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THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.04.2013

Coram

THE HONOURABLE Mr. JUSTICE ELIPE DHARMA RAO

AND

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.P.No.20485 of 2012

and

M.P.No.1 of 2012

The Registrar General,

High Court of Madras,

Chennai 600 104.

.. Petitioner

Vs.

1.K.Elango

2.The Registrar,

The Tamil Nadu Information Commission,

No.2, Sir Thyegaraya Salai,

Teynampet, Chennai 600 018.

.. Respondents

(R2 impleaded as per order dated

04.10.2012 in M.P.2/2012)

PRAYER: Petition filed under Article 226 of the Constitution of India praying for an issuance of a Writ of Certiorari calling for the records in Case No.10447/Enquiry/A/11 dated 10.01.2012 of the Tamil Nadu Information Commission and quash the same.

For Petitioner : Mr.S.Haja Mohideen Gisthi

For 1st Respondent : Party in Person

For 2nd Respondent : Mr.G.Rajagopalan, Senior Counsel

For M/s.G.R. Associates

ORDER

M.VENUGOPAL,J.

The Petitioner has preferred the instant Writ Petition as against the order dated 10.01.2012 in Case No.10447/Enquiry/A/11 dated 10.01.2012 passed by the Tamil Nadu Information Commission, Chennai.

2.The Tamil Nadu Information Commission, Chennai, in Case No.10447/Enquiry/A/11 dated 10.01.2012 has, among other things, observed that 'A perusal of the appeal and the replies furnished by the public authority shows that the appellant has only asked for details relating to the number of subordinate Judges, employees, compliants of bribe and so on in the subordinate judiciary. He has not asked for details of anything which could be termed as Judicial proceedings or part of the Judicial process. During the enquiry it was also confirmed by the Assistant Public Information Officer that these details are received and collected by the Registry of the High Court routinely. Section 4 of the RTI Act very clearly defines the obligation of the public authorities. Most of the information sought for by the present appellant seem to be covered in this section. Such being the case the Hon'ble High Court,Madras, being a public authority, requires to provide access to these information

unless expressly prohibited by a Competent forum or exempted as defined under various sections of the RTI Act. It is also observed that the appellant has asked only for statistical details and not names of individuals. Therefore, the argument of "un warranted invasion of privacy of individuals" is very weak and hence not accepted' and resultantly, allowed the appeal by directing the public authority (Writ Petitioner) to furnish the details within 15 days from the date of receipt of this order.

3. According to the Learned Counsel for the Petitioner/Registrar General, High Court of Madras, the impugned order dated 10.01.2012 in Case No.10447/Enquiry/A/11 passed by the Tamil Nadu Information Commission, Chennai is legally void and therefore, it is liable to be set aside.

4. The Learned Counsel for the Petitioner urges before this Court that the impugned order has been passed in violation of the provisions of the Right to Information Act, 2005 and as such, it is void ab initio.

5. The Learned Counsel for the Petitioner contends that the Tamil Nadu Information Commission, Chennai, while passing the impugned order dated 10.01.2012, has failed to appreciate an important fact that the information sought for by the 1st Respondent/Petitioner is infringing the internal administration of Hon'ble High Court of Madras.

6. Yet another submission of the Learned Counsel for the Petitioner is that if the request of the 1st Respondent/Petitioner is acceded to by the High Court of Madras, then, it will set a bad precedent for others.

7. Per contra, the 1st Respondent/Petitioner submits that he has enrolled as an Advocate in the Bar Council of Tamil Nadu and Pondicherry in the year 1986 and is practising before the High Court of Madras and before the trial Courts in Chennai. Also that, he is engaged in various social activities. Furthermore, he was appointed as an Assistant Solicitor General of India in the High Court of Madras during the period 2008-2009. He served as Special Government Pleader for the Tamil Nadu State during the year 2006 - 2008.

8. According to the 1st Respondent/Petitioner that he is the legal advisor of several Residents' Welfare Associations and Traders' Welfare Associations at K.K. Nagar, Chennai 600 078. He served as President of Rotary Club of Madras, T.Nagar (2005-2006) and General Secretary of Anti Bribe Coalition, (a public trust) a wing of EXNORA international and an active member of India Against Corruption.

9. The 1st Respondent/Petitioner contends that he approached the Public Information Officer of the High Court, Madras to find out the mechanism and structure the High Court has to take action against the corrupt employees and the Presiding Officers of the

Subordinate Judiciary and sought certain information, by means of queries, as referred in para 3 of the Affidavit filed by the Writ Petitioner.

10. According to the 1st Respondent/Petitioner, the information sought for by him are all matters defined under Section 2(f) of the Right to Information Act, 2005. As a matter of fact, those information do not come within Section 8 of the Right to Information Act, 2005.

11. The 1st Respondent/Petitioner lodged an Appeal dated 20.12.2010 before the Appellate Authority (Writ Petitioner). But the Appellate Authority had not furnished information sought for by him vide his letter dated 01.11.2010. As such, he was performed to prefer Second Appeal to the Information Commissioner on 18.03.2011. The 2nd Respondent/Tamil Nadu Information Commission, through its direction dated 23.03.2011, has transmitted the petition dated 16.03.2011 of the 1st Respondent for taking appropriate action. Also, the 2nd Respondent/Information Commission has sought the remarks of the Writ Petitioner/Registrar General by 27.04.2011 for the said petition. The Registrar (Administration)/Public Information Officer of the Petitioner/High Court sent a reply dated 27.04.2011 to the Registrar of the 2nd Respondent/Information Commission stating that the remarks called for in the matter would be furnished shortly. However, the Writ Petitioner (Appellate Authority), on 29.04.2011, sent a letter to the Information Commission (marking a copy to him) denying the information. However, the Tamil Nadu Information Commission, Chennai passed an order on 10.01.2012 directing the Petitioner/Appellant to furnish the informations to the 1st Respondent/ Petitioner.

