



W.P.(MD) No.19811 of 2013

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.01.2023

PRONOUNCED ON : 31.01.2023

CORAM

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

W.P.(MD) No.19811 of 2013

and

M.P.(MD) No.1 of 2013

K.K.C.Balaganesan

... Petitioner

/vs./

- 1.The Managing Director,
Tamil nadu Generation and Distribution
Corporation Limited,
Chennai.
- 2.The Appellate Authority, under RTI Act,
Tamil nadu Generation and Distribution
Corporation Limited,
Tuticorin Circle, Tuticorin 628 002,
Tuticorin District.
- 3.The Public Information Officer, under RTI Act,
Tamil nadu Generation and Distribution
Corporation Limited,
Tuticorin Circle,
Tuticorin 628 002,
Tuticorin District.

... Respondents



W.P.(MD) No.19811 of 2013

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the 3rd Respondent's proceedings in Ka.No.Po.Th.A/Vu.Se.Po/Podhu/Muthava/Tha.AVuSa.104/A.No.2065/dated 22.11.2013 and quash the same as illegal and arbitrary and against the provision of RTI Act, 2005 and further direct the 1st respondent to initiate appropriate department proceedings against the 3rd respondent for his willful refusal to provide information under the RTI Act and pay compensation to the petitioner.

For Petitioner : Mr.S.M.Anantha Murugan

For Respondents : Mr.S.Deenadhayalan
Standing Counsel

ORDER

The writ petition is for a Writ of Certiorarified Mandamus to call for the records pertaining to the proceeding of the third respondent dated 22.11.2013, quash the same and for a consequential direction to the first respondent to initiate appropriate departmental proceeding against the third respondent for his wilful refusal to provide information under the Right to Information Act, 2005 and pay compensation to the petitioner.



W.P.(MD) No.19811 of 2013

WEB COPY

2. Heard Mr.S.M.Anantha Murugan, learned counsel for the petitioner and Mr.S.Deenadhayalan, learned Standing Counsel for the respondents.

3. Mr.S.M.Anantha Murugan, learned counsel for the petitioner would submit that the petitioner is a resident of Tuticorin Town. He had approached the third respondent seeking certain details about the electricity connection granted in favour of certain individuals. The third respondent without providing such information, by the impugned communication, had called upon the petitioner to provide documents to substantiate that he is the citizen of India. He would further submit that the Right to Information Act, 2005 (*hereinafter referred to as 'the Act'*) does not require any such proof to be submitted.

4. By placing reliance upon Section 6 of the Act, he would submit that when a person desires to obtain any information, he shall make a request in writing in the official language in English or Hindi or in the official language of the area, in which the application is being made along with the fee prescribed. Section 6(2) of the Act mandates that an applicant making the request shall not be required to give any reason for requesting the information or any other personal details



W.P.(MD) No.19811 of 2013

WEB COPY

except those details that may be necessary for contacting him. When that be so, the impugned communication calling upon the petitioner to provide documents to substantiate his citizenship is wholly uncalled for. The conduct of the third respondent in calling for such documents is contrary to the object and intent of the Act.

5.Further, he would submit that to deny the information sought for by the petitioner, the third respondent had issued such a communication. Therefore, he is also liable to be punished under the provisions of the Act apart from stating that the petitioner is also entitled for compensation. Hence, he would pray this Court to issue direction to the third respondent to issue the details as prayed for by the petitioner.

6.Countering his argument, Mr.S.Deenadhayalan, learned Standing Counsel appearing for the respondents would submit that the impugned communication had only called upon the petitioner to substantiate that he is a citizen of India. He would further submit that Section 3 of the Act only entitles a citizen of India to have the right to information. Only in that context, the petitioner was directed to



W.P.(MD) No.19811 of 2013

substantiate by production of certain documents that he is the citizen of India. He would further submit that the petitioner has got an appellate remedy under Section 19 of the Act against any decision of the Public Information Officer. Without exhausting the appeal remedy available under Section 19 of the Act, the petitioner had approached this Court. Hence, he would submit that the writ petition will have to be rejected not only on the ground of availability of an alternate remedy but also on the ground that the petitioner is not wanting to comply with the provisions of the Act.

