

(2010) 04 MAD CK 0386

In the Madras High Court

Case No : Writ Petition No. 14461 of 2007 and M.P. No. 1 of 2007

Secretary to Government, Home, Prohibition and Excise
Department, Public Information Officer and Deputy Secretary
to Government, Home, Prohibition and Excise Department,
Superintendent of Police and Additional Superintendent of
Police and Public Information Officer

APPELLANT

Vs

S. Suresh Babu, M. Swamiyadiyan, C. Devarajan and The
State Chief Information Commissioner, Tamilnadu
Information Commission

RESPONDENT

Date of Decision : 13-04-2010

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1)

Right to Information Act, 2005 — Section 2, 24, 24(4), 6(2), 7

Citation : (2010) 04 MAD CK 0386

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : P.S. Raman, General assisted by N. Senthilkumar, AGP, for the Appellant; A.L. Somayaji, SC for Narmadha Sampath, for R2, V. Perumal, for R1, A. Govindasamy, for R3 and G. Rajagopal, SC for G.R. Associates for R4, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The writ petition is filed by the Secretary to the Government of Tamil Nadu, Home Department along with three other officers. This writ petition is filed by the respondent State seeking to challenge the order passed by the fourth respondent Tamil Nadu Information Commission, dated 4.4.2007.

2. By the impugned order, the Commission held that the Home Department of the State Government cannot deny information sought for by respondents 1 to 3 and that protections claimed by virtue of exemption u/s 8(h) of the Right to Information Act (for short RTI Act) will not apply to the petitioner department. The writ petition was admitted on 20.4.2007 and an interim order was granted.

Subsequently when the matter came up on 23.12.2009, at the instance of the learned Government Pleader, the writ petition was permitted to be withdrawn. Accordingly it was dismissed as withdrawn. Thereafter, the State Government filed a review application in Review application No. 37 of 2010. After due notice to the parties, the review application was allowed by an order, dated 17.3.2010 and the writ petition was restored.

3. Heard the arguments of Mr. P.S. Raman, learned Advocate General and Mr. A. L. Somayaji, learned Senior Counsel appearing for Mrs. Narmadha Sampath, counsel for second respondent, Mr. V. Perumal, learned Counsel for first respondent, Mr. A. Govindasamy, learned Counsel for third respondent and Mr. G. Rajagopal, learned Senior counsel for M/s. G.R. Associates for fourth respondent Information Commission.

4. It is seen from the records that the second respondent sought for the following information from the Public Information Officer attached to the first petitioner:

(a) Petitions received for withdrawal of the case in CC. No. 450/04, CC No. 449/04 and CC No. 268/2005 on the file of Judicial Magistrate, Eraniel.

(b) Opinion of the Public Prosecutor received in this regard.

(c) The reports of Inspector General of Police, South Zone, Superintendent of Police and District Collector.

(d) The report of Deputy Inspector General of Police.

(e) Government Orders passed in this regard.

5. The Information Officer fourth petitioner informed the applicants that the information with confidence in nature cannot be divulged and they may contact the State Government. The second petitioner was informed that the information sought for is relating to the criminal case pending with Judicial Magistrate Court, Eraniel in C.C. No. 451 of 2004 and therefore, the information cannot be divulged in the light of Section 8(h) of the RTI Act. If he was aggrieved, he can file an appeal to the appellate authority. The same reply was given to the other applicants.

6. Thereafter, the second respondent sent an appeal to the appellate authority under the first petitioner. The appellate authority by an order dated 24.1.2007 once again took view that details regarding the criminal case pending cannot be furnished in terms of Section 8(h) of the Act. Thereafter, the second respondent filed an appeal to the fourth respondent Information Commission. In the said appeal, notice was given to the petitioners. Finally, the Commission, after hearing the parties, held that information sought for by the applicant (R2) exists in the Government file and the efforts of the officers was to hide certain facts to protect the officers of the Indian Rare Earths Limited. In the operative portion of the order, dated 4.4.2007 (enquiry was conducted on 30.3.2007), the

Commission has held as follows:

