

Madras High Court
Madras High Court
P.Jayasankar vs Chief Secretary To Government Of ... on 18 February, 2013
DATED: 18.02.2013

CORAM:

THE HON BLE MR. JUSTICE K.CHANDRU

W.P.Nos.3776 to 3778 of 2013

P.Jayasankar .. Petitioner in Writ Petition

Nos.3776 and 3777 of 2013

C.Selvaraj

President

Association of Transparency &

Anti Corruption

2, Alwarnagar 1st street

Ullagaram,

Chennai 61 .. Petitioner in W.P.NO.3778/2013

Vs.

1. Chief Secretary to Government of Tamilnadu

Fort St.George

Chennai .. 1st respondent in all Writ Petitions

2. Gunaseelan, I.P.S.,

PIO & IGP (Estt)

O/o.the Director General of Police

Beach Road, Chennai

.. 2nd respondent in W.P.No.3776/2013

3. K.Vivekanandan

PIO & Dy. Secretary to Governor of Tamilnadu

Raj Bhavan,

Guindy, Chennai 32

.. 2nd respondent in W.P.No.3777/2013

4. K.V.Muralidaran,

PIO & Dy.Secretary to Governor of Tamilnadu

Raj bhavan,

Guindy, Chennai 32

5. Chief Postmaster General,

TN Circle

Head Post Office

Anna Salai, Chennai 2

.. 2nd respondent & 3rd respondent in W.P.No.3778/2013

Prayer in W.P.No.3776/2013 : Petition under Article 226 of the Constitution of India praying for a Writ of Mandamus to the 1st respondent to institute disciplinary proceedings against the 2nd respondent apart from imposing the cash penalty of Rs.25,000/- U/Sections 20 (1) & (2) of RTI Act and consequently to direct the 2nd respondent to provide him with the correct information.

Prayer in W.P.No.3777/2013: Petition under Article 226 of the Constitution of India praying for a Writ of Mandamus to the 1st respondent to institute disciplinary proceedings against the 2nd respondent apart from imposing the cash penalty of Rs.25,000/- U/Ss 20 (1) & (2) of RTI Act and consequently to direct the 2nd respondent to provide him the requisite records.

Prayer in W.P.No.3778/2013: Petition under Article 226 of the Constitution of India praying for a Writ of Mandamus to the 1st respondent to institute disciplinary proceedings against the 2nd respondent apart from imposing the cash penalty of Rs.25 000/- U/Ss 20 (1) & (2) of RTI Act and consequently to direct the 2nd respondent to provide him the requisite information truthfully.

For Petitioner in

all Writ Petitions :: Mr.Manikandan Vathan Chettiar

For Respondents in

all Writ Petitions :: Mr.V.Subbiah, Spl.G.P.

COMMON ORDER

The petitioner in the first two Writ Petition is the Sub Inspector of Police, Anakkavur Police Station, Tiruvannamalai. In both the Writ Petitions, namely W.P.Nos.3776 and 3777 of 2013, the petitioner is seeking for a direction to the 1st respondent, namely the Chief Secretary to the Government of Tamil Nadu to institute disciplinary proceedings against the 2nd respondent (respective 2nd respondents, who have been made as party by their individual name and not in the name of the office held by them). The 2nd respondent in

W.P.No.3776 of 2013 is the Public Information Officer attached to the office of the Director General of Police. The 2nd respondent in W.P.No.3777 of 2013 is the Public Information Officer cum Deputy Secretary to Governor of Tamil Nadu, Raj Bhavan, Chennai. The prayer of the petitioner is that as they provided false information, the respective contesting respondents should be imposed with penalty of Rs.25,000/- and also appropriate disciplinary action should be initiated against them.

2. In the third Writ Petition (W.P.No.3778 of 2013), the petitioner described himself as President of the Association of Transparency and Anti Corruption and he has also filed the Writ Petition seeking for a direction to institute disciplinary action against the contesting 2nd respondent, who is the Public Information Officer cum Deputy Secretary to the Governor of Tamil Nadu.