7.He would also refute the contention of the learned counsel for the petitioner that under Section 6 of the Act, any person will have to be provided with the terms by contending that Section 6 of the Act cannot be independently read and the same has to be read along with Section 3 of the Act and therefore, he would submit that the writ petition is devoid of merits and sought this Court to dismiss the same.

8.In reply, Mr.M.Anantha Murugan, learned counsel for the petitioner relying upon the judgment of the Hon'ble Apex Court in the case of *Chief*



W.P.(MD) No.19811 of 2013

Information Commissioner and another Vs. The State of Manipur and another reported in **AIR 2012 Supreme Court 864** would submit that the Hon'ble Apex Court had held that Section 6 is wider than Section 3 and therefore, he would submit that the meaning of 'person' in Section 6 cannot be restricted only to the citizens of India. He would also rely upon the judgment of the Hon'ble Apex Court in the case of **Secretary, Ministry of Information and Broadcasting, Government of India and others Vs. Cricket Association of Bengal and others** reported in **1995 AIR SCW 1856** to contend that the rights to participate in the affairs of the polity of the country is meaningless, unless the citizens are well informed on all stage of an issue. Hence, he would submit that the third respondent has misconducted himself in not providing the information as sought for by the petitioner.

9.I have considered the rival submissions made by the learned counsels appearing on either side.

10.The issue that is sought to be raised in this writ petition is as to who is entitled to the information invoking the provisions of the Act. For better



W.P.(MD) No.19811 of 2013

understanding of the said issue, I propose to extract the relevant portions of the Act, which reads as under:-

OBJECTS AND REASONS

“In order to ensure greater and more effective access to information, the Government resolved that the Freedom of Information Act, 2002 enacted by the Parliament needs to be made more progressive, participatory and meaningful. The National Advisory Council deliberated on the issue and suggested certain important changes to be incorporated in the existing Act to ensure smoother and by the National Advisory Council and others and decided to make a number of changes in the law.

The important changes proposed to be incorporated, inter alia, include establishment of an appellate machinery with investigating powers to review decisions of the Public Information Officers; penal provisions for failure to provide information as per law; provisions to ensure maximum disclosure and minimum exemptions, consistent with the constitutional provisions, and effective mechanism for access to information and disclosure by authorities, etc. In view of significant changes proposed in the existing Act, the Government also decided to repeal the Freedom of Information Act, 2002. The proposed legislation will provide an effective framework for effectuating the right of information recognized under Article 19 of the Constitution of India.”

PREAMBLE OF THE ACT

“An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of



W.P.(MD) No.19811 of 2013

WEB COPY

public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

Whereas the Constitution of India has established democratic Republic;

And whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

And whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

And whereas it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

Now, therefore, it is expedient to provide for furnishing certain information to citizens who desire to have it.”

11. Section 3 of the Act reads as under:-

“3.Right to Information:- Subject to the provisions of this Act, all citizens shall have the right to information.”



W.P.(MD) No.19811 of 2013

WEB COPY 12. Section 6 of the Act reads as under:-

“6. Request for obtaining information.— (1) *A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to—*

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

(3) Where an application is made to a public authority requesting for an information,—

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that



W.P.(MD) No.19811 of 2013

WEB COPY

other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.”

13.The statement of objects and reasons of the Act is to provide information as per law with provisions to ensure maximum disclosure, minimum exemptions consistent with the constitutional provisions and to provide an effective mechanism for access of the information. The preamble of the enactment would suggest that the democracy requires that the citizens should be informed and there should be transparency of informations, which are vital to the functioning of the Government and to contain corruption. The preamble also explicitly states that **it is expedient for furnishing certain informations to the citizens, who desire to have it.**

14.Section 3 of the Act mandates that all the citizens shall have the right to information subject to the provisions of the Act. Section 3 of the Act is very clear as to who shall have the right to information. It qualifies that the citizens shall



W.P.(MD) No.19811 of 2013

WEB COPY

have the right to information. Section 6 of the Act is the provision, which provides as to how a person, who desires to obtain the information, shall approach the authority concerned. Section 6(2) of the Act also ensures that such person need not provide the reasons as to why such request is sought for including the personal details. This has been consciously included by the Parliament for the reason that such request should not be rejected on the ground that the information required by the applicant under Section 6 (1) of the Act is alien to the information.

