

(2011) 04 MAD CK 0501
In the Madras High Court
Case No : W.A. No. 320 of 2010

The Superintendent of Police

APPELLANT

Vs

R. Karthikeyan

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Constitution of India, 1950 — Article 19(1), 21
Right to Information Act, 2005 — Section 24(4)

Citation : (2011) 3 CTC 241 : (2011) WritLR 469

Hon'ble Judges : K.K. Sasidharan, J;D. Murugesan, J

Bench : Division Bench

Advocate : G. Desinghu, Special Government Pleader, for the Appellant; Party-in-person for R1 in W.A. No. 320 of 2010 M. Muthupandian, for R1 in W.A. No. 321 of 2010 P. Kannan, for G.R. Associates for R2 in both the writ appeals, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—Both the writ appeals, at the instance of the State, are directed against the common order dismissing the writ petitions.

2. The factual matrix leading to the filing of the writ petitions and the writ appeals are as follows. The Government of Tamil Nadu issued G.O. Ms. No. 158, Personnel and Administrative Reforms (N) Department dated 26.8.2008 specifying that the provisions of the Right to Information Act, 2005 (hereinafter referred to as "the Act") shall not apply to the Tamil Nadu State Vigilance Commission and Directorate of Vigilance and Anti-Corruption organizations. It also issued a notification to the said effect in the Tamil Nadu Government Gazette in exercise of the powers conferred under Sub-section (4) of Section 24 of the said Act. Thereafter, a press release was issued by the Director of Information and Public Relations, Chennai vide Press Release No. 786 dated 23.9.2008 to the effect that the exemption has been given to the Department of Vigilance and Anti-Corruption only considering the fact that even before the investigation is

completed in a case and even before a decision is taken by the Government to proceed further, furnishing information to an applicant would hamper the investigation, especially, in most of the cases, the delinquents themselves would be interested to know about their cases under the Right to Information Act. Hence, it was stated that the required information cannot be furnished to them. It was also further stated that once the investigation stands completed and a final report was laid before the Government, the information can be obtained by an applicant under the Right to Information Act.

3. Based on the said press release, Thiru v. Madhav, the first Respondent in W.A. No. 321 of 2010, made an application dated 4.10.2008 before the Public Information Officer, Directorate of Vigilance and Anti-Corruption, Chennai seeking for furnishing of certain particulars under the Right to Information Act, namely, number of investigations completed and the number of persons convicted for the years from 2003-2004 to 2007-2008 with the details as to the names of such convicted persons, the post held by them when the act of corruption was done, the charges framed and the recommendations given to the Vigilance Commissioner after investigation. As those particulars were not furnished, he filed appeal dated 8.8.2008 before the Appellate Authority seeking to take suitable steps to furnish those particulars within the time limit specified under the Act. Thereafter, a further reminder was also made on 27.11.2008. Even thereafter, as no information or reply was furnished/received, he filed a second appeal dated 11.12.2008 before the Tamil Nadu State Information Commission seeking for suitable directions for furnishing of the particulars sought for by relying upon the proviso to Section 24(4) which states that "Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this Sub-section". In the meanwhile, the Superintendent of Police, Central Range/Public Information Officer by letter dated 12.12.2008 informed the first Respondent that the Act shall not apply to the Directorate of Vigilance and Anti-Corruption as per the Government Order dated 26.8.2008 and that the authenticated press release cited by the first Respondent was not received in the Directorate and therefore refused to furnish the information. Thereafter, the second appeal of the first Respondent was considered by the second Respondent-State Information Commission and after holding of enquiry on 24.9.2009, the second Respondent, by order dated 16.10.2009, directed the Appellant-public authority to furnish the particulars to the first Respondent within two weeks of the receipt of the order.

