



W.P.(MD) No.15472 of 2012

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.12.2022

PRONOUNCED ON : 06.01.2023

CORAM

THE HONOURABLE MR.JUSTICE **K.KUMARESH BABU**

W.P.(MD) No.15472 of 2012

and

M.P.(MD) No.1 of 2012

Sakayaraj

... Petitioner

/vs./

1.Tamil Nadu Information Commission,
represented by its Chairman,
No.2, Thiyagaraya Road,
Eldam's Road Junction,
Teynampet,
Post Box No.6405,
Chennai 600 018.

2.The District Collector,
Pudukottai District.

3.Tahsildar,
Pudukottai District.

4.Rajkumar

... Respondents



W.P.(MD) No.15472 of 2012

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned order in Case No.7198/Enquiry/C/2012 dated 11.09.2012 on the file of the respondent No.1 and quash the same as illegal.

For Petitioner	: Mr.N.Balakrishnan
For R1	: Mr.K.K.Senthil
For R2 & R3	: Mrs.D.Farjana Ghoushia Special Government Pleader
For R4	: No appearance

ORDER

The writ petition has been filed by the petitioner challenging the order of the first respondent, where under he had been directed to furnish informations for certain queries and also had imposed with a penalty of Rs.25,000/-.

2.Heard Mr.N.Balakrishnan, learned counsel for the petitioner, Mr.K.K.Senthil, learned counsel for the first respondent and Mrs.D.Farjana Ghoushia, learned Special Government Pleader for the respondents 2 and 3. None appears for the fourth respondent.

3.The case of the petitioner is that the fourth respondent herein had made a request for information under Right to Information Act, 2005, on 28.11.2011, for



W.P.(MD) No.15472 of 2012

which, by their communication dated 15.12.2011, the petitioner had replied requesting him to approach the Tahsildar, Pudukottai in respect of his query Nos. 1, 3, 6 and 10, in respect of other queries, information has been furnished. Being aggrieved against the said communication, the fourth respondent seems to have approached the first respondent.

4.Pursuant to the appeal filed by the fourth respondent, the first respondent had issued a notice calling upon the petitioner to appear for enquiry and that on 11.09.2012, the petitioner had appeared before the first respondent and had submitted that the application has been replied to.

5.The first respondent on analysis of the said report had given a finding that in respect of query Nos.1, 3, 5 and 6, no information has been provided and that the fourth respondent was directed to approach an other authority. This, according to the first respondent, was in violation of the Right to Information Act, 2005 and therefore, he had further directed the petitioner to give informations in respect of query Nos.1, 3, 5 and 6 apart from imposing penalty of Rs.25,000/- to be recovered from the petitioner in his personal capacity.



W.P.(MD) No.15472 of 2012

WEB COPY

6.Mr.N.Balakrishnan, learned counsel for the petitioner would submit that the said order is without application of mind. He would further submit that the information that has been sought for by the fourth respondent in respect of query Nos.1, 3 and 6 are all relating to a record of the office of the Tahsildar. Therefore, he was directed to approach the said office of the Tahsildar, who would be the appropriate authority to grant informations. As regards to query No.5, the fourth respondent had sought to enquire into the allegation in respect of the poultry farm that had been constructed in his land and to furnish him the clear details.

7.The learned counsel for the petitioner would further submit that with regard to query No.5, it is not an information that is available with the petitioner. In respect of query No.5, the fourth respondent was directed to submit a complaint, based upon which an enquiry could be conducted. Query No.5 is not an information that is sought for, the fourth respondent had made a bald allegation, based upon which an enquiry was sought to be conducted. It would only amount to searching for a needle in a haystack. Therefore, he would contend that the order impugned passed by the first respondent dated 11.09.2012 is wholly arbitrary without any justification and sought for interference by this Court.



W.P.(MD) No.15472 of 2012

WEB COPY

8.Countering his arguments, Mr.K.K.Senthil, learned counsel for the first respondent would vehemently contend that the petitioner ought to have transmitted the request to the appropriate authority. He ought not to have directed the fourth respondent to approach the authority. According to him, when a composite application is made to the authority, the authority shall transmit such request, which is not within his jurisdiction to the appropriate authority and direct him to furnish such informations to the fourth respondent.