3. In all these Writ Petitions, the petitioners have moved the Public Information Officers attached to the Department concerned and not satisfied with the reply given by the Public Information Officer, they had also moved the Tamil Nadu Information Commission by way of Second Appeals.

4. In the first Writ Petition, Tamil Nadu Information Commission by its order dated 1.11.2010 disposed of the second appeal filed by the petitioner stating that the application sent by the petitioner was not received by the office of the Director General of Police and also the Public Information Officer. Therefore, in order to give one more opportunity to the petitioner, the Commission, after giving copy of the petition to the two Officers, directed the Officers to provide the information to the petitioner within 15 days and the Second Appeal was closed. It is pursuant to the direction issued, the 2nd respondent by communication dated 29.11.2010 gave certain information to the petitioner.

5. Similarly, in W.P.No.3777 of 2013, the petitioner preferred a further appeal to the appellate authority and as against the reply given by the appellate authority, a second appeal was filed to the Information Commission. The second appeal was disposed of on 24.5.2012. In the second appeal, the Commission found that the petitioner did not appear for the enquiry, whereas the Public Information Officer was present and thereafter the Commission also noted that in the enquiry held on 17.8.2011, the concerned person appeared and informed the Chairman of the Commission that he should not conduct the enquiry. Referring to the judgment of the Supreme Court in the Central Board of Secondary Education and another vs. Aditya Bandyopadhyay and others reported in 2011 (8) SCC 497, the Commission recorded that the petitioner was abusing the process of law and his only intention is to make complaints against the Commission and he continues to make insinuating or defamatory remarks against the Commission. Therefore, the Commission passed an order that the Commission should not receive any order from the petitioner concerned. This is the subject matter of the second Writ Petition.

6. In the third Writ Petition, as against the order passed by the Public Information Officer, an appeal was filed and thereafter, a second appeal was filed to the Information Commission. The Information Commission on the appeal called for remarks from the 2nd respondent and the 2nd respondent communicated his reply dated 24.9.2012. It was informed that no information about the complaint made by the petitioner was available with the Governor's Secretariat with reference to the allegations made against the Chief Information Commission. The matter is not dealt with by the Governor Secretariat and it is dealt with by the Personnel and Administrative Department.

7. In all these cases, the petitioners seek to invoke the power under Sections 20(1) and 20 (2) of the Right to Information Act, 2005 against the contesting respondents. The petitioners in their affidavit had stated that they had already filed a Writ Petition to disqualify the Chief Information Commission before this Court in W.P.No.29244 of 2011 and it is pending. It is unnecessary to go into the allegations made against the Information Commissioner as well as his power to hold the office, as there is no impediment for the said officer from passing order.

8. In the present case, the order of the Commission is not under challenge. On the other hand, Mr.Manikandan Vathan Chettiar, learned counsel for the petitioner seeks for a direction, wherein and by which this Court will have to take over the powers vested on the Commission in imposing appropriate penalties against the Public Information Officers.

9. It must be noted that the Right to Information Act provides for hierarchy of authorities and thereafter it is only a second appeal to the Information Commission. It is only when the Information offered by the Public Information Officer is either erroneous or not satisfactory or he refuses to give the said information, the first appeal lies to the appellate authority and finally to the second appellate authority, which is the Commission.

10. In W.P.No.3778 of 2013, the Commission has issued notice to the Public Information Officer and on receipt of the reply from the said authority, the Commission is yet to pass final orders. In the first two Writ Petitions, as against the first order, the petitioner had second round of litigation and finally the Commission was forced to blacklist the petitioner from filing any further information with the Commission and with a direction that the petitions made by the petitioner should not be entertained. This was on the specific finding that the Information seeker has misbehaved during the first sitting and had made defamatory and insinuating remarks. In these cases, the Commission also has not been made as a party to the Writ Petitions so as to enquire into the correctness or otherwise of the allegations. Though normally if an order of the TNIC is under challenge, the Commission need not be made as a party, since in this case the TNIC's power is questioned, it must have been made as a party respondent in the Writ Petitions.

