(2008) 08 MAD CK 0052

In the Madras High Court

Case No : W.A. No. 811 of 2008 and M.P. No. 1 of 2008

Tamil Nadu Road Development Co. Ltd. APPELLANT

Vs

Tamil Nadu Information Commission and Another RESPONDENT

Date of Decision : 05-08-2008

Acts Referred:

Constitution of India, 1950 — Article 311
Right to Information Act, 2005 — Section 2

Citation : (2008) 145 CompCas 248 : (2009) 243 ELT 171 : (2008) 3 LW 904 : (2008) 6 MLJ 737

Hon'ble Judges : A.K. Ganguly, C.J;Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : R. Muthukumarasamy, for V. Ramajegadeesan, for the Appellant; G. Rajagopalan, for S.R. Associates for respondent No. 1 and D.N. Nagasila, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Ganguly, C.J.—This writ appeal is directed against the judgment and order dated July 17, 2008, passed by a learned judge of the writ

court, whereby the learned judge was pleased to dismiss the writ petition and inter alia upheld the order passed by the Tamil Nadu Information

Commission dated May 21, 2008, whereby the State Commission, the first respondent herein, held that the appellant is a ""public authority"" u/s

2(h) of the Right to Information Act, 2005 (hereinafter referred to as the ""RTI Act"") and directed the appellant to furnish the required information

to the second respondent.

2. The material facts of the case which are not disputed are that the second respondent in her letter dated October 21, 2007, requested the

appellant to furnish the following details:

(i) Who are the contractors for constructing the IT corridor ?

(ii) Copies of contract agreements with the contractors constructing the IT corridor ?

(iii) Copies of documents published by TNRDC or other consultants about the IT corridor ?

3. The appellant refused to furnish those details. The main ground of objection on which the matter was argued before us is that the appellant is not

covered under the RTI Act, inasmuch as it is not a public authority within the meaning of Section 2(h) of the RTI Act. Section 2(h) of the RTI Act

defines a public authority as follows:

2(h). ''Public authority'' means any authority or body or institution of self-government established or constituted:

(a) by or under the Constitution ;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature ;

(d) by notification issued or order made by the appropriate Government, and includes any:

(i) body owned, controlled or substantially financed ;

(ii) non-Government organisation substantially financed;

directly or indirectly by funds provided by the appropriate Government.

4. Learned Counsel for the appellant submits that the order of the first respondent dated May 21, 2008, which held that the appellant is a public

authority u/s 2(h) of the RTI Act is erroneous and the learned writ court by affirming the said decision committed an error of law. The said error

should be corrected by this appeal court. Learned Counsel for the appellant further submitted by referring to the definition u/s 2(h) that the

appellant is not established or constituted under the Constitution, by any law of Parliament or any State Legislature, nor by any notification issued

or order made by the appropriate Government. He also submitted that the appellant could not be included within the definition of a body owned,

controlled or substantially financed, or a non-Government organisation substantially financed, directly or indirectly by funds provided by the

appropriate Government. Learned Counsel submitted that the appellant is a limited company incorporated under the provisions of the Companies

Act in the year 1998 and was jointly promoted by the Tamil Nadu Industries Development Corporation (TIDCO), which is a public sector

undertaking, wholly owned by the Government of Tamil Nadu, and M/s. Infrastructure Leasing and Finance Services Ltd. (IL & FS), which is a

non-Government investment company. Thus, both TIDCO and IL & FS have equal stakes in the appellant-company having 50 per cent, shares.

Therefore, it would not fall within the ambit of a public authority under the provisions of Section 2(h) of the RTI Act.

5. When the matter was heard on the first day, viz., July 28, 2008, this Court adjourned it to the next day and directed learned Counsel for the

appellant to file the memorandum and articles of association of the appellant-company.

6. Pursuant to such direction, the memorandum and articles of association were filed before this Court. From a perusal of the said memorandum it

appears that the appellant-company was incorporated on May 28, 1998, under the Companies Act as a public limited company, and thereafter, its

memorandum of association was amended in 1999, as a result the articles of association of the appellant-company was changed and the promoters

of the company became TIDCO and IL & FS. It cannot be disputed that TIDCO is a fully owned Government corporation and so far as IL & FS

is concerned its shareholding is as follows:

Sl. Shareholder Number %

No.

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1. Life Insurance Corporation of India 27,986,818 26.10

2. ORIX Corporation, Japan 25,542,452 23.82

3. Housing Development Finance Corporation Limited 14,049,500 13.10

4. Abu Dhabi Investment Authority 10,972,278 10.23

5. Central Bank of India 9,843,386 09.18

6. State Bank of India 8,237,967 07.68

7. IL & FS Employees'' Welfare Trust and others 9,667,160 09.01

8. UTI-Unit Linked Insurance Plan-UTI Asset 9,46,000 0.88

Management Co. Pvt. Ltd.

