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In the Madras High Court

Case No : Writ Petition No. 3784 of 2008 and M.P. No. 1 of 2008

Electronics Corporation of Tamil Nadu Limited — APPELLANT

Vs

Tamil Nadu Information Commission and R. Rajendran — RESPONDENT

Date of Decision : 05-01-2010

Acts Referred:
Right to Information Act, 2005 — Section 18, 2, 3, 4, 6(2)

Citation : (2010) 6 CTC 541 : (2011) 263 ELT 214 : (2010) 5 MLJ 402

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Vijayan, for King and Patridge, for the Appellant; C.M. Syed Nurullah Sheriff, for G.R. Associates for R1 and R. Gowri, for R2, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides.

2. The petitioner is a registered company wholly owned by the Government of Tamil Nadu. They had come forward to file the present writ

petition, seeking to challenge the order of the first respondent, dated 3.1.2008. By the said order, the petitioner company was directed to supply

an information asked for by the second respondent as the information sought for did not come under the exempted category provided u/s 8 of the

Right to Information Act, 2005 (for short RTI Act). The writ petition was admitted on 14.2.2008. Pending the writ petition, an interim stay was

granted by this court.

3. It is seen from the records that the petitioner was an incorporated company in the year 1977 under the Companies Act, 1956. The petitioner

company was entrusted with the task of rendering assistance to entrepreneurs setting up Information Technology and ITES organisations. They claimed to have developed so far nine IT parks in Tamil Nadu.

4. The second respondent herein sent a requisition to the petitioner by a letter, dated 24.09.2007, stating that the officials of the petitioner

company had visited the water bodies, Kaiveli and Uppankazhi lands at Thiruporur and nine other villages in Chengalpattu Taluk. They were

examining the suitability of those lands for setting up IT and other industries. Therefore, he wanted to have the field inspection report for his

information.

5. The second respondent was informed by the Public Information Officer that the field inspection report is of business secret and if disclosed, it

would affect the economic interest of the petitioner corporation and the Government of Tamil Nadu and therefore, such information cannot be

divulged. The second respondent, by a letter, dated 12.10.2007 complained to the first respondent about the attitude of the petitioner Corporation

(ELCOT). In the complaint, the second respondent had stated that he is working in a nearby salt plant for over 33 years. The livelihood of 1500

families in that area depends on the salt production. There are over 1000 fishermen families who are also dependent for their livelihood in those

lands. The Government''s attempt to make those lands into concrete jungles will result in their villages being submerged during monsoon time. Since

the official of the petitioner Elcot had visited their places, they are very much interested in knowing the contents of their field inspection report.

6. The petitioner Elcot was summoned by the Commission. The Managing Director of the petitioner company appeared and informed that

whenever officials of Elcot have gone and set up IT parks, the cost of lands shoots up by 10 to 30 times. In one such place at Madurai South

Taluk, the cost of one acre land was earlier less than Rs. 5 lakhs. But today, in the vicinity of the IT park set up therein, the land costs have gone

up by Rs. 50 lakhs to Rs. 1.5 Crores per acre. Similar was their experience in the other places. The moment they make a pilot survey, the real

estate brokers enhance the price of the lands. The RTI Act should not be used for unlawfully enriching some one by extracting the business secret

from a Government company.

7. The Commission should ascertain the credentials of the applicant about the public interest. Seeking such an information under the Act should not

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serve any private interest. However, they stated that they have no problem in presenting the two page office note put up by the General Manager

(Land), Elcot after the inspection of the site. If the Commission so directs, they are willing to hand over a copy of the two pages document.

However, they insisted that their business secrets should not be allowed to be extracted through the mechanism of the RTI Act.

8. The Commission after hearing both parties by the impugned order, dated 27.12.2007 informed that the information asked for is not coming

under any exempted category u/s 8 of the RTI Act. Therefore, the petitioner corporation ELCOT was directed to furnish such information. It is this

order, the petitioner ELCOT has come forward to challenge in the present writ petition.

9. The stand taken by the petitioner was that disclosure of information will prejudicially affect the economic interest of the State and is saved by

Section 8(1)(a). They also placed reliance upon Sections 8(1)(a), 8(1)(d) and 8(1)(i) of RTI Act, which reads as follows:

8. Exemption from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic

interests or the State, relation with foreign State or lead to incitement of an offence;

....

