



W.P.(MD)No.2094 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2023

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P(MD)No.2094 of 2016

and

W.M.P(MD)Nos.1809 and 1810 of 2016

The Principal
Lady Doak College
Madurai - 625 002,
Madurai District.

... Petitioner

Vs

1.The State Information Commissioner
Tamilnadu Information Commission,
No.2, Theagaraya Salai,
Near Aalai Amman Koil,
Teynampet, Chennai - 600 018.

2.The Public Information Officer /
The Joint Director of Collegiate Education,
Madurai Region, Madurai,
Madurai District - 620 020.

3.A.Kondavellai

... Respondents

Prayer:- Writ Petition is filed under Article 226 of Constitution of India to
issue a writ of Certiorari calling for the records relating to the impugned



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proceedings issued by the 1st respondent Information Commissioner in Case No.SA1354/enquiry/D/2015(CP 941/D/15) dated 16.10.2015, quash the same.

For Petitioners	:	Mr.Isaac Mohanlal Senior Counsel for Mr.T.Cibi Chakraborty
For R1	:	Mr.K.K.Senthil
For R2	:	Mr. V.Om.Prakash Additional Government Pleader
For R3	:	Mr.R.Alagumani

ORDER

The petitioner is an educational institution founded and administered by the "Katie Wilcox Education Association" (KWEA), which is a not-for-profit company incorporated under company law. The petitioner states that the college was established in the year 1948 and that it is a minority educational institution in terms of Article 30 of the Constitution of India. According to the petitioner, the third respondent, which is a society, made a request on 28.07.2014 for information regarding 26 issues. The said request was responded to on 17.10.2014. The reply categorized the request for



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information into four categories. The first category pertained to information regarding KWEA. Since KWEA is a distinct juristic entity, the petitioner informed the third respondent that it is not competent to provide the information requested for. As regards the second category, the petitioner informed the third respondent that the information is available on the official website of the petitioner college. As regards the third category comprising five questions, the third respondent was informed that the question pertains to personal information of individual members and, therefore, cannot be provided without their permission. The fourth category consisted of only one question (Question No.24) and this question was responded to by providing the information called for by the third respondent. An appeal was filed in respect of the response by the third respondent. Upon receipt of notice in such appeal, the petitioner provided a detailed representation on 16.10.2015 and dealt with each query of the third respondent. The impugned order was issued pursuant thereto.

2. By the impugned order, the first respondent directed the petitioner to provide the information which is already available on the website, by



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taking print outs thereof and providing the same to the third respondent. As regards the other information requested for by the third respondent, the first respondent concluded that extensive information had been called for and that the third respondent should limit the request to necessary information and call for the same from the petitioner. If such request is received, the petitioner was directed to provide such information. In addition, by the impugned order, the petitioner was called upon to show cause as to why proceedings under Section 20 of the Right to Information Act 2005 (the RTI Act) should not be initiated.

3. Learned senior counsel for the petitioner assails the impugned order on multiple grounds. The first ground is that the petitioner is not a citizen. By relying upon the preamble to the RTI Act and Section 3 thereof, learned senior counsel contended that only citizens have the right to information under this enactment. Since the third respondent is a society and not an individual citizen, he submitted that the third respondent is not entitled to information under the enactment. The second contention was that the objects of the association appear to be completely unconnected with



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the information requested for by the third respondent. In this connection, learned senior counsel relied upon the judgment of the Hon'ble Supreme Court in *Central Board of Secondary Education v. Aditya Bandopadhyay (CBSE) [(2011) 8 Supreme Court Cases 497]* to contend that the Supreme Court distinguished between information that is required to be maintained in public interest and information which a public authority is not under an obligation to maintain. He also relied upon the judgment of the Hon'ble Supreme Court in *Girish Ramchandra Deshpande v. Central Information Commissioner [(2013) 1 SCC 212]*, particularly paragraphs 12 and 14 thereof.

4. The third contention of learned senior counsel was that the information requested for under serial numbers 7,9,10,12, 15, 16, 21, 22, 23, 25 and 26 are already available on the official website of the college. By relying upon Section 4(2)(3) and (4) of the RTI Act, learned senior counsel contended that information which is already available in the public domain need not be provided. The fourth contention of learned senior counsel was that the third respondent has called for information relating to the



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establishment of the college. The college was established in the year 1948 and, therefore, the information is not restricted to the 20 year period from the date of request. In support of this contention, learned Senior Counsel relied on Section 8(3) of the RTI Act. The last contention was that KWEA is a distinct juristic entity and that information pertaining to the said entity cannot be provided by the petitioner. He further submitted that KWEA does not qualify as a public authority for purposes of the RTI Act because it is not substantially financed by the State Government. In support of this contention, he relied upon the judgment of the Hon'ble Supreme Court in *Thalapalam Service Co-operative Bank Limited v. State of Kerala (Thalapalam)* [(2013) 16 Supreme Court Cases 82].