4. Likewise, Thiru R. Karthikeyan, the first Respondent in W.A. No. 320 of 2010, filed an application dated 30.12.2008 before the Public Information Officer, Home Department, Secretariat, Chennai seeking for certain particulars under the Right to Information Act, namely, as to how many police stations/wings/branches within the Chennai city were raided by the DVAC officials during the last five years i.e., from January, 2003, how many police officials were caught during the raids, the list of names, the designation and the address of such officials who were caught and the amount recovered from each official, details of

departmental actions taken against such official including the copy of enquiry report, the details of prosecution launched against such officials, the status of prosecution against each official, how many have been re-inducted into active service including the date of rejoining the service and their present place/station of service, the details of action taken by the Department to prevent corruption at police stations/branches/wings especially in Chennai city and the grievance redressal machinery for the public to make a complaint against such corrupt official demanding bribe/favour to do the duty. By letter dated 5.1.2009, the Public Information Officer/Deputy Secretary to Government, Home Department informed the first Respondent that the application has been forwarded to Personnel and Administrative Reforms (N) Department and that the particulars would be furnished by them. By another letter dated 13.1.2009, the Public Information Officer/Under Secretary to Government, Personnel and Administrative Reforms (N) Department informed the first Respondent that the application has been forwarded to the Directorate of Vigilance and Anti-Corruption for consideration on merits and to furnish the particulars to the first Respondent and the Government. By a letter dated 2.2.2009, the first Respondent was informed by the Superintendent of Police, Central Range, Vigilance and Anti-Corruption Department that the particulars cannot be furnished since the Act shall not apply to the Directorate of Vigilance and Anti-Corruption as per the Government Order dated 26.8.2008. Aggrieved by the said letter, the first Respondent preferred a first appeal to the Appellate Authority/Special Secretary to Government, Home Department, which was forwarded to the Directorate of Vigilance and Anti-Corruption vide letter dated 6.3.2009 of the Deputy Secretary to Government, Personnel and Administrative Reforms (N) Department. By the order dated 26.3.2009, the Joint Director, Vigilance and Anti-Corruption Department reiterated the very same Government Order and informed the first Respondent that he may approach the Information Commission if aggrieved against the order. Thereafter, a second appeal was preferred before the State Information Commission on 4.6.2009. The State Information Commission considered the said appeal and after holding of enquiry on 14.9.2009, the second Respondent, by order dated 16.10.2009, directed the Appellant-public authority to furnish the information to the first Respondent within two weeks of the receipt of the order in full and free of cost.

5. Both the above orders dated 16.10.2009 were questioned by the Superintendent of Police, Central Range, Directorate of Vigilance and Anti-Corruption in Writ Petition Nos. 23507 and 23508 of 2009 basically on the grounds that the provisions of Section 24(4) of the Right to Information Act shall not apply to that Department, the Government Order dated 26.8.2008 was already tested and upheld by this Court vide order in W.P. No. 4907 of 2009 dated 30.3.2009 and that the particulars sought for by the applicants cannot be furnished as it would affect the investigation or prosecution of offenders, etc. By the impugned common order dated 12.1.2010, both the writ petitions were dismissed by the learned Judge with a direction to the Appellant/writ Petitioner to

furnish the information to the respective first Respondent in the appeals within two weeks from the date of receipt of the order, failing which to face further action at the hands of the Information Commission u/s 20(1) and 20(2) of the Act. The correctness of the said order is put in issue in these writ appeals.

6. We have heard the learned Special Government Pleader for the Appellant and the respective learned Counsel for the first and second Respondents apart from the party-in-person.

7. Before considering the submissions, we are inclined to refer to the object for which the Right to Information Act has been enacted by the Parliament. The legal entrenchment of the right to information is drawn from the United Nations, which recognised the "freedom of Information as fundamental human right and as the touchstone for all freedoms to which the United Nations was consecrated." The right of free expression and declaring information has been recognised at the common law many years back, as the fundamental rights of the public to know what the Government have been transacting in their name. Until we adopted our Constitution in 1950, there had been no scope for individual freedom at any time in India's history. After the Constitution, the liberty of thought is the basis of freedom of speech and expression under Article 19(1)(a), which is an essential component of a democratic governance. The right to information is now treated as an invisible integral part of the right of free speech. As information is vital not only for the betterment of the society but also for the betterment of an individual, Article 21 guarantees right to life including the basic right to be informed.