12. The Learned Senior Counsel appearing for the 2nd Respondent/Tamil Nadu Information Commission submits that the 1st Respondent/Petitioner, as a citizen, has a statutory right, to obtain the informations sought for by him, through his Letter dated 01.11.2010 addressed to the Public Information Officer of the Writ Petitioner/High Court. Further, Section 4 of the Act speaks of 'Obligations of the Public Authority'. As such, the informations sought for by the 1st Respondent/ Applicant through his Letter dated 01.11.2010 do squarely come within the purview of Section 4 of the Act.

13. The Learned Senior Counsel for the 2nd Respondent urges before this Court that Section 22 of the Right to Information Act enjoins that the provisions of the Act have an overriding effect on the Official Secrets Act, 1923 (19 of 1923) and any other law for the

time being in force etc. Viewed in that perspective, it is contended that the informations sought for by the 1st Respondent/Petitioner, by his Letter dated 01.11.2010, can be supplied by the Petitioner/High Court, because of the reason that he has sought for statistical particulars and names of individuals concerned. In short, the Learned Senior Counsel for the 2nd Respondent contends that the impugned order dated 10.01.2012 passed by the Tamil Nadu Information Commission does not suffer from any impropriety or illegality, in the eye of law.

14. The Learned Counsel for the Petitioner submits that the information sought for by the 1st Respondent/Petitioner in his application dated 01.11.2010 addressed to Public Information Officer of High Court relates to the internal administration of the Madras High Court and the information sought for by the 1st Respondent/Petitioner from Serial Nos.1 to 9 in his application dated 01.11.2010, if furnished would cause an invasion of privacy of the individuals. Therefore, under the ingredients of Section 8(e) and (f) of the Act, the Writ Petitioner is exempted to disclose the information sought for. Also, as per Section 8(i) of the Act, the Petitioner/High Court is exempted to disclose the information sought for by the 1st Respondent/Petitioner.

15. To lend support to the contention that the information sought for by the 1st Respondent/Petitioner, in his application dated 01.11.2010 addressed to the Public Information Officer of High Court, Madras, cannot be acceded to by the Petitioner, the Learned Counsel for the Petitioner cites the order of the Hon'ble Supreme Court in Special Leave Petition (Civil) No.27734 of 2012 (@ CC 14781/2012) dated 03.10.2012 between Girish Ramchandra Deshpande V. Cen. Information Commissioner & Others, wherein in paragraphs 12 to 16, it is observed and laid down as follows:

"12. The petitioner herein sought for copies of all memos, show cause notices and censure/punishment awarded to the third respondent from his employer and also details viz. movable and immovable properties and also the details of his investments, lending and borrowing from Banks and other financial institutions. Further, he has also sought for the details of gifts stated to have accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is whether the above-mentioned information sought for qualifies to be personal information as defined in clause (j) of Section 8(1) of the RTI Act.

13. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show cause notices and orders of censure /punishment etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression 'personal information', the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

14. The details disclosed by a person in his income tax returns are 'personal information' which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information.

15. The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act.

16. We are, therefore, of the view that the petitioner has not succeeded in establishing that the information sought for is for the larger public interest. That being the fact, we are not inclined to entertain this special leave petition. Hence, the same is dismissed."

16. The Learned Counsel for the Petitioner also seeks in aid of the order of this Court dated 12.02.2010 in W.P.Nos.8068 and 8069 of 2008 between M.Velayutham V. The Registrar, Tamil Nadu Information Commission, Teynampet, Chennai- 18 & 3 others, wherein in paragraphs 10 and 11, it is observed and held as follows:

"10. Before closing the case it must be noted that whenever a person challenges the order of the State or Central Information Commission, it is not necessary to make the Commission a party to the writ petition. The Commission is a statutory appellate authority and is expected to function within the four corners of the RTI Act. If its orders are under challenge, the Commission is not expected to defend it. In a writ for certiorari the order will have to speak for itself. If the Commission is made as a party, it will be an unnecessary drain on the Commission to engage counsel to defend its orders. In no case a court is expected to defend

its decisions. More often, the Commission's orders are challenged by the Government departments or information officers at the expense of the Government. In these cases, the applicant who sought the information will be a party and will be expected to defend his request.

11. Only for the purpose of calling for records or sending a copy of the order, the Information Commission need not be made as a party. If the persons who do not file proper records, then a notice may be sent by the Registry to call for the records if ordered by the courts. Likewise, on complicated matters if any legal assistance is required, the Court can appoint an 'amicus curiae' to help the Court. The orders of the Court on all matters involving the Right to Information Act, as a matter of routine, can be marked to the appropriate Commission. The Registry shall henceforth must ask the counsel who files writ petitions to delete the Information Commission from the array of parties. This will not only reduce the paper work and administrative difficulties faced by the Commission, besides saving them draining their meagre resources."

17. The 1st Respondent/Petitioner, in his Application dated 01.11.2010 addressed to the Public Information Officer of the High Court, Madras, has sought the following information by raising queries to be furnished to him. They are as follows:

"1. How many Subordinate Judges are there in service in the state of Tamil Nadu. The district-wise list may be furnished to me as per the hierarchy?

2. How many employees are serving in the judicial department in the whole of Tamil Nadu (including the Government servants on deputation)?

3. How many judicial officers, police officers and staffs are working in the Vigilance Department of the registry of Madras High Court?

4. Does your vigilance department is having any branches in the district so as to receive the complaint from the general public against the judicial officer and court staffs?

5. Does your registry is having any tie up or coordination with the office of Vigilance and Anti-corruption, Rajaannamalai Puram, Chennai 28 to trap the judicial officers or court staffs on the basis of the complaints from the affected persons?

6. Does your registry is having special team for trapping the corrupt judicial officers and court staffs?

7. Between 2001 to 2010 how many complaints have been received by your Registry and Vigilance Department, kindly give complaint wise break up figure (that is how many complaints against DJ, ADDLJ, SJ, DMC, FTC Judges, Magistrates and Court staffs)?