Total 107,245,561 100.00

From a perusal of the aforesaid shareholding of IL & FS it appears that a little less than 50 per cent. of the shares are held by public sector

undertakings or statutory corporation like LIC created by an Act of Parliament. It also appears that as a result of the amendment to the articles of

association in 1999 the number of directors of the company shall comprise two directors nominated by TIDCO and two directors nominated by IL

& FS. It also appears from the articles of association, as amended, vide its clause 118 that the managing director of the appellant-company shall

be nominated by an unanimous agreement between IL & FS and TIDCO, for such period and upon such terms as they may think fit, and the

managing director so appointed shall exercise substantial powers of management. From Clause 113 of the articles of association, it further appears

that all important matters must be referred to the board and can only be effected by a resolution of the board comprising of the affirmative votes of

at least one director representing TIDCO and one director representing IL & FS. It is also not in dispute that the board of directors of the

appellant-company consists of the following persons:

Name/Designation Position

1. Mr. K. Allaudin, IAS, Chairman

Secretary (Highways) and Chairman/TNRDC

2. Mr. S. Ramasundaram, IAS Director

Chairman and Managing Director/TIDCO

3. Mr. K. RViswanathan, Director

Director (Projects)/TIDCO

4. Mr. Hari Sankaran, Director

Managing Director/IL & FS

5. Mr. Pradeep Puri Director

President and CEO/NTBCL

6. Mr. K. Ramchand Director

President and CEO/IL & FS Transportion

Networks Limited

7. Mr. N. R. Krishnan, IAS (Retd.) Director

Former Secretary/Government of India

8. It is clear from the aforesaid composition that the chairman is the Secretary to the Government of Tamil Nadu, and out of the seven directors

two are from Indian Administrative Service and three are nominated by TIDCO, which is a Corporation wholly owned by the Government of

Tamil Nadu. There is one managing director nominated by IL & FS. There is another director also nominated by IL & FS. There is only one

director, viz., Mr. Pradeep Puri, who is not nominated by either IL & FS or TIDCO, and Mr. N. R. Krishnan, is also a retired IAS and a former

Secretary to the Government of India.

9. The aforesaid composition of the board of directors of the appellant-company makes it clear that the appellant-company is a body which is

controlled by the appropriate Government.

10. Now comes the question whether it is substantially financed by the Government. The cost of the project, which is the subject-matter of the writ

petition, would be about Rs. 84.41 crores, which includes the cost of construction of Toll Plaza, contingencies and supervision costs, etc.

However, the land acquisition cost of Rs. 43 crores has not been included in the project cost. Such cost of land acquisition has obviously been

paid by the Government. It appears from page 3 of the typed set of papers, which is a Government Order issued by the Secretary to the

Government of Tamil Nadu, Highways Department, that the appellant-company has estimated the project cost at Rs. 84.41 crores. Out of the said

project cost a sum of Rs. 34 crores has been sanctioned to the project by the State Government and the same has been routed through the

appellant-company so as to make the project bankable and the appellant-company sourced the balance fund of Rs. 50.41 crores through loans at

competitive rates and tenor. The terms of the loan given by the State Government to the appellant-company is to be decided later. It also appears

from the said Government Order that under ASIDE Scheme, the Ministry of

Commerce and Industry, Government of India has also sanctioned as

sum of Rs. 12.5 crores for the appellant-company for this project, and, therefore, the State Government''s contribution would be to the tune of Rs.

21.5 crores only. As such request was, therefore, made by the Secretary to Government to the CEO of the appellant-company to send necessary

proposal in that regard. It also appears from the said Government Order that the State Government modified the detailed project report of the

appellant-company and the said modified report has to be brought in the concession agreement to be entered into by the Government with IT

Expressway Ltd./appellant-company. The CEO of the appellant-company was requested to send the necessary draft of the concession agreement

for the approval of the Government.

11. In the said Government Order the following directions were also given:

3. The Government direct that the project for the Improvement of IT Corridor shall be implemented by a Special Purpose Vehicle, viz., IT

Expressway Ltd. (ITEL), created for this purpose.

4. The Government also direct that the proposed IT Corridor shall be extended from Siruseri to Mahabalipuram and that this portion shall be taken

up as Phase-II separately.

5. The Government have also decided to constitute an empowered committee to monitor and take appropriate decisions for the implementation of

this project. Orders constituting an empowered committee are being issued separately.