8. India has adopted a democratic form of Government and no democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government. It is only when the people know how the Government is functioning, they can fulfill the role which democracy assigned to them and make democracy a really effective participatory democracy. Right to information is basic to any democracy. A vibrant citizenry is a prerequisite for survival of democratic society and governance. The quality of life in a civilized society depends upon the quality of exchange of information about the governance and related aspects. It is now widely recognised that openness and accessibility of people to information about the government's functioning is a vital component of democracy. Disclosure of allowable information would lead to better system and it would be in the public interest that a public authority should throw open the process of public scrutiny, which would result in evolving a better system. Disclosure of information would compromise the integrity and efficiency of the functioning of the public authority. In an increasingly knowledge-based society, information and access to information holds the key to resources, benefits and distribution of power. Information, more than any other element, is of critical importance in a participatory democracy.

9. The Right to Information Act is a rights based enactment more akin to any

other enactments safeguarding fundamental rights. As the statement of the object of the Act goes, democracy requires an informed citizenry and transparency of information. The Act encompasses basically two things, firstly, the right of a citizen to seek for information to which he is entitled under the provisions of the Act and the corresponding duty of the information officers to furnish such information and secondly, it leads to transparency in the government functioning.

10. The use of the Right to Information Act needs no elaborate reference as the very fact that such a right to get information has been recognised as a fundamental right. To put it precisely, the information supplied under the Act brings about transparency and accountability, both of which hold to reduce corruption and increased efficiency in governance and it also encourages participation of the people in a democracy. The need for right to information ensures people's participation, ensures principle of accountability, transparency, limiting the discretion powers given to officials, protects the civil liberties, effective and proper implementation of schemes of government and makes media more effective.

11. Though the Indian Constitution has no express provision guaranteeing the right to information, it has been recognized by the Courts in a plethora of cases as implicit in Article 19(1)(a), which guarantees to all citizens the right to free speech and expression, and Article 21 of the Constitution which guarantees the right to life in accordance with due process to all citizens. The background of the enactment will not be complete if the contribution of the Hon'ble Apex Court for the legislation is not mentioned. The Apex Court in the decision in *The State of U.P. Vs. Raj Narain and Others*, , interpreted Article 19(1)(a) of the Constitution of India so widely so as to include so many rights within its sweeping shadow. One such right is the right to information. It is observed in the said judgment that "the right to know which is derived from the concept of freedom of speech, though not absolute is a factor which should make wary, when secrecy is claimed for transactions which can at any rate have no repercussion on public security." The Apex Court further observed that "the people of this country have the right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in its bearing." The concept of an open Government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a), as observed by the Apex Court in *S.P. Gupta Vs. President of India and Others*, .

12. In the *Secretary, Ministry of Information and Broadcasting, Government of India v. The Cricket Association of Bengal* (1995) 2 SCC 179, the Apex Court, while considering the freedom of speech and expression in the light of the right to information, has observed that "freedom of speech and expression is basic to and indivisible from a democratic polity. It includes the right to impart and receive information." The Apex Court has also observed that "for ensuring the

free speech right of the citizens of the country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues and a successful democracy posits an "aware" citizenry."

13. The pride for enactment of the Right to Information Act would certainly go to the judiciary as could be seen from certain observations of the Hon'ble Apex Court in some of the judgments. The judgment in Union of India (UOI) Vs. Association for Democratic Reforms and Another, is again a forerunner for recognising the right to information as a fundamental right and the said judgment laid the foundation over which the superstructure of the Right to Information Act, 2005 was built. In People's Union for Civil Liberties and Another Vs. Union of India (UOI) and Others, , it was observed that

Right of information is a facet of the freedom of "speech and expression" as contained in Article 19(1)(a) of the Constitution of India. Right of information, thus, indisputably is a fundamental right.

In another case in Union of India (UOI) Vs. Association for Democratic Reforms and Another, , it was observed that "the right to get information in a democracy is recognized all throughout and it is a natural right flowing from the concept of democracy".

14. The Apex Court in Indira Jaising Vs. Registrar General, Supreme Court of India and Another, , also took the same view and held

It is no doubt true that in a democratic framework free flow of information to the citizens is necessary for proper functioning particularly in matters which form part of a public record. The decisions relied upon by the learned Counsel of the Petitioner do not also say that right to information is absolute. There are several areas where such information need not be furnished. Even the Freedom of Information Act, 2002, to which also reference has been made, does not say in absolute terms that information gathered at any level in any manner for any purpose shall be disclosed to the public.