9.He would further contend that there has been delay in furnishing the information by the petitioner to the fourth respondent. He would further contend that in spite of the repeated directions on 07.08.2012 and 29.08.2012, the petitioner had failed to furnish the information to the fourth respondent. Hence, the impugned order was passed not only directing the petitioner to furnish the information but also a penalty of Rs.25,000/- has been imposed on the petitioner. Hence, he would submit that there is no necessity to interfere with the orders passed by the first respondent.



W.P.(MD) No.15472 of 2012

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11. The reason, based upon which the impugned order was passed, is that in respect of query Nos.1, 3, 5 and 6, information has not been provided by the petitioner to the fourth respondent. For better appreciation of the fact, let me first extract the queries that have been raised, namely limited to query Nos.1, 3, 5 and 6.

“1.	S.No.	Patta
	579-2	2171
	579-8A	2289
	579-8B	2289

There is no name mentioned in the computer Chitta adangal please given correct information regarding this?

.....

3. If there is any change in the Citta adangal please give me the name and address of me officer who gave order to change the computer citta adangal?

.....

5. 5 month ago those Survey No.579-2, 579-8A and 579-8B were illegally surveyed by VAO Sargunam Menatchisundaram a (Retirement) VAO and current VAO Mr. along with me help of land brokers for



W.P.(MD) No.15472 of 2012

WEB COPY

keeping “Poultry form”, may I know who gave permission for them to sarvery these lands which of belong to our joins family? Please enquire them and furnish me with clear details?

.....

6. Under Government rule the VAO has to pay Challan on the bank to sarvery any land here who paid. The chalan on whose name to survey. There lands please give the Xerox copy of the chalan.”

12.The query numbers 1, 3 and 6 are all the records pertaining to the office of the Tahsildar of the particular Taluk. The argument of the learned counsel for the first respondent is that the petitioner ought to have transmitted such queries to the said Tahsildar and then direct him to grant information. The direction issued by the first respondent in spite of having found that the queries 1, 3 and 6 have to be answered by the Tahsildar again directing the petitioner to furnish the details is contrary to the submissions made by the learned counsel for the first respondent.

13.A reading of query No.5 would make it clear that what is sought is not an information that is available with the petitioner. There is a bald allegation, which is sought to be enquired and details to be furnished. This has been replied by the petitioner that if the complaint is made by the fourth respondent, then the



W.P.(MD) No.15472 of 2012

same can be enquired into. As found supra, query number 5 is not an information that is readily available with the petitioner.

14. Even though the argument of the learned counsel for the first respondent is very attractive, it is necessary to point out that it is not the reason, based upon which the impugned order has been passed. It is a well settled principle of law that the impugned order has to be sustained on the reasons, on which it is made. The same cannot be improved by adducing reasons, based upon which the impugned order came to be passed. In that context, I would usefully refer to the notable judgment of the Hon'ble Apex Court in the case of ***Mohinder Singh Gill and another Vs. the Chief Election Commissioner, New Delhi and others*** reported in ***(1978) 1 Supreme Court Cases 405***. The relevant paragraph in the said judgment reads as under:-

“The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought ,out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji:



W.P.(MD) No.15472 of 2012

WEB COPY

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in Ms mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older: "

15.The said principle has been relied and followed by the Hon'ble Apex Court and various High Courts including this Court even till date. Therefore, I outright reject the arguments made by the learned counsel for the first respondent. Hence, the Writ Petition is allowed. I am of the considered view that the first respondent had not applied his mind in any manner before passing the impugned order. On that ground alone, the same is liable to be interfered with.



W.P.(MD) No.15472 of 2012

WEB COPY

16.The reason assigned by the first respondent in imposing cost of Rs. 25,000/- is that the petitioner had failed to provide the information. This, in view of the aforesaid findings, also suffers from absolute arbitrariness and a colorable exercise of power, which is also liable to be interfered with.

17.In fine, the Writ Petition is allowed. The order impugned in this writ petition dated 11.09.2012 made by the first respondent in Case No. 7198/Enquiry/C/2012 is set aside. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
Internet : Yes / No
Index : Yes / No
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06.01.2023

To

1.The District Collector,
Pudukottai District.

2.Tahsildar,
Pudukottai District.

10/11



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W.P.(MD) No.15472 of 2012

K.KUMARESH BABU, J.

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order made in
W.P.(MD) No.15472 of 2012

06.01.2023