(2024) 05 KL CK 0188

In the High Court Of Kerala

Case No : Writ Petition (C) No. 8044 Of 2014

T.K.Anilkumar APPELLANT

Vs

State Information Commission RESPONDENT

Date of Decision : 23-05-2024

Acts Referred:

Right to Information Act, 2005 — Section 5(1), 7(1), 8(1)(j), 19, 20, 20(1)
Kerala Value Added Tax Act, 2003 — Section 85, 85(1)

Citation : (2024) 05 KL CK 0188

Hon'ble Judges : Murali Purushothaman, J

Bench : Single Bench

Advocate : M.R.Nandakumar, Krishna Rajendran, M.Ajay

Final Decision : Dismissed

Judgement

Murali Purushothaman, J

1. This writ petition is filed challenging Ext.P16 order passed by the State Information Commission (for short 'Commission'), the 1st respondent, under Section 20(1) of the Right to Information Act, 2005 (for short, the 'RTI Act, 2005').

2. The petitioner, while working a Commercial Tax Officer, 2nd circle, Kottayam, was designated as Public Information Officer under the RTI Act, 2005. While so, the 2nd respondent sought certain information regarding M/s Indiana Panels, Kottayam under the RTI Act, 2005. The information sought in the respective applications was provided by the petitioner. By Ext.P9 application, the 2nd respondent sought for copies of documents related to revenue recovery proceedings issued to District Collector, Kottayam by the office of the Commercial Tax Officer in respect of arrears of M/s Indiana Panels, Kottayam. To Ext.P9, the petitioner submitted Ext.P10 reply, stating that the documents sought cannot be provided under Section 8(1) (j) of the RTI Act, 2005 and Section 85 of the Kerala Value Added Tax Act, 2003 (for short, 'KVAT Act'). Against Ext.P10, the 2nd

respondent filed an appeal under the RTI Act, 2005 before the First Appellate Authority, the Deputy Commissioner of Commercial Taxes, Kottayam. The petitioner submitted reply stating that as per Section 85(1) of the KVAT Act, the disclosure of the details requested in Ext.P9 are prohibited. However, the Appellate Authority, by Ext.P13 order, directed the petitioner to furnish all information required by the 2nd respondent in Ext.P9 application.

3. Against Ext.P13, the petitioner, by Ext.P14 letter, sought clarification from the 1st respondent Commission, pointing out that Section 85 of the KVAT Act prohibits the disclosure of the details sought in Ext.P9 and, how the documents as requested can be provided to the applicant under the RTI Act, 2005. The Commission, by Ext.P15 letter, informed the petitioner that the Commission has no advisory jurisdiction and the applications under the RTI Act, 2005 have to be disposed of in accordance with the provisions of the said Act. The petitioner was thereafter transferred from the post of Commercial Tax Officer, 2nd circle, Kottayam and he vacated the charge of Public Information Officer. In the meantime, the 2nd respondent filed second appeal before the 1st respondent Commission and the 1st respondent directed the Public Information Officer to provide the required information. Having formed the opinion that the petitioner, without reasonable cause, failed to furnish the information required by the 2nd respondent, the Commission issued a show cause notice to the petitioner, seeking explanation as to why penalty should not be imposed on him. The petitioner submitted his explanation, and the Commission, after hearing him, passed Ext.P16 order, finding that the petitioner did not provide the information to the 2nd respondent within 30 days as required under Section 7(1) of the RTI Act, 2005, and is liable for penalty under Section 20 of the Act. However, taking a lenient view, a penalty of Rs.2,500/-alone was imposed on the petitioner. Ext.P16 order is challenged in this writ petition.

4. According to the petitioner, he did not provide the information sought in Ext.P9 because its disclosure was prohibited under Section 85 of the KVAT Act. He contends that there was no deliberate intention to cause any delay in furnishing the information, that he acted in good faith, and that the imposition of the penalty is illegal and arbitrary.

5. Heard Sri. M.R. Nanda Kumar, the learned counsel for the petitioner and Sri. M. Ajay, the learned standing counsel for the 1st respondent.

6. In Ext. P16, the Commission held that when the First Appellate Authority found that the stand taken by the petitioner that the information cannot be furnished under Section 8 (1) (j) of the RTI Act, 2005 and Section 85 of the KVAT Act was not correct, and directed the petitioner to furnish all required information to the 2nd respondent, it was improper for the petitioner to write to the Commission seeking clarification on the matter. The Commission found that the same can be viewed only as a tactics to delay the information to the 2nd respondent. The Commission also observed that, due to the said conduct of the petitioner, the 2nd respondent had to prefer a second appeal and had to wait for

one more year for getting information. However, taking note of the fact that the petitioner had responded to the applications and that it may be due to the sincerity to the department that he has acted in excess of his jurisdiction, showing leniency, the Commission imposed only a nominal penalty of Rs.2,500/- on the petitioner.

7. It is not for this Court to examine whether the petitioner was liable to furnish the information sought for in Ext.P9 or whether the information sought for is one which shall not be furnished in the light of Section 8 (1)(j) of the RTI Act, 2005 or Section 85 of KVAT Act. What this Court is called upon to consider is the legality and propriety of Ext.P16. The petitioner is a Public Information Officer designated under Section 5 (1) of the RTI Act, 2005. Section 19 provides for appeal against the decision of the Public Information Officer to such officer who is senior in rank to the Public Information Officer, in each public authority. The petitioner denied the information sought for by the 2nd respondent in Ext.P9 on the ground that the disclosure of information sought for is prohibited under Section 8 (1) (j) of the RTI Act, 2005 and Section 85 of the KVAT Act. In the appeal preferred by the 2nd respondent under the RTI Act, 2005, the First Appellate Authority directed the petitioner to furnish the information sought for in Ext.P9. When petitioner's order rejecting the application for information is interfered with in appeal, the petitioner cannot be aggrieved by the order whereby and whereunder his order has been set aside. The petitioner is bound to comply with the directions of the Appellate Authority and cannot seek any clarification from the Commission, the Second Appellate Authority or from any other authority. The Public Information Officer exercising powers under the RTI Act, 2005 cannot chase or contest his order. The conduct of the Public Information Officer in refusing to obey the orders of the Appellate Authority and seeking clarification from the Commission to justify his stand has to be deprecated. The Commission has, in Ext.P16, found that when the Appellate Authority, who is conversant with the provisions of the KVAT Act and the RTI Act, 2005, directed the petitioner to provide all the information sought for in Ext.P9, it was not right on his part to seek clarification from the Commission and the same can only be viewed as delay tactics. I fully endorse the view taken by the Commission. The conduct of the petitioner shows that he has not acted reasonably and diligently. The Commission, before passing Ext. P16 order, had issued show cause notice to the petitioner and also afforded an opportunity of hearing. The Commission has taken a lenient view and imposed only Rs.2,500/- as penalty. Ext.P16 does not suffer from any error of law or fact warranting interference by this Court.

The writ petition is, accordingly, dismissed.