6. The CEO, TNRDC is requested to take speedy action at every stage to implement the project early.

7. This order issues with the concurrence of Finance Department vide its U.O. No. 23/ss(LK)/04, dated 23-01-2004.

12. It also appears from page 1 of the typed set that the Government of Tamil Nadu, Highways Department, issued G.O. Ms. No. 81 dated April

24, 2003, in this regard. The text of the said Government Order is set out below:

ORDER

The Government have taken a policy decision to improve the road from Madhya Kailash in Sardar Patel Road to Siruseri in Old Mahabali-puram

Road. They accordingly direct that Special Purpose Vehicle be formed to improve the road from Madhya Kailash to Siruseri as a world class 6

lane road by mobilizing resources from the project and to maintain the road thereafter.

2. The Chief Executive Officer, Tamil Nadu Road Development Company, is requested to send necessary proposal to the Government in this

regard.

(By Order of the Governor)

A. Nagarajan

Secretary to Government.

13. It is clear from the above Government Order that the appellant was implementing the said policy decision of the Government of Tamil Nadu. It

is, therefore, very clear that the project of the appellant-company was substantially financed by the Government. Apart from that the activities of

the appellant-company is substantially controlled by the Government, both in the composition of the board of directors and also in the manner in

which the articles of association of the appellant-company has been amended, and the manner in which the said project has been implemented and

monitored by the Government by issuing from time to time various Government Orders referred to herein above.

14. It also appears that of the two promoters of the appellant-company one (TIDCO) is fully owned Government Corporation and the other IL &

FS has almost 50 per cent, shareholding by the Government. The board of the directors is therefore totally controlled by these two promoters and

consists of I.A.S. officers and government officials.

15. In the background of this admitted factual position, this Court is of the opinion that on a reasonable interpretation of Section 2(h) of the RTI

Act, the appellant-company comes within the meaning of public authority as defined by Section 2(h) of the RTI Act.

16. If we look at the definition of Section 2(h), which has been extracted herein above, it is clear that the appellant-company does not come under

the provisions of Section 2(h)(a), (b), (c) or (d), but thereafter Section 2(h)(d) of the definition clause uses the word ""includes"". It is well known

that when the word ""includes"" is used in an interpretation clause, it is used to enlarge the meaning of the words and phrases occurring in the body of the statute. Reference in this connection can be made to G. P. Singh''s ""Principles of Statutory Interpretation"". In the 10th edition of the said

treatise, the learned author formulated that when the word defined is declared to ""include"" such and such, ""the definition is prima facie extensive

(page 175 of the book). In support of the aforesaid formulation, the learned author has referred to a number of decisions. The latest decision

referred to in support of the aforesaid proposition was rendered in the case of Associated Indem Mechanical Pvt. Ltd. Vs. West Bengal Small

Scale Industrial Development Corporation Ltd. and Others, of the report, the learned judges held as follows:

The definition of premises in Section 2(c) uses the word ''includes'' at two places. It is well settled that the word ''include'' is generally used in

interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute; and when it is so used those

words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import, but also those things

which the interpretation clause declares that they shall include (see Dadaji alias Dina Vs. Sukhdeobabu and Others, , Reserve Bank of India Vs.

Peerless General Finance and Investment Co. Ltd. and Others, and M/s. Mahalakshmi Oil Mills Vs. State of Andhra Pradesh,).

17. Therefore, obviously the definition of bodies referred to in Section 2(h)(d)(i) of the RTI Act would receive a liberal interpretation, and here the

words which fall for interpretation are the words ""controlled or substantially financed directly or indirectly by funds provided by the appropriate

Government.

18. We are here concerned with the interpretation of the definition clause in the RTI Act. The Act has been enacted ""in order to promote

transparency and accountability in the working of every public authority"". In the Preamble to the Act, it is made clear that ""democracy requires an

informed citizency and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and

their instrumentalities accountable to the governed"". From the Preamble to the Act it is clear that revelation of information may cause conflict with

the other public interests including efficient operations of the Governments, but the Act has been enacted to harmonize these conflicting interests while preserving the paramountcy of the democratic ideal.

19. The RTI Act thus attempts to inculcate openness in our democratic republic. It has to be accepted that one of the salience of openness in

democracy is an access to information about the functioning of the public authorities.

20. While construing whether the Tamil Nadu Newsprint and Papers Ltd. is a public authority u/s 2(h)(d)(i) of the RTI Act, a learned judge of this

Court, while holding it a public authority made certain pertinent observations in Tamil Nadu Newsprint and Papers Ltd. v. State Information

Commission [2008] CDJ MHC 1871. Those observations in paragraph 13 of the judgment run as under:

13. One of the objectives to this right to information is eradication of ineffective governance and corrupt governance. Corruption is now recognised

as violation of human rights. Good transparency practices are essential for good governance and it includes maximum disclosure ; obligation to

publish ; promotion of open Government ; limited scope of exceptions ; minimum costs ; processes that facilitate access ; open meetings ;

precedence of disclosure ; and protection of whistle-blowers. The civil society must be unrelenting in its efforts to ensure that the Government at all

levels reaches a reasonable standard in affording public information to the citizens. Sometimes even harmless information is not made available.