8. How many complaints ended in dismissal, suspension, issuance of memo and dropping of the case and conviction between the said 2001 to 2010?

9. Between 2001 to 2010 how many complaints against High Court staffs have been received relating to bribe and the fate of those complaints?"

18. It transpires that the 1st Respondent/Petitioner has filed an Appeal under Section 19 of the Right to Information Act, 2005 on 20.12.2010 before the Appellate Authority (Writ Petitioner). Since the Public Information Officer of the High Court had not furnished him the required information sought for by him through his letter dated 01.11.2010. In the Appeal filed by the 1st Respondent/Petitioner before the Appellate Authority (Writ Petitioner) dated 20.12.2010, he had sought for the information earlier sought for by him as per his Application dated 01.11.2010. Inasmuch as the 1st Respondent/ Petitioner was not furnished with the requisite informations sought for by him, by the Writ Petitioner/Appellate Authority, he filed Second Appeal before the Tamil Nadu State Information Commission, Chennai praying for issuance of a direction to the Writ Petitioner/Appellate Authority to furnish the informations, as sought for by him, in his letter dated 01.11.2010 with cost and penalty to be imposed.

19. The Tamil Nadu Information Commission in Case No.10447/ Enquiry/A/20 issued summons dated 16.03.2011 to the Public Information Officer of the High Court, Madras requiring him to appear before the Commission in person along with all original records on 21.12.2011 at 3.30 p.m. for further consideration of the matter.

20. The Tamil Nadu Information Commission, on 10.01.2012 in Case No.10447/Enquiry/A/11 passed an order by not accepting the argument "un warranted invasion of privacy of individuals" and allowed the Appeal by directing the Petitioner/Public Authority to furnish the details sought for by the 1st Respondent/Petitioner within 15 days from the date of receipt of this order.

21. It is to be borne in mind that under the Right to Information Act, 2005 an authority has a rudimentary function to perform either to furnish the information or deny the information. As a matter of fact, there is no specific Article in the Constitution of India which provides for the citizens right to know. However, Article 19(1)(a) provides for freedom of thought and expression which indirectly includes right to obtain information. Further, Article 21 guarantees right to life and personal liberty to citizens. Undoubtedly, Right to Life is incomplete if basic human right viz., 'Right to Know' is not included within its umbrage.

22. Right to information is seen in Article 19(1)(a), 14 and 21 of the Constitution.

23. It is not out of place for this Court to point out that Sections 1 and 2 of the Right to Information Act, 2005 deal with title, commencement and definitions of important terms employed under the Act. Sections 6 and 7 specified procedure for submitting the requisition for obtaining information and disposal of applications. Section 8 deals with cases of exemption from disclosure of information, when such disclosure affects prejudicial the sovereignty and integrity of India etc. Section 9 deals with Grounds for rejection of applications. Section 18 deals with the Powers and Functions of the Central Information Commission or the State Information Commission as the case may be.

24. It is to be noted that Section 2(e) of the Right to Information Act, 2005 defines the term 'Competent authority' meaning,

"(i) the Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having such Assembly and the Chairman in the case of the Council of States or Legislative Council of a State;

(ii) the Chief Justice of India in the case of the Supreme Court;

(iii) the Chief Justice of the High Court in the case of a High Court;

(iv) the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;

(v) the administrator appointed under article 239 of the Constitution."

25. Section 2(f) of the Act defines 'Information' as follows:

"(f) information means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating

to any private body which can be accessed by a public authority under any other law for the time being in force."

26. Also, Section 2(h) of the Act means 'Public Authority' as under:

"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;

(i) record includes-

(a) any document, manuscript and file;

(b) any microfilm, microfiche and facsimile copy of a document;

(c) any reproduction of image or images embodied in such microfilm

(whether enlarged or not); and

(iii)(d) any other material produced by a computer or any other device."

27. Section 2(j) of the Act defines 'Right to Information' meaning,

"the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-

(i) inspection of work, documents, records;

(ii) taking notes, extracts or certified copies of documents or records;

(iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device."

28.As per Section 6 of the Right to Information Act, if a person desires to obtain an information shall make a request in writing or through electronic means in English or Hindi or in the official language along with prescribed fee to the concerned public authority.

29.It is true that the applicant is not required to furnish any reason requiring the information or any personal details except those that may be necessary for the purpose of contacting him.

30.Soon after the receipt of request for supplying/furnishing of information, the Central Public Information Officer/State Public Information Officer is to deal with the matter in issue within 30 days. If the information sought for relates to the life or liberty of an individual, the same is to be provided within 48 hours of the receipt of request. If the concerned officer fails to render his decision within 30 days or 48 hours as the case may be, he shall be deem to have refused the request.

31.In case, the information is to be furnished on payment of any fee, the Officer is required to send an intimation to the requisitioner together with relevant particulars of fee.

32.If a physically challenged person requires an access to the record, then, the Officer is to provide an assistance to enable him to get an access to the information. Indeed, no fee is to be charged in regard to the persons who are below the poverty line. However, if the public authority fails to provide information within the specified limits which are to be provided on payment of fee, it shall be provided free of charge.

33.Where a request has been rejected, the concerned officer is to communicate the reasons for denying the request, the time limit within which an Appeal may be filed and the relevant particulars of the Appellate Authority to the concerned individual who has made the request.

34. It cannot be gainsaid that under the Right to Information Act, 2005, the Public Information Officer concerned is an independent authority, in law. If the said Officer fails to furnish the informations sought for by the concerned Applicant, within the time specified under the Act, then, in law, it amounts to deemed rejection/denial of request. However, if the Public Information Officer malafidely denies/rejects the request of an Applicant either wholly or in part, then, he can be proceeded with under the Right to Information Act, 2005.

35. For denying the information as per Section 8(e) of the Right to Information Act, 2005, the following paramount factors may be taken into consideration.