Though it is evident from the case that an effort has been made to dodge supply of the information on dubious reasons at every stage right up to the stage of enquiry by the Commission. The concerned officer, ADSP, who was present has stated that no proposal to withdraw the case but the file clearly shows in black and white the contrary on the Government records. This is a very clear case of motivated and malafide denial of information and Section 8(h) which has been sought to be used is clearly inapplicable as the investigation is completed in this case and supply of all information is not likely to impede the investigation. If at all anything this information will only enable the petitioner to challenge the action taken for pursuing the case in a court of law which is the proper forum to protect the interest of justice and which will be the over riding public purpose which will u/s 8(2) nullify any exemption which can be sought u/s 8(1), as a plain reading of both sections clearly shows.

As such the Commission comes to the painful conclusion that this is a fit case to be held as a motivated and malafide refusal of the information which ought to be given to him and directs the Superintendent of Police, Kanniyakumari Dt to file his personal explanation why the penalties prescribed under the Act should not be imposed upon him. The Director General of Police is directed to obtain the same and forward it to the Commission.

The Public Information Officer, Home Department is also directed to file his explanation for the wrongful application of Section 8(h) and denial of information and why it should not be viewed as deliberate attempt to dodge supply of the information which will attract the penal provision of the Act.

The Home Secretary is directed to obtain the explanation from him and the Secretary, Home is also directed to ensure that the documents asked for are supplied to the petitioner within a week from now and the petitioner's acknowledgement obtained and forwarded to the Commission.

7. In the writ petition it is this order which is under challenge. Though it was stated that the second respondent was motivated in seeking information and he was set up by M/s. V.V. Minerals to settle local scores, this Court is not inclined to go into the bonafide of the information seeker in the light of Section 6(2).

8. Throughout the case, the petitioner only relied upon the exemption granted u/s 8(h) of the Act, which reads as follows:

8(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

During the course of argument, learned Advocate General also placed reliance upon Section 8(e) which reads as follows:

8(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the

disclosure of such information;

9. In addition to those provisions, learned Advocate General also stated that since one of the information sought for is the opinion of the Public Prosecutor and it is a privileged document and it need not be furnished. Any direction given will hamper the work of the State Government.

10. On behalf of the first respondent, a counter affidavit, dated 21.3.2010 was filed. It was stated by them that during Tsunami period, 400 people were killed in Collachal village due to indiscriminate mining operations carried out by Indian Rare Earth Limited by its blatant violation of the environmental rules and CRZ notifications. A criminal case for which information was sought for was emanated due to the assault of workmen belonged to V.V. Minerals. It resulted in a complaint given by them and a criminal case was registered by Karungal police station. It was finally taken up for trial by the learned Judicial Magistrate, Eraniel in C.C. No. 450 of 2004. It is in order to save the accused, who are the officers of Indian Rare Earths Limited, which is a Central Government Public Sector company, steps were made to withdraw the complaint without notice to the defacto complainant. Hence they were forced to seek for information. The exemption relied as per Section 8(h) is meaningless. The information does not relate to the investigation or apprehension or prosecution of offenders. On the contrary, this information regarding a deal struck by the authorities to withdraw the criminal case. Reliance placed upon Section 8(h) is most inappropriate. It is also stated information given to the Government is not in a fiduciary relationship and the competent authority in the present case was fully satisfied that larger public interest warranting disclosure of such information.

11. In the light of these contentions, it has to be seen whether the order passed by the fourth respondent Commission is liable for interference by this Court.

12. With reference to the opinion given by the Public Prosecutor, the learned Advocate General placed reliance upon the judgment of this Court in W.P. No. 20574 of 2009 in the Superintendent, Office of the Public Prosecutor, High Court, Chennai-104. v. The Registrar, Tamil Nadu Information Commission and Anr., dated 5.1.2010 which was based upon the privilege claimed by a lawyer and client. The reliance upon the said judgment has no relevance. In the present case, such information is not sought from the Public Prosecutor, but from the Government which had received such information. In the very same case, this Court after sustaining the privilege claimed by the Public Prosecutor based upon the rules framed by the Bar Council under the Advocates Act as well on the provisions of the RTI Act, in paragraph 20 had observed as follows:

20. It is suffice to state that in the present case, instead of asking the petitioner, who holds such an information in the capacity of counsel, the petitioner is very well entitled to approach the client, i.e. the State of Tamil Nadu directly for getting such information. If such information are available in the public domain without being circumscribed by Section 8 of the RTI Act, he can always get such

information without seeking such information from the hands of the Public Prosecutor.