15.The term “**person**” has not been defined under the Act. However, Section 3 of the Act empowers all “**citizens**” to have the right to information. The preamble of the Act also is very categorical that the citizens requires to be informed in view that the democracy requires transparency of information which is vital to the functioning and to contain corruption and hold Government and their instrumentalities accountable. Viewing in that angle, the term a “**person**” in Section 6(1) of the Act will have to be given a restricted meaning viz., a “**citizen**” of India who is entitled to information. I would draw support to come to the aforesaid conclusion, in view of the judgment of the Hon'ble Apex Court in the



W.P.(MD) No.19811 of 2013

WEB COPY

case of ***Tata Engineering and Locomotive Company Limited Vs. State of Bihar***

and another reported in ***(2000) 5 Supreme Court Cases 346***. The relevant paragraph in the aforesaid judgment is extracted hereunder:-

“15.Statutes, it is often said, should be construed not as theorems of Euclid but with some imagination of the purposes which lie behind them and to be too literal in the meaning of words is to see the skin and miss the soul. The method suggested for adoption, in cases of doubt as to the meaning of the words used is to explore the intention of the legislature through the words, the context which gives the colour, the context, the subject-matter; the effects and consequences or the spirit and reason of the law. The general words and collection or phrases, howsoever wide or comprehensive in their literal sense are interpreted from the context and scheme underlying in the text of the Act. The decision in Utkal Contractors & Joinery (P) Ltd. Case also emphasises the need to construe the words in a provision in the context of the scheme underlying the other provisions of the Act as well, which ultimately was considered to be in tune with the object set out in the statement of the Objects and Reasons and in the Preamble. Apart from the fact that the observations contained in the decision have to be understood in the light of the issue raised and exercise undertaken by the Court therein, the fallacy in the submission of behalf of the appellant lies though not in the principles of construction to be adopted but in the assumption of the counsel to confine or restrict and construe the law in question to be one made to regulate the trade of sawing, contrary to the very Preamble which reads,



W.P.(MD) No.19811 of 2013

WEB COPY

to make provisions for regulating in the public interest the establishment and operation of sawmills and saw-pits and trade of sawing for the protection and conservation of forest and the environment.”

16.The Hon'ble Apex Court in a judgment reported in ***AIR 2012 Supreme Court 864 (Chief Information Commissioner and another Vs. The State of Manipur and another)*** has dealt with in detail various provisions of the enactment. The learned counsel for the petitioner had specifically placed reliance to paragraph No.25 of the aforesaid judgment to claim that even though under Section 3 of the Act, a right of all citizens to receive information is statutorily recognized, Section 6 of the Act is wider in a sense, as Section 6 gives the right to any person to acquire information. For better appreciation, the said paragraph is extracted hereunder:-

“25. It is quite interesting to note that even though under Section 3 of the Act right of all citizens, to receive information, is statutorily recognised but Section 6 gives the said right to any person. Therefore, Section 6, in a sense, is wider in its ambit than Section 3.”



W.P.(MD) No.19811 of 2013

WEB COPY

17. In my view, the aforesaid statement is a mere observation. It has been repeatedly held by the Hon'ble Apex Court that a portion of the judgment cannot be read in isolation and that the judgment has to be read in whole. The aforesaid judgment had dealt with in details various other judgments of the Hon'ble Apex Court, namely, in *the State of Uttar Pradesh Vs. Raj Narain and others* reported in AIR 1975 SC 865, in *S.P.Gupta and others Vs. President of India and others* reported in AIR 1982 SC 149, in *Secretary, Ministry of Information and Broadcasting, Government of India and others Vs. Cricket Association of Bengal and others* reported in (1995) 2 SCC 161:1995 AIR SCW 1856, in *Reliance Petrochemicals Limited Vs. Proprietors of Indian Express Newspapers Bombay Private Limited and others* reported in AIR 1989 SC 190 and in *People's Union for Civil Liberties and another Vs. Union of India and others* reported in (2004) 2 SCC 476.