11. Insofar as the present request that this Court must take over the power from the Commission and issue a direction to the Chief Secretary to the Government of Tamil Nadu to institute disciplinary action against the concerned Public Information Officer and also to impose a penalty of Rs.25,000/-, is concerned, such a request cannot be countenanced by this Court because as per Section 20 of the Right to Information Act, the power to impose penalty as well as direction to the concerned Department to take disciplinary action entirely vests on the Information Commission. Section 20 of the Right to Information Act reads as follows: "20. Penalties: 1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished any information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information,it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty five thousand rupees; Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of providing that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of Section 7 or mala fidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may, be, under the service Rules applicable to him."

12. The issue as to how the power has to be dealt with under Section 20 of the Right to Information Act came to be considered by this Court vide judgment in Public Information Officer General Manager in-charge, Villupuram District Central Cooperative Bank Ltd., Villupuram and others Vs. Tamil Nadu Information Commission, Chennai 18 and others reported in (2010) 2 MLJ 140. In paragraph Nos.14 to 20 and 22, this Court had observed as follows:

14. Section 20(1) while empowering the Commission to impose penalty of Rs.250/- for each day till application is received or information is furnished subject to a maximum penalty not exceeding Rs.25000/-, also provides that the concerned officer should be given reasonable opportunity of being heard before any penalty is imposed on the said authority. The burden is also shifted on the concerned officer to prove that he had acted reasonably and diligently. Section 20(2) further empowers the Information Commission to decide that in case an information officer without any reasonable cause refused to receive an application or has not furnished information within the time provided or malafidely denied the request for information or knowingly given an incorrect, incomplete or misleading information or obstructed in furnishing the information, it can recommend for disciplinary action against such officer under the service rules applicable to him.

15. Undoubtedly, Section 20 is penal in nature. The section itself mandatorily provides for a reasonable opportunity to an information officer before inflicting him with any penalty or recommending for disciplinary action. While Sections 6 and 7 enables the information officer to dispose of the request made in an application, in case of their disobedience, the said Act enables the Information Commission to deal with such cases. The power of the Commission is provided under Section 18. Section 19 provides for an appeal. In case of refusal to furnish the information by the authority, the Information Commission can initiate an enquiry in respect of such refusal. Under Section 19, when an appeal is preferred, wherein an appropriate direction can be given for providing information, which is binding on the authorities concerned. It is only in cases, where the authorities have disobeyed the order of the Commission or there is specific finding that the obligation on the public authority was not performed in terms of Sections 6 and 7, the question of penalty or direction to take disciplinary action will arise.

16. In all these cases, the grievance of the petitioners was that they were not heard before the penalty was imposed and that there is no justification either to direct them to be placed under suspension or being recommended to their superiors to take disciplinary action under the relevant rules. In some of the cases, a defence was taken either about their non appearance before the Commission was due to pressing work elsewhere or that they had provided the relevant information to the applicants or that the applicants themselves have withdrawn the applications due to non availability of documents or that they had occupied their post only for a short while and that the incident had taken place before they were notified as an Information Officer.

17. In any event, a direction to recover the amount as penalty itself indicates that it is penal in nature and a further direction to take disciplinary action will result in their service career being jeopardised. Further, a day's delay involves penalty of Rs.250/- and a maximum penalty is fixed at Rs.25000/-. Therefore, the Commission has discretion to order penalties ranging from Rs.250/- to Rs.25000/-. But, in all the five cases, only maximum penalties were imposed on the petitioners. In some of the cases, direction to place them under suspension and to frame charges under the relevant service rules have also been recommended. In each of the case, the petitioners have some plausible defence to put forth. But no separate enquiries were conducted by the Commission.

18. Though Section 20 enjoins the Information Commission at the time of deciding any complaint or appeal and also to decide the question of penalty, a careful reading of the relevant provisions including first proviso to Section 20 will show that it obliges a reasonable opportunity of being heard on the question of penalty and in recommending initiation of disciplinary proceedings. It also requires the Commission to form an opinion about the conduct of an Information Officer. Therefore, it involves a separate action by the Commission against the officer concerned so that they can put forth their defence either about their bona fides or plead for

minimum penalty.