5. In response to these contentions, learned counsel for the third respondent submitted that he is the District Organizer of the Society and that he is a public spirited person. He further submitted that the petitioner college had sent students for training to the third respondent. In course of such training, these students ventilated grievances with regard to the manner in which the college is being conducted. This triggered the request for



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information by the petitioner. As regards the contention that the third respondent is not a citizen, learned counsel submitted that this contention was not raised previously in response to the request for information. As regards the availability of information on the official website, learned counsel submitted that the information is required to be authenticated by the public authority. For such purpose, it is necessary that the public authority provides information by printing and endorsing the contents thereof. Although the information requested for by the third respondent pertains to the period commencing from 1948 and ending on the date of request, learned counsel submitted that the petitioner should at least provide information relating to the last 20 years.

6. Learned standing counsel representing the first respondent submitted that the Hon'ble Supreme Court interpreted Section 8(3) of the RTI in **CBSE**. By referring to Paragraph 57 of the said judgment, learned counsel submitted that the Hon'ble Supreme Court held that the maintenance of records by a public authority is governed by special statutes and not by the RTI Act. If such statute mandates that information should be



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preserved for longer than 20 years, subject to clauses (a),(c) and (i) of Section 8(1) such information should be provided.

7. By referring to the impugned order, learned counsel pointed out that the first respondent recognized that the information sought for by the third respondent is extensive and, therefore, directed the third respondent to confine the request to necessary information and the petitioner was only directed to provide such necessary information. In response to the reliance on ***Thalapalam***, learned counsel placed for consideration the judgment in *D.A.V.College Trust and Management Society v. Director of Public Instructions and others [(2019) 9 SCC 185]* to contend that even indirect financing would result in the entity receiving such financing being classified as a public authority for the purpose of the RTI Act.

8. Upon taking stock of the contentions of the contesting parties, in order to decide this dispute, it is necessary to examine the objections raised by learned Senior Counsel to the impugned order. Learned Senior Counsel submitted that the third respondent had called for information relating to



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KWEA, which is a distinct juristic entity. In paragraph 2 of the affidavit in support of the writ petition, it is stated that KWEA was incorporated under the Companies Act. Any incorporated entity is a distinct juristic entity, i.e. such entity qualifies as a person in the eye of law and can sue and be sued in its name. Consequently, as submitted by learned senior counsel, information relating to such juristic entity should be requested for from such entity. Learned senior counsel further submitted that KWEA is not a public authority because it is not substantially financed by the Government. KWEA is not before this Court and the information on record is wholly insufficient to draw any conclusion as to whether KWEA qualifies as a public authority under the RTI Act.

9. The second ground on which the order was assailed was that information relating to the college from the year of establishment thereof was called for. Learned senior counsel relied on Sub-Section 3 of Section 8 to contend that the public authority is only under an obligation to provide information relating to events that occurred 20 years prior to the date of request for information. Section 8(3) reads as follows:



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"8.(3) Subject to the provisions of clauses (a),(c) and (i) of sub-section(1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under Section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act."

10. From the text of Section 8(3), it follows that the statute mandates that a public authority shall provide the information requested for, if such information pertains to an occurrence, event or matter that took place 20 years prior to the date of request for such information. This sub-section is not elegantly worded: it certainly cannot mean that the obligation is limited to providing information relating to events that took place 20 years prior to the date of request and not earlier. If read contextually, it appears that the object and purpose is to strike a balance between the right to information and the resources required to ensure information is available by fixing a



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time limit of 20 years prior to the date of request. In paragraph 56 and 57 of **CBSE**, the Hon'ble Supreme Court interpreted Section 8(3) as under:

"56. On behalf of the respondent examinees, it was contended that having regard to sub-section(3) of Section 8 of the RTI Act, there is an implied duty on the part of every public authority to maintain the information for a minimum period of twenty years and make it available whenever an application was made in that behalf. This contention is based on a complete misreading and misunderstanding of Section 8(3). The said sub-section nowhere provides that records or information have to be maintained for a period of twenty years. The period for which any particular record or information has to be maintained would depend upon the relevant statutory rule or regulation of the public authority relating to the preservation of records.