When what is asked for is just ordinary data, data that any interested tax-paying citizen has a right to know-a human right, even no national secrets

that threaten public interest are asked for-it is not furnished. This access to information is more vitally important in developing countries. It is very

necessary that the ordinary person is enable to participate in the processes that effect daily life and he has empowered with the information to play

an effective role in policy-making and legislative decision-making. To promote broader political participation, there should be accountability and

transparency of Government, to prevent the criminalisation of policy, there should be free flow of information. These are the reasons why the Act

came into force. The Government should have the will to make the shift from being niggardly in providing access to information. Transparency is

essential for a healthy democracy and robust economy....

21. This Court is in respectful agreement with the aforesaid opinion expressed by

the learned judge.

22. Learned Counsel for the appellant relied on a decision of the Supreme Court in the case of A.K. Bindal and Another Vs. Union of India (UOI)

and Others, . That was a decision as to what would mean a Government company. On the legal position of a Government company, it was held in

that decision that the Government company cannot be identified with the Government itself nor its employees are Government servants, and such

employees are to entitled to the protection under Article 311 of the Constitution. We are not concerned with the aforesaid question at all in this

case. Here we have only to consider whether in the facts and circumstances of the case the appellant-company comes within the meaning of public

authority as defined u/s 2(h)(d)(i) of the RTI Act. Therefore, the ratio in the aforesaid case has no application.

23. The RTI Act is virtually enacted to give effect to citizen''s right to know. Citizen''s right to know has been construed by the hon''ble Supreme

Court as emanating from the citizen''s right to frpedom of speech and expression, which is a fundamental right. So, a legislation, which has been

enacted to give effect to right to know, which is one of the basic human rights in today''s world, must receive a purposive and broad interpretation.

24. The principle of purposive interpretation has been explained by Chief Justice S.R. Das in The Bengal Immunity Company Limited Vs. The

State of Bihar and Others, of the report the learned Chief Justice referred to and adopted the principles in Heydon''s case [1584] 3 Co Rep 7a.

Those principles are:

(i) What was the common law before the making of the Act;

(ii) What was the mischief and defect for which the common law did not provide ;

(iii) What remedy Parliament hath resolved and appointed to cure the disease of the common law ; and

(iv) The true reason for the remedy.

25. If we go by the aforesaid four principles, it will appear that the constitutional principle of right to know which was virtually a common law

principle of universal application was holding the field before the coming into effect of the RTI Act, inasmuch as the hon''ble Supreme Court has

held that the right to know is a part of the fundamental right to speech and expression and also a part of the fundamental right to life. But, there was no well-structured Act laying down the procedure on how to exercise one''s right to know and right to information, which is why the RTI Act came

into existence.

26. The RTI Act has also provided a remedy for facilitating the exercise of the right to information and the reason for the remedy is also indicated

in the Preamble to the Act. So going by the direction in Heydon''s case [1584] 3 Co Rep 7a followed by the Supreme Court in The Bengal

Immunity Company Limited Vs. The State of Bihar and Others, such an Act must receive a purposive interpretation to further the purpose of the

Act. So any interpretation which frustrates the purpose of RTI Act must be eschewed. Following the said well known canon of construction, this

Court interprets the expression ""public authority"" u/s 2(h)(d)(i) liberally, so that the authorities like the appellant who are controlled and

substantially financed, directly or indirectly, by the Government, come within the purview of the RTI Act. In coming to the conclusion, this Court

reminds itself of the Preamble to the RTI Act which necessitates a construction which will hopefully cleanse our democratic polity of the corrosive

effect of corruption and infuse transparency in its activities. In this context, a few lines from Joseph Pulitzer, in a slightly different context, will be

very apt and are reproduced hereunder:

There is not a crime, there is not a dodge, there is not a trick, there is not a swindle which does not live by secrecy. Get these things out in the

open, describe them, attack them, ridicule them in the press, and sooner or later public opinion will sweep them away.

27. This Court, therefore, holds that the appellant is a ""public authority"" within the meaning of Section 2(h)(d)(i) of the RTI Act, and the learned

judge of the writ court came to a correct conclusion, may be on the basis of some different reasons.

We, therefore, do not find any merit in the appeal, and accordingly it is dismissed. Consequently, connected miscellaneous petition is also

dismissed. However, there will be no order as to costs.