19. When minimum and maximum penalties have been prescribed, the proportionality of such penalties can also be granted, which can be pleaded by any officer. Therefore, it obliges the Commission to pass a separate order after issuing separate show cause notice to the information officer so as to enable them to satisfy the Commission with their defence.

20. In one case, the writ petitioner was not the notified officer at the relevant time. But it is necessary that penalty should be imposed on a named officer, who was acting as the Information Officer at the relevant time. The imposition of penalty and recommendation for disciplinary action can be taken on several grounds including the grounds of delay, malafide denial, incorrect or incomplete or misleading information, etc. Therefore, in each of the cases, penalty has to be in proportion to the charge levelled against an information officer. Unless the officer concerned is personally notified with the proposal of the Commission to impose a maximum penalty together with a direction to recommend disciplinary action, imposition of penalty may not be legally valid. The impugned orders are thus liable to be set aside both on the grounds of procedural violation and also on the question of proportionality of the penalty.

22. Though in a given case, this Court can go into the proportionality of a punishment, under normal circumstance, if the court is of the opinion that if a punishment requires reconsideration, it should be remanded to the very same authority for reconsideration. This was made clear in Om Kumar's case (cited supra). The following passages found in paragraphs 70 and 71 may be usefully quoted below: "70. In this context, we shall only refer to these cases. In Ranjit Thakur v. Union of India⁴³ this Court referred to proportionality in the quantum of punishment but the Court observed that the punishment was shockingly disproportionate to the misconduct proved. In B.C. Chaturvedi v. Union of India⁴⁴ this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then, the court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty. It was also so stated in Ganayutham².

71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as arbitrary under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment." (Emphasis added)

In the light of the same, this Court is not inclined to entertain such Writ Petitions requesting this Court to take over the power of the Information Commission.

13. Lastly, as regards the question as to whether the particular information seeker can be disqualified or blacklisted from sending further representation having regard to the conduct of the concerned person, certainly if a person abuses the process of law and also insinuating the Commission, then the Chief Information Commissioner can be appointed only as a person of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

14. The Supreme Court vide its judgment in Namit Sharma vs. Union of India reported in 2013 (1) SCC 745 had dealt with the scope of Section 20 of the R.T.I Act and declared that the Information Commission exercises a quasi judicial power. Further, it has held that though Section 23 excludes the jurisdiction of other

courts but an High Court under Article 226 can judicially review the orders of the Commission. Hence, it is necessary to extract the following passages found in paragraphs 37, 62, 74 and 80: "37. Another very significant provision which was non-existent in the Act of 2002, is in relation to penalties. No provision was made for imposition of any penalty in the earlier Act, while in the Act of 2005 severe punishment like imposition of fine up to Rs.250 per day during which the provisions of the Act are violated, has been provided in terms of Section 20(1). The Central/State Information can, under Section 20(2), even direct disciplinary action against the erring Public Information Officers. Further, the appropriate Government and the competent authority have been empowered to frame under Sections 27 and 28 of the Act of 2005, respectively, for carrying out the provisions of the Act. Every rule made by the Central Government under the Act has to be laid before each House of Parliament while it is in session for a total period of 30 days, if no specific modifications are made, the rules shall thereafter have effect either in the modified form or if not annulled, it shall come into force as law.

62. Under the provisions of the Act, particularly Sections 4, 12, 18, 19, 20, 22, 23 and 25, it is clear that the Central or State Information Commission, as the case may be, not only exercises adjudicatory powers of a nature no different than a judicial tribunal, but is vested with the powers of a civil court as well. Therefore, it is required to decide a lis, where information is required by a person and its furnishing is contested by the other. The Commission exercises two kinds of penal powers; firstly, in terms of Section 20(1), it can impose penalty upon the defaulters or violators of the provisions of the Act and, secondly, Section 20(2) empowers the Central and the State Information Commission to conduct an enquiry and direct the disciplinary authority concerned to take appropriate action against the erring officer in accordance with law. Hence, the Commission has powers to pass orders having civil as well as penal consequences. Besides this, the Commission has been given monitory and recommendatory powers. In terms of Section 23, the jurisdiction of the civil courts has been expressly barred.