57. Section 8(3) provides that information relating to any occurrence, event or matter which has taken place and occurred or happened twenty years before the date on which any request is made under Section 6, shall be provided to any person making a request. This means that where any information required to be maintained and preserved for a period beyond twenty years under any of the provisions of Section 8(1) of the RTI Act, then, notwithstanding such exemption, access to such information shall



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have to be provided by disclosure thereof, after a period of twenty years except where they relate to information falling under clauses (a), (c) and (i) of Section 8(1)".

11. On examining paragraphs 56 and 57 of **CBSE**, it appears that the Hon'ble Supreme Court concluded that the RTI Act does not deal with the preservation of records. Therefore, it was held that the preservation of records by a public authority should be in accordance with the statute relating to such preservation. if such statute mandates that records, in general, or, of a particular category, should be preserved for more than 20 years, if requested for, such information should be provided by the public authority.

12. In this case, learned senior counsel contended that the petitioner is not under an obligation under any law to preserve the records relating to the information called for for more than 20 years. The third respondent is unable to effectively controvert the said contention. Therefore, the petitioner is justified in refusing to provide information, if such information predates the request by more than 20 years.



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13. The next ground on which the petitioner assailed the impugned order was that information relating to serial numbers 7,9,10,12,15,16,21,22,23,25 and 26 are already available on the website. Although such information is available on the website, learned counsel for the third respondent contended that the information should be authenticated by printing and endorsing such information. Section 4 of the RTI Act deals with the obligations of a public authority. Sub-sections (2) to (4) thereof are set out below:

"4.(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause(b) of sub-section(1) to provide as much information suo motu to the public at regular intervals through various means of communications, including Internet, so that the public have minimum resort to the use of this Act to obtain information.

(3) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and in such form and manner which is easily accessible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the



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information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed."

14. Sub-Section 2 to 4 make it abundantly clear that a public authority should take measures to provide information to the public *suo motu*. In fact, sub-Section 2 expressly refers to the provision of information on the internet so as to obviate the need of the citizen to take recourse to the RTI Act to obtain information. The petitioner has stated categorically that the information relating to the serial numbers specified in the preceding paragraph are available on the official website of the college. The third respondent does not deny the availability of the information on the official website. Information hosted on the official website of the college cannot be equated with information available through the Google search engine or sources such as wikipedia. As regards such sources, it may be contended with a fair measure of justification that the information is not authenticated. Here, the information has been hosted by the college on its official website and the college cannot disclaim responsibility for the information hosted



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therein. In this factual context, by examining Sub-Section (2) to (4) of Section 4 of the RTI Act, I conclude that it unnecessary for the petitioner to print and provide information already available on its official website to the third respondent.

15. The last contention to be examined is whether the petitioner is dis-entitled to the information because the petitioner is a society and not a citizen. Section 3 of the RTI Act prescribes that all citizens shall have the right to information. Section 6 of the RTI Act, which enables a request for information, uses the expression “person” and not citizen. Learned senior counsel for the petitioner referred to the preamble and Section 3 to contend that Section 6 should be restricted to a request for information by a citizen. The RTI Act is a beneficial legislation and, therefore, text and context permitting, should be construed so as to advance the object of the enactment. The factual matrix of this case is that an association, represented by its District Organizer, A.Kondavellai, has requested for information. The petitioner has arrayed Mr. A. Kondavellai, in his individual capacity, as the third respondent in the writ petition. In the reply dated 17.10.2014, as also



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the detailed reply dated 16.10.2015, the petitioner has not objected to the request for information on the ground that the third respondent is not a citizen. In these facts and circumstances, I reject the objection that the third respondent is not entitled to the information called for because he is not a citizen.

16. Based on the above discussions and reasons, I am inclined to interfere with the impugned order partly. The impugned order is quashed to the extent that it directs the petitioner to provide information already available on the official website of the college by taking and providing printouts thereof to the third respondent. The impugned order is also quashed to the extent that proceedings for breach of the RTI Act are sought to be initiated against the petitioner. To the extent that the impugned order directs the third respondent to call for only necessary information, the order does not call for interference subject to the following caveats. The petitioner is entitled to refuse to provide the following: information relating to KWEA, confidential third party information and information relating to events that pre-date the request by more than 20 years.



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17. This writ petition is disposed of on these terms. No costs.

Consequently, connected miscellaneous petitions are closed.

15.03.2023

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

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To

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No.2, Theagaraya Salai,
Near Aalai Amman Koil,
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