- (a) Whether supplying/furnishing information on public records would impede the investigation/apprehension/prosecution;
- (b) Whether the information is such that can be refused/denied to Parliament or State Legislature;
- (c) Whether public interest in disclosure earns the protected interest;
- (d) Section 22 of the Right to Information Act has an overriding effect and as such, the legal procedure enshrined for quasi judicial proceedings gets overridden by the Right to Information Act.

36. In this connection, this Court worth recalls the decision of the Hon'ble Supreme Court in *Namit Sharma V. Union of India* [2013-2-L.W.1 at page 2] wherein it is laid down as follows:

"The Right to Information, like any other right, is not an unlimited or unrestricted right. It is subject to statutory and constitutional limitations. The doctrine of severability finds place in the statute in the shape of Section 10 of the Act of 2005".

37. Indeed, Section 18 of the Right to Information Act deals with the Powers and Functions of the Commission. Section 18(3) of the Right to Information Act, 2005 enjoins as follows:

"(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;

- (b) requiring the discovery and inspection of documents;
- (c) receiving evidence on affidavit;
- (d) requisitioning any public record or copies thereof from any court or office;
- (e) issuing summons for examination of witnesses or documents; and
- (f) any other matter which may be prescribed."

Also, Section 18(4) of the Act, runs thus:

"(4)Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds."

38.From the reading of the ingredients of Section 18 of the Act, it is crystal clear that the State Information Commission has power to conduct an enquiry in a given case. It is to be remembered that the Information Commission is only required to find out whether the endorsement issued by the Public Information Officer is in confirmity with the Right to Information Act, 2005 and whether the information which is sought for has been intentionally/deliberately held back or the same has not been furnished within the specified time.

39.It is to be pointed out that in an Appeal filed under Section 19 of the Act, under Section 18(4) of the Act, the State Information Commission before passing an order (relating to an information of a third party) has to issue a Notice to the third party for the purpose of providing a reasonable opportunity [obviously, in terms of the Principles of Natural Justice]. Coming to Section 20 of the Act, in regard to the imposition of penalty under Section 20 of the Act, the same is undoubtedly penal in nature. Before awarding any penalty, on an Official/Officer, a reasonable opportunity is to be provided to the deviant concerned. However, the directions/recommendations of the State Information Commission to initiate action against an deviant/ errant Public Information Officer are not binding on the appropriate authority. It is purely within the ambit of the Public Authority/ Competent

Authority either to concur with the directions/ recommendations so issued/made or not to concur with the same.

40.It cannot be gainsaid that the Information Commission exercises judicial powers and it is a Tribunal entrusted with the task of adjudicating upon special matters and disputes between the parties. The Commission is a Tribunal vested with the appellate power to decide the appeals etc., as per the decision in Poornaprajna House Building Co-operative Society Limited V. Karnataka Information Commission & others, [AIR 2007 Karnataka 136]. Furthermore, in the said decision at page 136, it is observed as follows:

"It is settled that any authority or body of persons constituted by law or having legal authority to adjudicate upon questions affecting the rights of a subject and enjoined with a duty to act judicially or quasi judicially is amenable to the certiorari jurisdiction of the High Court. Similarly, Art. 227 of the Constitution confers on every High Court the power of superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any Court or tribunal constituted by or under any law relating to armed forces. Thus, the orders of the Commission are amenable to the jurisdiction of the High Court."

41.In the decision Ahmedabad Education Society & Another V. Union of India & Others, [AIR 2008 Gujarat 42 at page 44], it is inter alia observed as follows:

"Looking to the provisions of Section 18 of the Act,2005, State Chief Information Commissioner can hold an inquiry and can impose penalty upon erring officer. No order can be passed against the third party otherwise right of first appeal as well as second appeal of third party will be taken away. Looking to the facts of the present case, it is clear that the State Chief Information Commissioner has exceeded his jurisdiction under the Act,2005.

(iv) Order passed without giving an opportunity of being heard, lead to arbitrariness. Arbitrariness and equality are sworn enemies of each other. Where arbitrariness is present, equality is always, absent and where equality is present, arbitrariness is absent. In the facts of this case, there is gross violation of principles of natural justice. Hence, the order is arbitrary and ,therefore, is violative of Article 14 of the Constitution of India."

42. This Court aptly points out the decision of the Hon'ble Supreme Court in *Namit Sharma V. Union of India*, [2013-2-L.W.1] at special page 41 & 42, in paragraphs 99 to 102, wherein it is observed as follows:

"99. Persons of eminence in public life is also an expression of wide implication and ramifications. It takes in its ambit all requisites of a good citizen with values and having a public image of contribution to the society. Such person should have understanding of concepts of public interest and public good. Most importantly, such person should have contributed to the society through social or allied works. The authorities cannot lose sight of the fact that ingredients of institutional integrity would be applicable by necessary implication to the Commissions and their members. This discussion safely leads us to conclude that the functions of the Chief Information Commissioner and Information Commissioners may be better performed by a legally qualified and trained mind possessing the requisite experience. The same should also be applied to the designation of the first appellate authority, i.e., the senior officers to be designated at the Centre and State levels. However, in view of language of Section 5, it may not be necessary to apply this principle to the designation of Public Information Officer.

100. Moreover, as already noticed, the Information Commission, is performing quasi-judicial functions and essence of its adjudicatory powers is akin to the Court system. It also possesses the essential trappings of a Court and discharges the functions which have immense impact on the rights/ obligations of the parties. Thus, it must be termed as a judicial Tribunal which requires to be manned by a person of judicial mind, expertise and experience in that field. This Court, while dealing with the cases relating to the powers of the Parliament to amend the Constitution has observed that every provision of the Constitution, can be amended provided in the result, the basic structure of the Constitution remains the same. The dignity of the individual secured by the various freedoms and basic rights contained in Part III of the Constitution and their protection itself has been treated as the basic structure of the Constitution.

