



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2025

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.14702 of 2011

and

M.P.No.2 of 2011

A.Manivannan

... Petitioner

Vs.

1.The Secretary,
Tamil Nadu Electricity Board,
144, Anna Salai, Chennai-600002.

2.The Chief Engineer (Distribution),
TANGEDCO,
Chennai South Region, Chennai.

3.The Superintending Engineer,
TANGEDCO,
Chennai E.D.C./South,
K.K.Nagar, Chennai-600078.

4.The Superintending Engineer,
TANGEDCO,
Kanchipuram EDC, Kanchipuram.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the record of the 3rd respondent in his letter No.SE/CEDC/S/AEE/PRO/F.RTC/303/2011 dated 31.03.2011 and that of the 4th respondent in his proceedings bearing MEMO No. SE/KEDC/KPM/AEEGL/AE2/F/RTI/D.241/11 dated 31.05.2011 and quash the order passed therein.



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For Petitioner : Mr.P.Arumugarajan

For Respondents : Mr.David Sundar Singh

ORDER

The impugned order, dated 31.03.2011, is purported to have been passed under Section 20(1) of the Right to Information Act, 2005 (hereinafter referred as 'RTI Act, 2005'), pursuant to an order passed by the Tamil Nadu Information Commission vide Direction No.7979/Q//09 dated 30.08.2010, wherein it is stated as under:

“The attention of the Chairman, Tamil Nadu Electricity Board is invited to the references cited. The Commission's views are as follows:

The fact of non supply of information remains. Even if the Commission take that clear malafide is not fully established, the penalty for the delay will accrue as it is a fact and no extenuating reasons to justify it exists. Hence compulsory nature of Section 20(1) of the RTI Act “shall” will operate, as the delay cannot be justified. The Commission is of the view that penalty to be imposed in unavoidable.”

2. A perusal of the Section 20 (1) of the RTI Act, 2005 makes it amply clear that the power under the said provision can be exercised by the Central Information Commission or the State Information Commission, as the case may be after following the procedure provided under the said provision.



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3. By an order dated 30.08.2010, the Tamil Nadu Information Commission made an observation that, the case before it is a fit case for imposing penalty under Section 20 (1) of the RTI Act, 2005, and that it is unavoidable, and penalty is to be imposed on the Public Information Officer, who is responsible for the delay in furnishing the information. If that be the case, it is for the Information Commission to call for an appropriate report or explanation from the concerned and then impose such a penalty. But the power under Section 20 (1) of the RTI Act, 2005 is now exercised by the 3rd respondent. The power under Section 20(1) of the RTI Act, 2005 can only be exercised by the State Information Commission but not by any other officer of the respondent Board. Having observed the above legal position, this Court passed a docket order on 21.12.2024, which reads as under:

“Prima facie, it appears that even assuming that there is a delay or default on the part of the Public Information Commission or the appellate authority thereon, the penalty contemplated under the provisions of RTI Act, 2005 can be imposed only by the State Commission or other authorities conferred with such power, but the same cannot be imposed by other than the authorities under the RTI Act, 2005. In the instant case, the said penalty is sought to be imposed by the Superintendent Engineer/respondent Board.

2. Prima facie, this Court is of the view that such delegation is not permissible under provisions of the RTI Act, 2005. The learned counsel for the petitioner is directed to verify this aspect.

3. Post the matter on 06.01.2025 under the caption 'for orders'.”



4. There is nothing that is brought to the notice of this Court to show that the 3rd respondent is empowered to exercise power under Section 20(1) of the RTI Act, 2005. In the absence of any such power specifically conferred upon the 3rd respondent to pass impugned order by imposing the penalty of Rs.25,000/- purportedly under Section 20(1) of the RTI Act, 2005, the impugned order cannot be sustained.

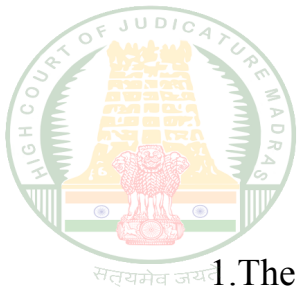
5. In view of the above, the impugned order is quashed solely on the ground of competency. However, it is open for the State Information Commission to take appropriate action in terms of the Direction No.7979/Q//09 dated 30.08.2010.

6. Accordingly, the writ petition is allowed. The connected miscellaneous petitions, if any, shall stand closed. No costs.

06.01.2025

dpa
Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

To



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MUMMINENI SUDHEER KUMAR, J.



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