Therefore, the objection has to be overruled.

13. The next question is the reliance placed upon Section 8(e). Such a defence was not even pleaded by the petitioners before the Commission. Even assuming that such defence was available, whether it applies to the present facts of the case is the question to be considered.

14. It is not as if the official correspondence between the police department and the Government took place on the basis of fiduciary relationship. But they are the official correspondence between two departments. In so far as Section 8(h) is concerned, exemption is available only when it is considered to be impediment in the process of investigation or apprehension or prosecution of offenders. In the present case, the information is about derailment of the prosecution by the police. Therefore pressing into service Section 8(h) will not arise.

15. Even Section 24 of the RTI Act provides immunity to certain organisations set up by the State Government. Section 24(4) reads as follows:

24(4) Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in Section 7, such information shall be provided within forty-five days from the date of the receipt of request.

16. By virtue of power vested u/s 24, the State Government has issued G.O.Ms. No. 158, P&AR Department, dated 26.8.2008 exempting only the Tamil Nadu State Vigilance Commission and Directorate of Vigilance and Anti Corruption. Even in such cases, as per the first proviso, notwithstanding such exemption, there is no immunity if informations are sought for on the allegations of corruption and human rights violation and which information can never be excluded from the public purview.

17. That question came up for consideration before this Court in W.P. No. 23507 and 23508 of 2009, in the Superintendent of Police, Central Range, Office of the Directorate of Vigilance and Anti-Corruption, Chennai-600 028 v. R. Karthikeyan and Ors., dated 12.1.2010. In paragraph Nos. 11 to 14, this Court held as follows:

11. He also submitted that when the said G.O. came to be challenged, a division

bench of this Court in *P. Pugalenthir v. State of Tamil Nadu and Ors.* in W.P. No. 4907 of 2009, dated 30.3.2009 upheld the validity of the said G.O. In paragraphs 5, 6, 8, 9 and 11 of the order, the division bench had observed as follows:

5. As can be seen from the language used in the main part of Sub-section 4, it states that nothing contained in this Act shall apply to such intelligence and security organisation. Thus, in the first part, two entities are mentioned in singular as organisation. Subsequently, they are referred as "organisations" established by the State Government. If intelligence and security organisation was only one, there was no need to use the plural term "organisations" subsequently. It clearly indicates that such an organisation can be for intelligence purpose or for security purpose. The word "and" between the two words intelligence and security organisation will have to be read as "or". Therefore, the second submission of Mr. Radhakrishnan cannot be accepted.

6. The third submission of Mr. Radhakrishnan was that this provision affects the fundamental rights envisaged under Article 19(1)(a) of the Constitution of India for freedom of speech and expression. It is material to note that Sub-clause 2 of Article 19 of the Constitution of India provides that any such law insofar as it 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,] particularly 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, its operation will not be affected by Sub-clause 1(a). In our view, Section 24(4) of the Act provides for reasonable restriction in the interest of public order.

...

8. As can be seen from this paragraph, these two organisations primarily deal with investigation into alleged corrupt activities of public servants. The investigations and subsequent actions culminate in disciplinary action or criminal action in the appropriate Courts of law. Thereafter, it is stated that confidentiality and secrecy in certain cases are required to be maintained right from the initial stage upto filing of charge sheet on the one hand and upto issue of final orders in the case of disciplinary proceedings. In the latter part of this paragraph, it is stated that in vigilance cases, giving information at the initial stage, investigation stage and even prosecution stage, would lead to unnecessary embarrassment and would definitely hamper due process of investigation.