101. Besides separation of powers, the independence of judiciary is of fundamental constitutional value in the structure of our Constitution. Impartiality, independence, fairness and reasonableness in judicial decision making are the hallmarks of the Judiciary. If

Impartiality is the soul of Judiciary, 'Independence' is the life blood of Judiciary. Without independence, impartiality cannot thrive, as this Court stated in the case of *Union of India v. R. Gandhi, President, Madras Bar Association* [(2010) 11 SCC 17].

102. The independence of judiciary *stricto sensu* applies to the Court system. Thus, by necessary implication, it would also apply to the tribunals whose functioning is quasi-judicial and akin to the court system. The entire administration of justice system has to be so

independent and managed by persons of legal acumen, expertise and experience that the persons demanding justice must not only receive justice, but should also have the faith that justice would be done."

Also, in the aforesaid decision at page 42 in paragraph 103, it is held as follows:

"103. The above detailed analysis leads to an ad libitum conclusion that under the provisions and scheme of the Act of 2005, the persons eligible for appointment should be of public eminence, with knowledge and experience in the specified fields and should preferably have a judicial background. They should possess judicial acumen and experience to fairly and effectively deal with the intricate questions of law that would come up for determination before the Commission, in its day-to-day working. The Commission satisfies abecedarians of a judicial tribunal which has the trappings of a court. It will serve the ends of justice better, if the Information Commission was manned by persons of legal expertise and with adequate experience in the field of adjudication. We may further clarify that such judicial members could work individually or in Benches of two, one being a judicial member while the other being a qualified person from the specified fields to be called an expert member. Thus, in order to satisfy the test of constitutionality, we will have to read into Section 12(5) of the Act that the expression knowledge and experience includes basic degree in that field and experience gained thereafter and secondly that legally qualified, trained and experienced persons would better administer justice to the people, particularly when they are expected to undertake an adjudicatory process which involves critical legal questions and

niceties of law. Such appreciation and application of legal principles is a sine qua non to the determinative functioning of the Commission as it can tilt the balance of justice either way. Malcolm Gladwell said, the key to good decision making is not knowledge. It is understanding. We are swimming in the former. We are lacking in the latter. The requirement of a judicial mind for manning the judicial tribunal is a well accepted discipline in all the major international jurisdictions with hardly with any exceptions. Even if the intention is to not only appoint people with judicial background and expertise, then the most suitable and practical resolution would be that a judicial member and an expert member from other specified fields should constitute a Bench and perform the functions in accordance with the provisions of the Act of 2005. Such an approach would further the mandate of the statute by resolving the legal issues as well as other serious issues like an inbuilt conflict between the Right to Privacy and Right to Information while applying the balancing principle and other incidental controversies. We would clarify that participation by qualified persons from other specified fields would be a positive contribution in attainment of the proper administration of justice as well as the object of the Act of 2005. Such an approach would help to withstand the challenge to the constitutionality of Section 12(5)."

43. At this stage, we deem it appropriate to cite the following decisions in furtherance of substantial cause of justice:

(a) In the decision *Kunche Durga Prasad and another V. Public Information Officer, Office of Chief Manager (HR) Oil and Natural Gas Corporation Limited, Rajamundry & others*, [AIR 2010 Andhra Pradesh 105] at page 106 in paragraph 6 and 7, it is observed as follows:

"6. Neither the 1st petitioner nor any other unsuccessful applicants have filed application before the 1st respondent pointing out any grievance. The 2nd respondent, who is an advocate, filed the application seeking information as referred to above. The 1st respondent furnished information on 13.02.2009 wherein it was mentioned that 73 SC candidates were selected; not an individual officer but a committee has selected the candidates; and a list indicating the particulars of posting orders of all the 284 candidates was furnished. So far as the request to furnish the copies of qualification certificates submitted by the selected candidates is concerned, the 1st respondent took the view that such an information is exempted under Section 8(1)(j) of the Act. The 2nd petitioner filed an appeal under Section 19 of the Act before the 3rd respondent. The latter upheld the view taken by the 1st respondent. Therefore, it needs to be seen as to whether the information sought for by the 2nd petitioner i.e. furnishing copies of the qualification certificates of the selected candidates is not exempted under Section 8(1)(j) of the Act.

The said provision reads as under:

8. Exemption from disclosure of information:-- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

.....

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

7. From a perusal of the above, it is evident that the exemption gets attracted under two circumstances namely, (a) if the information is personal in nature and has no relationship to

any public activity or interest, and (b) furnishing of the same would cause unwarranted invasion of privacy of an individual. These exemptions are, however, subject to the opinion that may be formed by the Central or State Public Information Officer or the appellate authority that the larger public interest justifies the disclosure of such information."

Moreover, in the aforesaid decision at page 107, in paragraph 10 and 11, it is observed as follows:

"10. The 2nd petitioner is not able to state as to how the copies of qualification certificates of the selected candidates have any characteristics of public activity or partake public interest. The aggrieved parties including the 1st petitioner have already approached this Court by filing W.P.No.17355 of 2008. Such of the selected candidates who are impleaded in that writ petition would certainly have to defend themselves. Any direction to the respondents herein to furnish the testimonials of the selected candidates to the petitioners would have its own impact upon the pleadings or the stands which the parties to the pending proceedings may take. It may appear to be enterprising or tempting for any one to have access to every possible information for an individual whether it relates to an individual or not. The freedom of an individual to have access to the information cannot be projected to such an extent as to invade the rights of others. Further, Section 6(2) of the Act cannot be read in isolation, nor can be interpreted to mean that an applicant can seek every information relating to any one. Just as he cannot be compelled to divulge the purpose for which he needs the information, he must respect the right of the other man to keep the facts relating to him, close to his chest, unless compelled by law to disclose the same. It is relevant to mention that even where an individual is placed under obligation to speak, the law can only draw adverse inference from his failure or refused to speak but cannot go further to invade his privacy or private life.

