

(2010) 01 MAD CK 0172

In the Madras High Court

Case No : Writ Petition No's. 23507-23508 of 2009 and M.P. No's. 1 and 1 of 2009

Superintendent of Police, Chennai

APPELLANT

Vs

R. Karthikeyan

RESPONDENT

Date of Decision : 12-01-2010

Acts Referred:

Constitution of India, 1950 — Article 19(1)

Right to Information Act, 2005 — Section 10, 20(1), 20(2), 24, 24(4)

Citation : (2011) 266 ELT 456

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M. Dhandapani, Spt. G.P, for the Appellant; M. Muthupandian, Krishna Anand and G. Rajagopal, SC, for M/s. G.R. Associates, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—These two writ petitions were filed by the Superintendent of Police, Central Range, Office of the Directorate of Vigilance and Anti-Corruption, Chennai.

2. In the first writ petition, a challenge is to the order made by the State Information Commission dated 16-10-2009, wherein the Commission directed the petitioner to furnish the information sought for by the first respondent free of cost. In the second writ petition, the challenge is to the order, dated 24-9-2009 passed by the second respondent the State Information Commission. By the said order, the Commission directed the petitioner to make available the information to the first respondent within two weeks of the said order.

3. In both the writ petitions, notice of motion was ordered on 17-11-2009 and an interim stay was granted. As both the writ petitions raised identical contentions and hence they were grouped together. Heard the arguments of Mr. M. Dhandapani, learned Special Government Pleader for petitioners and Mr. G. Rajagopal, learned Senior Counsel appearing for M/s. G.R. Associates for the

second respondent Commission and Mr. Krishna Anand for the first respondent.

4. In W.P. No. 23507 of 2009, the first respondent sought for information regarding the number of police officials who were caught during the raid by DVAC together with the list of names, the designation and the address of officials, who were caught during raids along with the amount recovered from each officials as well as the details of departmental action taken against each officials, the details of prosecution launched against the officials under the Prevention of Corruption Act and the status of such prosecution against each officials and whether the persons whose names are furnished were reinstated in service and if so, the date on which they had rejoined service as well as the details of list of action taken by the department to prevent corruption at Police Station/Branches/Wings in Chennai city.

5. The letter which was originally sent to the State Government was forwarded to the Director of Vigilance and Anti-Corruption. On such redirection, the appellate authority further directed the petitioner organisation to examine the scope of giving such information in accordance with law. It was thereafter, the petitioner organisation by an order, dated 2-2-2009 informed the first respondent that they are exempted from the purview of the RTI Act. When the first respondent made a complaint to the second respondent Information Commission, the second respondent passed the impugned order directing the petitioner to furnish the information.

6. Similarly, in W.P. No. 23508 of 2009, the first respondent approached the Public Information Officer of Directorate of Vigilance and Anti Corruption, asking for information regarding the number of investigations completed and convictions arrived at in the last five years from 2003-2004 to 2007-2008. He also sought for the list of names of persons, who are convicted in the last five years with reference to their names, the post in which they have committed corrupt practices, the description of the charges and the recommendations given to the Vigilance Commissioner after investigation. On receipt of the said requisition letter, dated 4-10-2008, the Public Information Officer attached to the petitioner's office did not furnish the information. Therefore, a representation was made to the appellate authority by a further communication, dated 8-11-2008. Further reminders were also sent on 27-11-2008 and 11-12-2008.

7. In the meanwhile, the petitioner informed the first respondent that the petitioner organisation has been exempted from the purview of the Right to Information Act, 2005 (for short RTI Act) by virtue of G.O. Ms. No. 158, P&AR(N) Department, dated 26-8-2008. They merely informed him that they were exempted from furnishing the information. Thereafter, the first respondent complained to the second respondent Commission. The Commission after notice to the parties held that paramount ideals of the RTI Act is transparency of operations of public authority and that there is difference in the terminology relating to intelligence and security organisations. Further, the information sought for is only a statistical information regarding the investigations

completed. Since all the information are basically about the corruption and post-facto information after conviction, the proviso to Section 24 as well as Section 8(1)(h) of the Act will not be attracted. The Commission also held that if the petitioner organisation dealt with corruption as well as intelligence and security activities together, the portion relating to intelligence and security can be severed in terms of Section 10 of the RTI Act and the information regarding corruption alone can be made available.

8. The attention of the petitioner was also drawn to the fact that the Central Vigilance Commission (CVC) was regularly publishing in their website regarding the names of persons, who are investigated by the Commission for various corruption charges. The Commission also impressed the petitioner that they will have to protect valid public interest and the paramount interest is to maintain confidentiality as well as right to transparency.

9. Aggrieved by both the orders, the petitioner had approached this court. Mr. M. Dhandapani, learned Special Government Pleader referred to Section 24(4) of the RTI Act, which reads as follows:

24. Act not to apply to certain organisations.- (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.

(Emphasis added)

10. He also stated that by virtue of the notification issued in terms of Section 24(4), by G.O. Ms. No. 158, P&AR(N) Department, dated 26-8-2008, both the Tamil Nadu State Vigilance Commission and the Directorate of Vigilance and Anti-Corruption have been exempted from RTI Act. Paragraph 3 of the said G.O. reads as follows:

3. The State Vigilance Commission and the Directorate of Vigilance and Anti-Corruption 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. Confidentiality and secrecy in certain cases requires to be maintained during the whole process from the initial stage upto filing of charge sheet in the court on the one hand and upto issue of final orders in the case of disciplinary proceedings. Revealing any information to any agency including the aggrieved person would

be detrimental to the progress of the case. Of late, there has been a tendency on the part of some citizens to ask for a lot of information under the Right to Information Act, 2005. The Government feel that in vigilance cases giving information at the initial stages, investigation stages and even prosecution stages would lead to unnecessary embarrassment and will definitely hamper due process on investigation.

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 Others* 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.

15. 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)²² 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.

16. 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.

17. Therefore, the stand taken by the petitioner cannot be countenanced by this court. They are bound to disclose the information sought for by the first respondent in both the cases. Reliance placed upon the exemption provision has no relevance to the information sought for by the first respondent and ordered by the second respondent.

18. In the light of the above, both the writ petitions will stand dismissed. The petitioner in both the petitions is directed to furnish the information to the first respondent in both the petitions within two weeks from the date of receipt of the copy of this order. Otherwise, they are bound to face further action by the Information Commission under Sections 20(1) and 20(2) of the RTI Act. Consequently, connected miscellaneous petitions also stand dismissed. No costs.