



W.P.(MD)No.59 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :09.03.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.(MD)No.59 of 2016

and

W.M.P.(MD).Nos.74 & 75 of 2016

The Principal (*in-charge*)
St.Xavier's College of
Education (Autonomous)
Palayamkottai-627 002.
Tirunelveli District.

... Petitioner

Vs.

- 1.The State Information Commissioner,
Tamilnadu Information Commission,
No.2, Sir Thiagaraya Salai,
Thenampet, Chennai 600 018.
- 2.The Public Information Officer/
The Joint Director of Collegiate Education,
Tirunelveli Region, Tirunelveli,
Tirunelveli District 627 001.

3.A.T.Jai Prasath

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records relating to the impugned order issued by the first respondent Information Commissioner in order No.SA 4765/D/2015 dated 20.04.2015 and his consequential Notice in Case No.SA 4765/D/2015 dated Nil and quash the same.

For Petitioner :Mr.S.Issac Mohanlal
Senior Counsel
:Mr.K.Ragatheeshkumar

For Respondents :Mr.K.K.Senthil for R1

:Mr.V.Om.Prakash
Government Advocate for R2

:Mr.S.Rajaselvam for R3

ORDER

The petitioner is a minority educational institution, which is partly aided by the Government of Tamilnadu. Pursuant to a request for information from the third respondent on 05.02.2015, an order dated 20.04.2015 was issued by the first respondent. Thereafter, a notice was issued on 21.12.2015. The order of 20.04.2015 and the notice of 21.12.2015 are impugned in this writ petition.



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2.By drawing reference to the request for information, learned Senior Counsel for the petitioner submitted that the information was not sought for from the Public Information Officer, as defined in the Right To Information Act, 2005. With reference to the nature of information requested for, learned Senior Counsel submitted that the information pertains to the appointment process against the vacancy caused by the death of a former staff, Mr.Alphonse Raj. He also pointed out that details with regard to the members of the selection committee, including their profile, was requested for by the third respondent. In reply, the petitioner informed the Joint Director of Collegiate Education that the information pertains to the selection process for appointment of a third party and, therefore, such information cannot be provided. Thereafter, on the matter being escalated to the first respondent, learned Senior Counsel submits that the first respondent proceeded to pronounce the impugned order without providing an opportunity to the petitioner. It was only in relation to the penalty proceedings that the petitioner was put on notice.



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3.By referring to and relying upon the judgment of the Hon'ble Supreme Court in *Central Board of Secondary Education and another V. Aditya Bandopadhyay and others*, reported in (2011) 8 SCC 497, particularly paragraphs 63, 65 and 67 thereof, he contended that the Right To Information Act, 2005 is being abused by persons, such as the third respondent, and minority educational institutions, which are not required to maintain the kind of information sought for by the third respondent, are being harassed by such requests. Therefore, he submitted that the impugned orders are liable to be interfered with.

4. In response, learned counsel for the third respondent submitted that the third respondent was employed as a staff by the petitioner, but his services were unlawfully terminated. He further submitted that the information requested for on 05.02.2015 is public information and that such information is necessary for the third respondent to challenge his unlawful termination and the appointments made against such vacancy.



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5. Learned counsel for the first respondent submitted that the petitioner is an aided institution. He further submitted that the information requested for is public information and not third party information.

6. By inviting my attention to the judgment of the Supreme Court in *Bihar Public Service Commission V. Saiyed Hussain Abbas Rizwi and another* reported in (2012) 13 SCC 61, learned senior counsel for the petitioner pointed out that the information requested for under Serial No.6 of the communication dated 05.02.2015 is clearly information that the Hon'ble Supreme Court held should not be provided.

7. The main basis of the challenge is that the petitioner was not provided a reasonable opportunity before the impugned order dated 20.04.2015 was issued. Although learned counsel for the first respondent points out that the petitioner was provided an opportunity before the notice of 21.12.2015 was issued, a post decisional hearing in a matter of this kind is clearly insufficient, and the impugned order and the proceedings subsequent thereto are unsustainable in this sole ground itself. In this



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regard, Rule 11 of the Right To Information Rules 2012 which mandates a personal hearing before a decision is taken is pertinent.

8. From the submissions made by parties, it appears *prima facie* that the information requested for under Serial No.6 of the communication dated 05.02.2015 is not liable to be provided as per the law laid down by the Hon'ble Supreme Court in the judgment reported in (2012) 13 SCC 61. Learned Senior Counsel for the petitioner had also submitted that some of the information requested for is not required to be maintained by a minority educational institution such as the petitioner and that such information cannot be called for.

9. The first respondent shall *inter alia* take into consideration the following observations while re-considering the matter:

(i) any objection by the petitioner on the ground that the petitioner is not required to maintain the information requested for as per the law applicable to a minority educational institution; and

(ii) any objection that the information is confidential information



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relating to a third party.

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10. For reasons set out above, the impugned order dated 20.04.2015 and the proceedings consequential thereto are quashed. However, it is open to the first respondent to consider the matter afresh after providing a reasonable opportunity to the petitioner and the third respondent. In course of such re-consideration, the observations set out above and all objections raised by the petitioner shall be duly considered.

11. Subject to the above observations, W.P(MD).No.59 of 2016 is disposed of without any order as to costs. Consequently, connected W.M.P. (MD).Nos.74 and 75 of 2016 are closed.

09.03.2023

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



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To
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SENTHILKUMAR RAMAMOORTHY, J.

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