18. It is also relevant to analyse the said judgment further it has been held that the right to information is basically founded on the right to know, which is an intrinsic part of the fundamental right to freedom of speech and expression



W.P.(MD) No.19811 of 2013

guaranteed under Article 19(1)(a) of the Constitution of India. For better appreciation, the relevant paragraph is extracted hereunder:-

“11. It is, therefore, clear from the ratio in the above decisions of the Constitution Bench of this Court that the right to information, which is basically founded on the right to know, is an intrinsic part of the fundamental right to free speech and expression guaranteed under Article 19 (1)(a) of the Constitution. The said Act was, thus, enacted to consolidate the fundamental right of free speech.”

19.Further, at paragraph No.20, it had held that such a right is always subject to reasonable restrictions under Article 19(2) of the Constitution of India. For better appreciation, the relevant paragraph is extracted hereunder:-

“20. However, while considering the width and sweep of this right as well as its fundamental importance in a democratic republic, this Court is also conscious that such a right is subject to reasonable restrictions under Article 19 (2) of the Constitution.”

20.In the light of the aforesaid observations and findings of the Hon'ble Apex Court in the same judgment, the observations in paragraph No.25 (*extracted supra*) relied upon by the learned counsel for the petitioner will have to



W.P.(MD) No.19811 of 2013

be understood that the provisions of the Act would only enable a citizen of India to receive the information. The reason that I arrive at, to such a conclusion is on the touchstone of Article 19 of the Constitution of India. Article 19 of the Constitution of India is available to only the citizens. For better appreciation, the said Article of the Constitution is extracted hereunder:-

“19. Protection of certain rights regarding freedom of speech etc.-

(1) All citizens shall have the right

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(f)

(g) to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

(3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from



W.P.(MD) No.19811 of 2013

WEB COPY

making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause.

(4) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause.

(5) Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to-

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise”



W.P.(MD) No.19811 of 2013

WEB COPY

21. When the Hon'ble Apex Court had traced the right to receive information is under Article 19(1)(a) of the Constitution of India, then it could be safely presumed that the persons, who are the citizens of India, alone are entitled to seek information, since the right under Article 19(1)(a) of the Constitution of India is only available to a citizen of India.

22. Further, if the contention of the learned counsel for the petitioner that the application under Section 6 of the Act cannot be restricted only to the citizens as adumbrated in Section 3, then would render Section 3 of the Act otiose/redundant. It is the cardinal principles of interpretation of statutes that while reading a statute, a provision of the statute cannot be made otiose or redundant. I am fortified to come to the aforesaid conclusion by placing reliance of the very same judgment (*AIR 2012 SCC 864*). The relevant paragraph in the aforesaid judgment is extracted hereunder:

“It is well known that the legislature does not waste words or say anything in vain or for no purpose. Thus, a construction which leads to redundancy of a portion of the statute cannot be accepted in the absence of compelling reasons. In the instant case there is no compelling reason to accept the construction put forward by the respondents.”



W.P.(MD) No.19811 of 2013

WEB COPY

23.Hence, the contention raised by the learned counsel for the petitioner that even a non citizen would be entitled to information under the Act, in my view, is untenable. It is the duty of the Court to ascertain the intention of the statute and to whose benefit such a statute has been enacted. The statute could be enacted for a class of persons for their benefit. In the present case, the Act has been enacted to provide information to a citizen alone. Any other person, who is not a citizen of India, cannot invoke the provisions of the Act and seek information.

24.The reason I come to this conclusion is clearly elucidated in the Preamble of the Act, which postulates that the democracy requires an informed citizenries and the Act was only to provide for furnishing of certain information to the citizen, who desires to have it. In that context, I find no infirmity in the impugned communication of the third respondent calling upon the petitioner to substantiate that he is the citizen of India. It is not known as to why the petitioner is shying away to produce such information.



W.P.(MD) No.19811 of 2013

WEB COPY

25.In fine, the Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
Internet : Yes / No
Index : Yes / No
NCC : Yes / No

31.01.2023

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W.P.(MD) No.19811 of 2013

K.KUMARESH BABU, J.

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order made in
W.P.(MD) No.19811 of 2013

31.01.2023