11. The learned counsel for the petitioners submits that the view taken by the respondents conflicts with the very spirit of Section 6(2) of the Act. This contention cannot be accepted for the simple reason that Section 8 of the Act, on one hand, and the Section 6 of the Act, on the other hand, operate in different and distinct fields. Though Section 6(2) of the Act enables every individual to seek information without disclosing the purpose, the information that can be furnished to him is subject to the restrictions placed under Section 8 of the Act. Therefore, no exception can be taken to the impugned orders.

(b) In the decision Rajasthan Public Service Commission V. Ms.Pooja Meena & Another, [AIR 2012 Rajasthan 52] at page 53, in paragraph 11, it is observed as follows:

"11.To the valued observations of the Hon'ble Supreme Court, this Court would respectfully add that the provisions of RTI Act cannot be used as a tool to give vent to the frustration and dissatisfaction of a citizen as in the present case without anything more. The present case relates to RAS Examination 2007, which have long been concluded and appointments made thereunder. A dissatisfied candidate who is disbelieving in the process of a constitutional body, ought not be allowed to continue pursuing the RPSC and seek information which can affect the efficient working and discharge of its constitutional obligations without any corresponding benefit or relationship to any public interest or activity. The impugned order dated 14.10.2010 is a mechanical order and does not disclose a careful consideration of the matter before the Chief Information Commissioner."

(c)In *Khandapuram Gandaiah V. The Administrative Officer, Ranga Reddy District Courts and Others*, [AIR 2009 Andhra Pradesh 174], at page 178, it is observed that 'Though Sections 8(1)(b) and 24 of the Act do not provide any exemption to the Judges or judicial officers from giving the information sought for' and further, it is held that 'The Petitioner has no locus to raise this contention because he can seek only information under the Right to Information Act'.

44.Coming to the aspect of non disclosure of information, it is to be pointed out that the ingredients of Section 8 and 11 of the Right to Information Act, 2005, there is total bar on 6 out of 10 exceptions i.e. 1(a), (b), (c), (f), (g) & (h). Insofar as the matters covered by Section 8(1)(d), (e)(h) and (i) of Section 8 of the Act, the Information Officers are necessarily to record a finding by taking into account the relative merit between the Public interest and secrecy. If the public interest outweighs private interest, then, the information has to be furnished. Otherwise, the Officer is entitled to assign reasons for refusing to supply/furnish the information in question.

45.Coming to the aspect of Right to Information Act, 2005 which has an overriding effect on the Official Secrets Act, 1923 and any other law for the time being in force with a view to achieve the object of reducing corruption and to maintain transparency in public activity/ dealing, at this juncture, we deem it appropriate to recall the observations of the Hon'ble Supreme Court in *Mohandas Lalwani V. The State of Madhya Pradesh*, [AIR 1973 Supreme Court 2679 at p.2684], wherein it is observed as under:

"... As long as an impression exists that corruption is prevalent and that unless one pays to somebody things are not done, there would be always persons who would feel the urge to

offer bribe. Bribe would be offered not only to get an undue favour but also to avoid unnecessary harassment and to see that no obstruction or delay is caused in getting the most legitimate work done. To prevent the repetition of crimes like the one of which the appellant has been found guilty, it is necessary to inculcate a general feeling that things are done in due course uninfluenced by extraneous considerations."

46. Also, we aptly point out the following decisions of the Hon'ble Supreme Court, to secure the ends of Justice:

(a) In *Swatanter Singh V. State of Haryana and others*, [AIR 1997 Supreme Court 2105 at p. 2106], it is laid down as follows:

"It is sad but a bitter reality that corruption is corroding, like cancerous lymph nodes, the vital veins of the body politics, social fabric of efficiency in the public service and demoralising the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of corrupt would gather thick and unchaseable clouds around the conduct of the officer and gain notoreity much faster than the smoke."

(b) In *High Court of Judicature at Bombay through its Registrar V. Shirish Kumar Rangrao Patil and another*, [AIR 1997 Supreme Court 2631] at page 2639 & 2640, in paragraph 16, it is observed as follows:

"16. Corruption, appears to have spread everywhere. No facet of public function has been left unaffected by the putrefied stinck of corruption. Corruption, thy name is depraved and degraded conduct. Dishonesty is thine true colour; thine corroding effect is deep and pervasive; spreads like lymph-nodes, cancerous cells in human body spreading as wild fire eating away the vital veins in the efficacy of public functions. It is a sad fact that corruption has its roots and semification in the society as whole. In the widest connotation, corruption includes improper or selfish exercise of power and influence attached to a public office. The root of corruption is nepotism and apathy in control on narrow considerations which often extends passive protection to the corrupt officers. The source and succour for acceptability of the judgment to be correct, is the upright conduct, character, absolute integrity and displayed on and off the Bench becomes centre stage of the judicial officer. Fallen standard of rectitude is the bane for lost faith of the people, tending to defeat the constitutional scheme of conferment of the powers of judicial review or decision according to law unless checks and corrective measures are applied and enforced. The conferment of exclusive power of judicial

review on the judiciary may become means to personal gain or advantage. The Tymph-nodes (cancerous cells) of corruption constantly keep creeping into the vital veins of judiciary and the need to stem it out by judicial surgery lies on judiciary itself by its self-imposed or corrective measures or disciplinary action under the doctrine of control enshrined in Articles 235,124(6) of the constitution. It would, therefore, be necessary that there should be constant vigil by the High Court concerned on its subordinate judiciary and self-introspection. What is most necessary is to stem out the proclivity of the corrupt conduct rather than to catch when the corrupt demands made and acceptance of illegal gratification. Corruption in judiciary cannot be committed without some members of the Bar become privy to the corrupt. The vigilant watch by the High court, and many a time by the members of the Bar, is the sustaining stream to catch the corrupt and to deal with the situation appropriately. At the same time the High Court is the protector of the subordinate judiciary. Often some members of the bar, in particular, in Muffasil courts, attempt to take undue advantage of their long standing at the bar and attempt to abuse their standing by bringing or attempting to bring about diverse form of pressures and pin-pricks on junior judicial officers or stubborn and stern and unbendable officers. If they remain unsuccessful, to achieve their nefarious purpose, some members of the Bar indulge in mudslinging without any base, by sending repeated anonymous letters against the judicial officer questioning their performance/capacity/integrity. The High Court should, therefore, take care of the judicial officers and protect them from such unseemingly attempts or pressures so as to maintain their morale and independence or the judicial officer and support the honest and upright officers."