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position

of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

....

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be

made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified

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in this Section shall not be disclosed;

10. It was also stated that since the information is exempted u/s 8 of the RTI Act, there is no obligation for the petitioner ELCOT to provide such

information. It was also stated that u/s 18 of the RTI Act, the Commission ought to have verified the bona fides or authenticity of the complainant.

11. To start with the second contention raised by the petitioner ELCOT, it must be noted that the bona fide of the applicant seeking an information

need not be verified. Section 6(2) of the RTI Act reads as follows:

6(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.

12.This view was reiterated by this Court vide its judgment in V.V. Mineral v. The Director of Geology and Mining and Ors. reported in 2007 (4)

MLJ 394. Therefore, the Commission is under no obligation to make an enquiry regarding the personal details of an applicant and the reason for

their seeking information. u/s 3 of the Act, all citizens shall have a right to information subject to the provisions of the Act.

13. It is needless to state that the petitioner ELCOT is a public authority within the meaning of Section 2(h) of the RTI Act. The term ""Right to

Information"" is very widely defined u/s 2(j) of the RTI Act, which reads as follows:

2(j) ""right to information"" means the right to information accessible under this Act which is held by or under the control of any public authority and

includes the right to-

(i) inspection of work, documents, records;

(ii) taking notes, extracts or certified copies of documents or records;

(iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such

information is stored in a computer or in any other device;

14. Section 4 of the Act creates obligation on a public authority to provide information. Therefore, the question that has to be determined is

whether in terms of the exemptions under Sections 8(1)(a), (d) and (i), the petitioner ELCOT is entitled to deny the information.

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15. It is not clear as to how Section 8(1)(a) is attracted to the present case. There is no economic interest of the State involved in the inspection

report of the Corporation. Similarly, reliance placed upon Section 8(1)(i) is also not attracted in the present case, as information sought for was not

relating to Cabinet minutes and also Secretaries and the other officers. Even there, the first proviso to the said Sub-section enables those

information can be divulged once a final decision is taken.

16. Therefore, the only relevant question is whether the exemption u/s 8(1)(d) is available to the petitioner. The said exemption relating to

commercial confidence, trade secrets itself had not made absolute embargo. In those cases, if the competent authority is satisfied that larger public

interest warrants disclosure, then such an information should be furnished. Therefore, the petitioner ELCOT cannot deny in furnishing the

information about their survey of a particular place for acquiring those lands. If the petitioner ELCOT had to purchase the land either by direct

negotiations, failing which to invoke the provisions of the Land Acquisition Acts (either Central Act or State enactments). In such cases, any

notification issued for acquiring lands are always a matter of public record. A citizen, who solely survives on the existence of the said land, if

apprehensive about the land being taken away by some other authority, is entitled to know whether those lands are to be acquired by such

authority so that, they can legitimately object to the acquisition of their lands on grounds which are available to them under law.

17. The only ground taken by the petitioner ELCOT is that certain persons with private interest may speculate on the land cost, which may

ultimately boost the price of the land. Under the existing law relating to the land acquisitions, a land owner is entitled to get market value for his

land. The acquiring authority is also bound to pay the market value. If there is any refusal to pay the market value, there are procedures to seek for

enhanced compensation including interest thereon. Therefore, there is no gainsaying that the disclosure of the field inspection report will result in

cost escalation. Since the petitioner company provides infrastructure facility for setting up IT and ITES companies, they will have to face the

ground reality of either local population''s objection to the acquisition of lands or in case they succeed in the acquisition of their lands must shell out

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compensation as per the market value.

18. A Division bench of this Court in N. Rajachandrasekaran v. The Secretary to Government, Public (Special-A) Department, State of Tamil

Nadu, Fort St. George, Chennai-9 and Ors. reported in 2009 (5) CTC 828 has held that if the information sought for is not covered by the

exemption provided u/s 8, then the public authority is bound to disclose the information sought for by any citizen.

19. Therefore, the attempt to challenge the decision of the Commission and the impugned order is misconceived. The petitioner themselves have

offered before the Commission that they are willing to provide the two page note put up by its General Manager (Land), ELCOT after inspecting

the site.

20. In the light of the above, the grounds raised by the petitioner are misconceived and lacks in merit. Accordingly, the writ petition will stand

dismissed. No costs. Consequently, connected MP also stands dismissed.

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