



WEB COPY

WP No.28430 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-03-2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.28430 of 2017

And

WPMP Nos.30534 and 30535 of 2017

T.Arul Kumar

... Petitioner

Vs.

1.The Tamil Nadu Information Commission,
Represented by its Commissioner,
No.2, Thiayagaraja Road,
Eldams Road Junction,
Teynampet,
Chennai-18.

2.R.Somasundaram

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the proceedings of the first respondent in its Case No.SA.10634/D/2016/X dated 10.10.2017 and quash the same.

For Petitioner

: Mr.V.Vijay Shankar



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For Respondent-1 : Mr.Niranjana Rajagopalan
for M/s.G.R.Associates.

For Respondent-2 : Mr.S.T.Sezhian

ORDER

The proceedings of the first respondent-Tamil Nadu Information Commission dated 10.10.2017, is sought to be quashed in the present writ petition.

2. The petitioner states that he was appointed as an Executive Officer Grade II and he was working as an Executive Officer at Mangalampettai Town Panchayat. He was posted as an Executive Officer In-charge at Pennadam Town Panchayat.

3. During the relevant point of time, an Information Seeker submitted an application seeking information regarding the application submitted by him for Building Plan Approval. Since the said application was not responded in consonance with the Right to Information Act, 2005, the unsatisfactory Information Seeker preferred an appeal before the Tamil Nadu Information Commission.



4. The Tamil Nadu Information Commission based on the files produced by the Public Information Officer, recorded the facts and issued show cause notice to the writ petitioner, asking the petitioner to submit his explanations as to why the punishment should not be imposed. The Information Commission cannot propose for initiation of disciplinary proceedings through Department, but the Information Commission can recommend for departmental disciplinary action.

5. The learned counsel for the petitioner made a submission that the order impugned cannot be construed as a show cause notice in view of the specific finding made by the Information Commission. The Commission formed a final opinion to impose punishment on the writ petitioner and therefore, the proceedings cannot be construed as show cause notice, since the Commission had pre-determined the issues.

6. The learned counsel for the petitioner reiterated by stating that immediately after filing of an appeal, the Commission ought to have called the writ petitioner to submit his explanation. Thus the order is to be set aside.



7. The learned counsel appearing on behalf of the first respondent-Commission objected the contentions raised on behalf of the petitioner by stating that the order per se would reveal that this show cause notice issued is in respect of the proposed action. Certain facts recorded based on the files cannot be construed as final information of the State Information Commission.

8. It is only a recording of facts done, based on the files produced by the Public information Officer concerned. Only if a decision is proposed to be initiated, then alone the individuals are called.

9. In the present case, the writ petitioner is called while at the time of recording of files. That apart, the petitioner was asked to explain as to why action should not be initiated against him under Section 20 of the Right to Information Act, 2005. Therefore, the said proceedings need not be construed as final decision and the petitioner has to be provided with an opportunity to defend his case in the manner contemplated under the Right to Information Act, 2005.



10. The learned counsel appearing on behalf of the second respondent made a submission that he got the Building Planning Approval and subsequently, constructed the building. However, the said fact is irrelevant as far as the present impugned order is concerned.

11. Perusal of the order impugned would reveal that the Tamil Nadu Information Commission in clear terms has stated that as per the files, certain facts are traced out. Therefore, the petitioner was asked to submit his explanations on or before 10.11.2017 and in the absence of any such explanations, further proceedings will be initiated under Section 20(1) and 20(2) of the Right to Information Act, 2005.

12. Therefore, it is only a show cause notice and the cost of Rs.2,000/- imposed in the impugned order is the compensation granted towards the travelling expenditure, which has to be paid to the Information Seeker. Hence, the said amount of Rs.2,000/- is not a penalty under the provisions of the Act. As far as the penalty under Section 20 of the Right to Information Act, 2005 and initiation of departmental disciplinary



proceedings are concerned, the Commission has to conduct an enquiry by affording an opportunity to the writ petitioner and thereafter, take final decision on merits and in accordance with law.

13. Regarding the enquiry to be conducted, the petitioner is at liberty to submit his explanations along with the documents, if any, within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the State Information Commission shall consider the same on merits and by affording an opportunity to the writ petitioner for personal hearing and thereafter pass final orders as expeditiously as possible.

14. With the abovesaid directions, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are also dismissed.

30-03-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn



To

The Commissioner,
Tamil Nadu Information Commission,
No.2, Thiayagaraja Road,
Eldams Road Junction,
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Chennai-18.

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S.M.SUBRAMANIAM, J.

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