47. That apart, in the decision of the Hon'ble Supreme Court in S.P.Gupta and others V. President of India and others, [AIR 1982 Supreme Court 149], it is held that 'the Right to know has been given a constitutional status by treating it as a part of speech and expression and thereby bringing this right within Art.19(1)(a) of the Constitution of India'.

48. It will be quite in the fitness of things to recall the Golden words of Thomas JefferSon, who rightly said that 'Information is the Currency of Democracy'.

49. In the words Amartya Sen, 'the Right to Information Act, 2005 is a momentous engagement with the possibilities of freedom'. [vide Lawz January 2008 at page 40 special page 41].

50. Befittingly, we recall the observation of Lord Goff in the decision *Attorney General V. Guardian Newspapers Limited and others* (No 2) 1990 1 A.P. at page 109 which runs as follows:

" Although the basis of Law's protection of confidence is that there is a Law, nevertheless the public interest may be outweighed by some other countervailing public interest which favours disclosure."

51. We aptly point out that on going through the tenor of Section 2(f) of the Right to Information Act pertaining to 'Information' stated thereunder, we are of the cocksure opinion that the same does not include within its fold the personal information of the officials, staff members/officers to the public authority viz., High Court, in the instant case on hand. Section 3 of the Right to Information Act, 2005 speaks of 'All citizens to have the right to information, subject to the provisions of the Act'. Section 4 of the Act refers to 'Obligations of public authorities'. Every public authority under the Act owes a duty to specify reasons of any administrative orders or quasi-judicial decisions to the affected/aggrieved persons as per the decision in *Satyan A. V. Government of Kerala*, [2008 (4) K.H.C. at page 120 & 121].

52. In the decision *B. Bindhu V. Secretary, Tamil Nadu Circle Postal Co-operative Bank Limited, Chennai*, [AIR 2007 Madras 13 at page 14], it is held that 'The petitioner is not entitled to the details sought for by her under the provisions of the Right to Information Act, 2005'.

53. Under Section 8(1)(j) of the Right to Information Act, 2005 the Officers are not required to provide private or personal information which is exempted. As a matter of fact, the informations relating to employees in High Court/Subordinate Courts/Judicial Officers etc. are inter se matters between an employer and employee in an institution which are purely governed by respective service rules. In fact, it partakes the character of 'personal information', the disclosure of the same has no public interest or public activity. It cannot be lost sight of that under the concept of 'Right to Know', a Public Information Officer is not supposed to be harassed or persecuted/prosecuted.

54. It is to be pointed out that the personal information and the information between persons in fiduciary relationship is exempted from disclosure under the Right to Information Act. Also, 'Confidence' may be outweighed by public interest in the matter of such disclosure.

55.The Learned Senior Counsel for the 2nd Respondent cites the decision of High Court of Delhi in Secretary General, Supreme Court of India V. Subhash Chandra Agarwal, [2010 (1) CTC 241] (Full Bench), wherein it is held as under:

"Every citizen is entitled to information held by or under Control of Public Authority unless it is exempted by Section 8(1) of the Right to Information Act etc."

56.Moreover, it is held that 'The Resolution of Full Court of the Honourable Supreme Court treating declaration of assets by Judges as confidential does not make it any less information which citizen is entitled to access'.

57.As against the Judgment in L.P.A.No.501/2009, dated 12.01.2010 (by the Full Bench of the Delhi High Court) between Secretary General, Supreme Court of India and Subhash Chandra Agarwal, the Central Public Information Officer of Supreme Court of India and another (on the file of the Honourable Supreme Court of India) has filed Civil Appeal No.10044 of 2010 (arising out of SLP (C)No.32855 of 2009) and the Honourable Supreme Court with C.A.10045/2010 @ SLP (C)No.32856 of 2009, the Central Public Information Officer of Supreme Court of India and another V. Subhash Chandra Agarwal and Civil Appeal No.2683 of 2010, Secretary General, Supreme Court of India V. Subhash Chandra Agarwal, has framed the following substantial questions of law as to the interpretation of the Constitution for consideration.

"1.Whether the concept of independence of judiciary requires and demands the prohibition of furnishing of the information sought? Whether the information sought for amounts to interference in the functioning of the judiciary?

2.Whether the information sought for cannot be furnished to avoid any erosion in the credibility of the decisions and to ensure a free and frank expression of honest opinion by all the constitutional functionaries, which is essential for effective consultation and for taking the right decision?

3.Whether the information sought for is exempt under Section 8(i)(j) of the Right to Information Act? 16. The above questions involve the interpretation of the Constitution raise great and fundamental issues."

and directed the Registry to place this matter before the Hon'ble Chief Justice of India for constitution of Bench for appropriate strength.

58. We aptly point out the decision of the Hon'ble Supreme Court in High Court of Judicature for Rajasthan V. Ramesh Chand Paliwal and another, [AIR 1998 Supreme Court 1079], it is observed as follows:

"Art.229 makes Chief Justice of the High Court the supreme authority in the matter of appointment of the High Court officers and servants. This Article also confers rule making power on the Chief Justice for regulating the conditions of service of officers and servants of the High Court subject to certain restrictions. The power available to the Chief Justice of the High Court, under Art. 229, is akin to the power of the Chief Justice of India under Art. 146. Just as Chief Justice of India is the supreme authority in the matter of Supreme Court Establishment including its office staff and officers, so also the Chief Justice of the High Court is the sole authority in these matters and no other Judge or officer can legally usurp those administrative functions or power."

