

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD).No.244 of 2022

S.M.A.Pon Gandhimathi Nathan

... Petitioner

Vs

1. The State Information Commissioner,
Tamil Nadu Information Commission,
No.2, Theagaraya Salai,
Near Aalai Amman Kovil, Teynampet,
Chennai 18.
2. The Appellate Authority / The District Collector,
District Collectorate, Thoothukudi District.
3. S.Amudha
Public Information Officer /
Personal Assistant to Sub Collector,
District Collectorate Campus,
Thoothukudi District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the first respondent to issue appropriate orders against the third respondent under section 20 of the Right to Information Act, 2005 by considering the representation, dated 02.07.2021 made by the petitioner within the time stipulated by this Court.

For Petitioner : Mr.I.Pinaygash

For R2 : Mr.N.Muthu Vijayan
Special Government Pleader

For R1, R3 : Mr.K.K.Senthil
Standing Counsel

ORDER

The Writ Petition has been filed in the nature of Mandamus, to direct the first respondent/ State Information Commissioner, Tamil Nadu Information, Government of Chennai to take appropriate action against the third respondent/Public Information Officer / Personal Assistant to Sub-Collector, District Collectorate Campus, Thoothukudi District, who had been shown as a respondent in her personal name, under Section 20 of the Right to Information Act, 2005 (hereinafter referred to as 'the Act'), by considering the representation, dated 02.07.2021.

2.The petitioner, had originally sought information under Section 6 of the Act from the District Collector, Thoothukudi to furnish the information about the disciplinary proceedings. An order had been passed under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules by the District Collector in letter No.Na.Ka.D2.2236.2014, dated 03.12.2014 against one Justin Chelladurai, who was working as Tahsildhar, Thoothukudi. The third respondent/ Personal Assistant to Sub-Collector, District Collectorate Campus, Thoothukudi District had denied to furnish the information by letter, dated 15.10.2020, stating that the information sought by the petitioner was personal information.

3.Then the petitioner had filed a first appeal before the second respondent/District Collector, Thoothukudi District on 29.10.2010. The second respondent had again refused to furnish the details.

4.The petitioner then filed a second appeal before the first respondent. Then the petitioner had also filed WP(MD)No.1353 of 2021, seeking a direction against the first respondent to dispose of the second

appeal filed by the petitioner. In that writ petition, orders were passed. Thereafter, the first respondent had passed further orders. Finally, the information was given to the petitioner on 27.11.2021.

5.Now, the writ petition has been filed seeking to take necessary action in accordance with the provision of Section 20 of Right to Information Act, 2005, for providing information, after much delay.

6.Heard the learned counsel appearing for the petitioner, learned Standing counsel appearing for the first and third respondents, learned Special Government Pleader appearing for the second respondent. The third respondent had been impleaded in her personal capacity.

7.In the counter affidavit filed by the first respondent, he had stated that the information relating to any noting in the Annual Confidential Report or notices relating to disciplinary proceedings, cannot be divulged as they are categorized as personal information and exempted information as per Section 8 of the Act. It is noted that disciplinary proceedings if initiated against a public servant will have to be dealt with in manner to law. Third

parties cannot have the privilege of seeking that particular information.

8.The third and second respondents had correctly refused the information sought by the petitioner. However, consequent to the order of first respondent, they were under compulsion to disclose the information and had done so.

9.Now, the petitioner has filed the writ petition seeking for the delay caused by the third respondent in providing the information, under Section 20 of the Act.

10.The said information should not have been granted. It had been held in **2014(14) SCC 794** in ***R.K.Jain vs Union Of India & Another*** that any noting in the Annual Confidential Reports are personal information and should not be disclosed. It would touch upon the integrity of the person and upon the service of the said individual. It was held as follows:

“14.On the other hand Section 11 deals with third party information and the circumstances when such information can be disclosed and the manner in which it is to be disclosed, if so decided by the Competent Authority. Under Section 11(1), if the information

relates to or has been supplied by a third party and has been treated as confidential by the third party, and if the Central Public Information Officer or a State Public Information Officer intends to disclose any such information or record on a request made under the Act, in such case after written notice to the third party of the request, the Officer may disclose the information, if the third party agrees to such request or if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

19. Recently similar issue fell for consideration before this Court in Girish Ramchandra Deshpande v. Central Information Commissioner and others reported in (2013) 1 SCC 212. That was a case in which Central Information Commissioner denied the information pertaining to the service career of the third party to the said case and also denied the details relating to assets, liabilities, moveable and immovable properties of the third party on the ground that the information sought for was qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. In that case this Court also considered the question whether the orders of censure/punishment, etc. are personal information and the performance of an employee/officer in an organization, commonly known as Annual Confidential Report can be disclosed or not.

20. This Court after hearing the parties and noticing the provisions of RTI Act held:

“11. The petitioner herein sought for copies of all memos, show-cause notices and censure/punishment awarded to the third respondent from his employer and also details viz.

movable and immovable properties and also the details of his investments, lending and borrowing from banks and other financial institutions. Further, he has also sought for the details of gifts stated to have been accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is: whether the abovementioned information sought for qualifies to be “personal information” as defined in clause (j) of Section 8(1) of the RTI Act.

12. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show-cause notices and orders of censure/punishment, etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organisation is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression “personal information”, the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest

justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

13. The details disclosed by a person in his income tax returns are “personal information” which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information.

14. The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act.

15. We are, therefore, of the view that the petitioner has not succeeded in establishing that the information sought for is for the larger public interest. That being the fact, we are not inclined to entertain this special leave petition. Hence, the same is dismissed.”

21. In view of the discussion made above and the decision in this Court in Girish Ramchandra Deshpande(supra), as the appellant sought for inspection of documents relating to the ACR of the Member, CESTAT, inter alia, relating to adverse entries in the ACR and the ‘follow up action’ taken therein on the question of integrity, we find no reason to interfere with the impugned judgment passed by

the Division Bench whereby the order passed by the learned Single Judge was affirmed. In absence of any merit, the appeal is dismissed but there shall be no order as to costs.”

11.The pronouncement of law laid down is very clear. The information relating to the confidential report, which would also relate to details about disciplinary proceedings initiated of any public servant are categorized as personal information and cannot be divulged.

12.The petitioner has now the benefit of the information sought. He has to satisfied with that. When the information itself should never been disclosed by the first respondent, the petitioner cannot seek action against the third respondent, for delay in furnishing such information. The writ petition itself is misconceived.

13.This Writ Petition stands dismissed. No costs

28.03.2023

NCS : Yes/No
Index : Yes / No
Internet: Yes/ No
PNM

To

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Near Aalai Amman Kovil, Teynampet,
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2. The Appellate Authority / The District Collector,
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C.V.KARTHIKEYAN, J.

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