date without fail. If the First Respondent is not in a position to take up the matter for hearing on the said date, the next date of hearing to which it is adjourned shall be informed to the parties. The First Respondent shall afford full opportunity of hearing to all parties concerned following the prescribed procedure in consonance with the principles of natural justice and pass reasoned orders dealing with each of the contentions raised by them on merits and in accordance with law and communicate the decision taken under written acknowledgment.



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In the upshot, the Writ Petitions are ordered on the aforesaid terms.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

08.12.2023

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 10.05.2024.

Maya

To

1. The Registrar,
The Tamil Nadu Information Commission,
No.2, Theyagaraya Salai,
Teynampet,
Chennai – 600018.
2. The Appellate Authority,
Superintending Engineer (Highways)
Construction & Maintenance Highways Department,
Villupuram.
3. The Public Information Officer,
Deputy Superintending Engineer (Highways)
Construction & Maintenance Highways Department,
Villupuram Circle,
Villupuram.

Copy to

1. T.K.Kumar,
Class-I Contractor (Highways & PWD),
334, Nehru Street,
Vedavalli Ammal Trust Building,
Poonthottam,
Tindivanam – 604001.



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2. D.Kamalam,
Class-I Contractor (Highways),
219/C, Gingee Road,
Poothamedu,
Ayyur Agaram Post,
Villupuram District – 605 601.
3. R.Vijayan,
Class-I Contractor (Highways & PWD),
18, Umapathi Mudali Street,
Tindivanam – 605 002.
4. K.Srinivasan,
Class-I Contractor (Highways),
350, Sudhakar Nagar,
New Bus Stand,
Villupuram.
5. T.Anbazhagan,
Class-I Contractor (Highways),
9, Nanthamedu Street,
Olakkur Post,
Tindivanam Taluk,
Villupuram District.
6. Nalvinai Viswaraju,
No. 7, Old Bus Stand,
Rasipuram – 637408,
Tamil Nadu.



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P.D. AUDIKESAVALU, J.

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