74. ... It is clear that the authorities concerned, particularly the Information Commission, possess the essential attributes and trappings of a court. Its powers and functions, as defined under the Act of 2005 also sufficiently indicate that it has adjudicatory powers quite akin to the court system. They adjudicate matters of serious consequences. The Commission may be called upon to decide how far the right to information is affected where information sought for is denied or whether the information asked for is "exempted" or impinges upon the "right to privacy" or where it falls in the "no-go area" of applicability of the Act. It is not mandatory for the authorities to allow all requests for information in a routine manner. The Act of 2005 imposes an obligation upon the authorities to examine such matter seriously being fully cognizant of its consequences and effects on the right of others. It may be a simple query for information but it may have far-reaching consequences upon the right of a third party or an individual with regard to whom such information is sought. Undue inroad into the right to privacy of an individual which is protected under Article 21 of the Constitution of India or any other law in force would not be permissible. In *Gobind v. State of M.P.*, this Court held that : (SCC p.155, para 22) "22... privacy-dignity claims deserve to be examined with care and to be denied only when an important countervailing interest is shown to be superior."

In *Ram Jethmalani v. Union of India*, this Court has observed that the right to privacy is an integral part of the right to life. Thus, the decision-making process by these authorities is not merely of an administrative nature. The functions of these authorities are more aligned towards the judicial functions of the courts rather than mere administrative acts of the State authority.

80. Further, Section 23 is a provision relating to exclusion of jurisdiction of the courts. In terms of this section, no court shall entertain any suit, application or other proceedings in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal provided for under this Act. In other words, the jurisdiction of the court has been ousted by express language. Nevertheless, it is a settled principle of law that despite such excluding provision, the extraordinary jurisdiction of the High Court and the Supreme Court, in terms of Articles 226 and 32 of the Constitution respectively, cannot be divested. It

is a jurisdiction incapable of being eroded or taken away by exercise of legislative power, being an important facet of the basic structure of the Constitution. In L.Chandra Kumar, the Court observed that the constitutional safeguards which ensure the independence of the Judges of the superior judiciary not being available for the members of the Tribunal, such tribunals cannot be considered full and effective substitute to the superior judiciary in discharging the function of constitutional interpretation. They can, however, perform a supplemental role. Thus, all decisions of the tribunals were held to be subject to scrutiny before the High Court under Articles 226/227 of the Constitution. Therefore, the orders passed by the authority, i.e., the Central or the State Information Commissions under the Act of 2005 would undoubtedly be subject to judicial review of the High Court under Articles 226/227 of the Constitution."

In view of the above finding, henceforth, no information seeker can be allowed to insinuate or defame the Commissioners in the guise of prosecuting their cases.

15. Under such circumstances, when specific power is vested on the Commissioner and the Commission had proceeded against the information seeker, who had abused the Chief Information Commissioner in the course of his proceedings, it will be open to the said authority to disqualify a particular information seeker by passing a speaking order.

16. A similar order has been passed by this Court when a particular individual had abused the process of law and kept on filing frivolous and irrelevant cases. A Division Bench of this Court in Dr. S. Ching Chyang Ching Vs. The Registrar, Tamil Nadu Administrative Tribunal and The Director of Elementary Education (MANU/TN/0692/2008) in W.P. Nos. 18727 of 2001, 29158 of 2002 etc batch cases., has directed not to entertain any more petitions from the said person concerned.

17. In the light of the above, this Court is not inclined to entertain the Writ Petitions, especially in the context that the petitioner makes series of allegations against the Chief Information Commissioner, who has also not been made as party in these Writ Petitions. There is no case made out. Hence, all the Writ Petitions stand dismissed. No costs. 18.02.2013

Index:Yes/no

Internet:Yes/no

ajr

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