59. Be that as it may, on a careful consideration of respective contentions and on going through the contents of the application dated 01.11.2010 filed by the 1st Respondent/Applicant, this Court is of the considered view that the information sought for by him in Serial Nos.1 to 9 pertaining to the internal delicate functioning/administration of the High Court besides the same relate to invasion of privacy of respective individuals if the informations so asked for are furnished and more so, the informations sought for have no relationship to any public activity or interest. Moreover, the informations sought for by the 1st Respondent/ Applicant, through his application dated 01.11.2010 addressed to the Public Information Officer of the High Court, Chennai, are not to a fuller extent open to public domain. Added further, if the informations sought for by the 1st Respondent/Applicant, through his letter dated 01.11.2010 addressed to the Public Information Officer of High Court, are divulged, then, it will open floodgates/Pandora Box compelling the Petitioner/High Court to supply the informations sought for by the concerned Requisitionists as a matter of routine, without any rhyme or reasons/restrictions as the case may be. Therefore, some self restrictions are to be imposed in regard to the supply of informations in this regard. As a matter of fact, the Notings, Jottings, Administrative Letters, Intricate Internal Discussions, Deliberations etc. of the Petitioner/High Court cannot be brought under Section 2(j) of the Right to Information Act, 2005, in our considered opinion of this Court. Also that, if the informations relating to Serial Nos.1 to 9 mentioned in the application of the 1st Respondent/Applicant dated 01.11.2010 are directed to be furnished or supplied with, then, certainly, it will impede and hinder the regular, smooth and proper functioning of the Institution viz., High Court (an independent authority under the Constitution of India, free from Executive or Legislature), as opined by this Court. As such, a Saner Counsel/Balancing Act is to be adopted in matters relating to the application of the Right to Information Act,

2005, so that an adequate freedom and inbuilt safeguard can be provided to the Hon'ble Chief Justice of High Court [competent authority and public authority as per Section 2(e)(iii) and 2(h)(a) of the Act 22 of 2005] in exercising his discretionary powers either to supply the information or to deny the information, as prayed for by the Applicants/Requisitionists concerned.

60. Apart from the above, if the informations requested by the 1st Respondent/Applicant, based on his letter dated 01.11.2010, are supplied with, then, it will have an adverse impact on the regular and normal, serene functioning of the High Court's Office on the Administrative side. Therefore, we come to an irresistible conclusion that the 1st Respondent/Applicant is not entitled to be supplied with the informations/details sought for by him, in his Application dated 01.11.2010 addressed to the Public Information Officer of the High Court, Madras under the provisions of the Right to Information Act. Even on the ground of (i) maintaining confidentiality; (ii) based on the reason that the private or personal information is exempted from disclosure under Section 8(1)(j) of the Act, 2005; and (iii) also under Section 8(1)(e) of the Act in lieu of fiduciary relationship maintained by the High Court, the request of the 1st Respondent/Applicant, through his Letter dated 01.11.2010/Appeal dated 20.12.2010 under Section 19 of the Act to the Writ Petitioner/Appellate Authority, cannot be acceded to by this Court. Further, we are of the considered view that the 1st Respondent/Applicant has no locus standi to seek for the details sought for by him, as stated supra, in a wholesale, omnibus and mechanical fashion in the subject matter in issue, (either as a matter of right/routine under the Right to Information Act) because of the simple reason that he has no enforceable legal right. Also, we opine that the 1st Respondent/Applicant's requests, through his Application dated 01.11.2010 and his Appeal dated 20.12.2010, suffer from want of bonafides (notwithstanding the candid fact that Section 6 of the Right to Information Act does not either overtly or covertly refers to the 'concept of Locus').

61. To put it differently, if the informations sought for by the 1st Respondent/Applicant, through his letter dated 01.11.2010/Appeal dated 20.12.2010, are divulged or furnished by the Office of the High Court (on administrative side), then, the secrecy and privacy of the internal working process may get jeopardised, besides the furnishing of said informations would result in invasion of unwarranted and uncalled for privacy of individuals concerned. Even the disclosure of informations pertaining to departmental enquiries in respect of Disciplinary Actions initiated against the Judicial Officers/Officials of the Subordinate Court or the High Court will affect the facile, smooth and independent running of the administration of the High Court, under the Constitution of India. Moreover, as per Section 2(e) of the read with Section 28 of the Right to Information Act, the Hon'ble Chief Justice of this Court is empowered to frame rules to carry out the provisions of the Act. In this regard, we point out that 'Madras High Court Right to

Information (Regulation of Fee and Cost) Rules, 2007' have been framed [vide R.O.C.No.2636-A/06/F1 SRO C-3/2008] in Tamil Nadu Gazette, No.20, dated 21.05.2008, Pt.III, S.2. Also, a Notification, in Roc.No.976 A/2008/RTI dated 18.11.2008, has been issued by this Court to the said Rules, by bringing certain amendments in regard to the Name and Designation of the Officers mentioned therein, the same has come into force from 18.11.2008.

62.In the upshot of quantitative and qualitative discussions mentioned supra, we hold that the view taken by the 2nd Respondent/ Tamil Nadu Information Commission, Chennai, in Appeal Case No.10447/Enquiry/A/11 dated 10.01.2012 that 'the appellant has asked only for statistical details and not names of individuals', is per se not correct. As such, the conclusion arrived at by the 2nd Respondent/ Information Commission, in allowing the Appeal and directing the Petitioner/High Court (Public Authority) to furnish the details within 15 days from the date of receipt of copy of this order, is not sustainable, in the eye of law. Therefore, to prevent an aberration of Justice and to promote substantial cause of Justice, this Court interferes with the order dated 10.01.2012 in Case No.10447/Enquiry/A/11 passed by the 2nd Respondent/Tamil Nadu Information Commission, Chennai and sets aside the same, to secure the ends of Justice. Resultantly, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sgl

To

1. The Registrar General,
High Court of Madras,
Chennai 600 104.

2. The Registrar,
The Tamil Nadu Information Commission,
No.2, Sir Thyegaraya Salai,
Teynampet
Chennai 600 018