15. Keeping the background and the object of the Act from which it was enacted and the above law laid down by the Apex Court, the issue raised in these writ appeals must be considered. It is the case of the Appellant/Superintendent of Police, Central Range, Vigilance and Anti-Corruption that so far as the Vigilance department is concerned, the provisions of the Right to Information Act are not applicable, as the Government have notified exempting the department u/s 24(4) of the Act. It is the contention of the Appellant that in terms of the G.O. Ms. No. 158, Personnel and Administrative Reforms (N) Department dated 26.8.2008, the Tamil Nadu State Vigilance Commission and the Directorate of Vigilance and Anti-Corruption are exempted from the Right to Information Act. Section 24(4) of the Act reads as under:

24(4). Nothing contained in this Act shall apply to such intelligence and security organization being organizations 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 receipt of request.

The relevant portion of the G.O. Ms. No. 158 dated 26.8.2008, reads as under:

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 up to filing of charge sheet in the court on the one hand and up to 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.

16. The validity of the said Government Order was questioned before this Court in W.P. No. 4907 of 2009 (P. Pugalenthi v. State of Tamil Nadu represented by the Secretary to Government, Personnel and Administrative Reforms (N) Department, Chennai and others) and the same has been upheld by order dated 30.3.2009. The contention of the learned Special Government Pleader is that in view of the above, the Chief Information Commissioner should not have directed the furnishing of information required by each of the first Respondent in the appeals and consequently the learned Judge should not have dismissed the writ petitions filed by the department. In our opinion, the said contention is totally unacceptable. Even in the said judgment, the Division Bench has categorically held that in the event the information required by an applicant relates to the allegations of corruption, the said Government Order cannot be made applicable and accordingly the department cannot claim the exemption from furnishing those particulars relating to corruption. The learned Judge has correctly applied the above judgment with reference to the particulars required by each of the first Respondent in these appeals, as they relate only to corruption.

17. In terms of Section 24(4), the State Government is empowered to notify in the Official Gazette that nothing contained in the Right to Information Act shall

apply to such intelligence and security organization being organizations established by the State Government. Nevertheless, in the light of the first proviso, such power being conferred on the State Government to notify exempting such intelligence and security organizations, it cannot notify in respect of the information pertaining to the allegations of corruption and human rights violations. As a necessary corollary, the power to exempt from the provisions of the Act is not available to the State Government even in case of intelligence and security organizations in respect of the information pertaining to the allegations of corruption and human rights violations. The application of the notification depends upon the nature of information required. In this context, we may refer that the first Respondent in W.A. No. 321 of 2010 has sought for the particulars relating to the number of investigations completed and the number of persons convicted for the years from 2003-2004 to 2007-2008 with the details as to the names of such convicted persons, the post held by them when the act of corruption was done, the charges framed and the recommendations given to the Vigilance Commissioner after investigation. Likewise the first Respondent in W.A. No. 320 of 2010 has sought for the particulars relating to the number of police stations/wings/branches within the Chennai city were raided by the DVAC officials during the last five years i.e., from January, 2003, how many police officials were caught during the raids, the list of names, the designation and the address of such officials who were caught and the amount recovered from each official, details of departmental actions taken against such official including the copy of enquiry report, the details of prosecution launched against such officials, the status of prosecution against each official, how many have been re-inducted into active service including the date of rejoining the service and their present place/station of service, the details of action taken by the Department to prevent corruption at police stations/branches/wings especially in Chennai city and the grievance redressal machinery for the public to make a complaint against such corrupt official demanding bribe/favour to do the duty. As all these particulars would certainly relate to corruption, the Government Order has no application to the facts of this case.

18. In that view of the matter, the challenge to both the orders of the Chief Information Commissioner cannot be questioned by the Superintendent of Police, Central Range, Vigilance and Anti-Corruption Department. For the above reasons, we are not inclined to interfere with the order of the learned single Judge dismissing the writ petitions. Accordingly, the writ appeals fail and they are dismissed. Consequently, M.P. Nos. 1 and 2 of 2010 are also dismissed. No costs