9. In our view, the State has given sufficient reasons as to why it was exercising powers u/s 24(4) of the Act and this is in exercise of discretionary power, which is otherwise also protected under Sub-clause (2) of Article 19 of the Constitution of India as stated earlier.

...

11. The third ground is that the property held by these organisations or their

budgetary allocations must be known to the public. It is not for us to dictate to the State as to how it has to function, when it gives exemption to these organisations. Insofar as the allegation of corruption and human rights violation are concerned, the first proviso to Section 24(4) of the Act takes care of apprehension of the petitioner. It clearly provides that information on allegation of corruption and human rights will not be excluded under this sub-section. In our view, there is no reason for the petitioner to have any such apprehension.

(Emphasis added)

12. Therefore, he submitted that the petitioner is well within their right to deny the information sought for by the first respondent in both the writ petitions and that the Information Commission had erred in directing the petitioner to furnish such information.

13. In the light of the above order of the division bench, this Court is not inclined to go into the efficacy of exemption given to the Directorate of Vigilance and Anti-Corruption from the purview of the RTI Act. But, as rightly observed by the Commission, if some organisations operate in different spheres such as intelligence and security, in those areas, exemption can be valid. But when the very same organisation dealt with corruption cases of public servants, then exemption u/s 24(4) of the RTI Act cannot be taken advantage of, since the proviso to Section 24(4) clearly says that information pertaining to the allegations of corrupt and human rights violations shall not be excluded under the sub-section.

14. Therefore, notwithstanding the exemption obtained by the petitioner organisation, any information relating to the allegations of corrupt cannot be excluded from the purview of public access. The information sought for by the first respondent are wholly statistical information regarding the number of cases filed, their success rate and the post conviction or post trial action taken against such officers. These information are vital in a transparency Government as public are entitled to know the officers who are facing charge of corruption as well as conviction or acquittal obtained by them as well as the result of departmental action initiated by the Government. Perhaps, consequent to proviso to Section 24(4), in paragraph 11 the division bench has specifically referred to the proviso and held that the first proviso will take care of apprehension expressed by the petitioner in that case. The section cannot be used to exclude the information of allegation of corruption.

18. The Supreme Court in its decision in Union of India (UOI) Vs. Association for Democratic Reforms and Another, while directing the personal information of candidates standing in election to be divulged as it should be available in public domain, in paragraph 44 had observed as follows:

44. It is also submitted that even the gazetted officers in all government services are required to disclose their assets and thereafter to furnish details of any acquisition of property annually. In our view, it is rightly submitted that in a

democratic form of government, MP or MLA is having higher status and duty to the public. In *P.V. Narasimha Rao v. State (CBI/SPE)* the Court *inter alia* considered whether Member of Parliament is a public servant. The Court (in para 162) held thus: (SCC p.747)

162. A public servant is ?any person who holds an office by virtue of which he is authorised or required to perform any public duty?. Not only, therefore, must the person hold an office but he must be authorised or required by virtue of that office to perform a public duty. Public duty is defined by Section 2(b) of the said Act to mean ?a duty in the discharge of which the State, the public or that community at large has an interest?. In a democratic form of government it is the Member of Parliament or a State Legislature who represents the people of his constituency in the highest law-making bodies at the Centre and the State respectively. Not only is he the representative of the people in the process of making the laws that will regulate their society, he is their representative in deciding how the funds of the Centre and the States shall be spent and in exercising control over the executive. It is difficult to conceive of a duty more public than this or of a duty in which the State, the public and the community at large would have greater interest.

(emphasis supplied)

The aforesaid underlined portion highlights the important status of an MP or an MLA.

19. The Supreme Court in *Vineet Narain and Others Vs. Union of India (UOI) and Another*, dealing with cases of corruption of public servants dealt with the role of the judiciary in dealing with such matters and in paragraph 55, it had observed as follows:

55. These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinising the conduct of every holder of a public office. It is trite that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a *prima facie* case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law.

20. Therefore, in the light of the above, this Court cannot interfere with the order passed by the fourth respondent Information Commission. Hence, the writ petition will stand dismissed. No costs. Consequently, connected miscellaneous petition stands closed.