

MANU/TN/1189/2017

Equivalent Citation: 2017(4)CTC153

IN THE HIGH COURT OF MADRAS (MADURAI BENCH)

W.P. (MD) No. 4309 of 2014

Decided On: 13.04.2017

Appellants: **S. Robinson**
Vs.

Respondent: **Tamil Nadu State Information Commission and Ors.**

Hon'ble Judges/Coram:

V. Parthiban, J.

Counsels:

For Appellant/Petitioner/Plaintiff: C. Arul Vadivel @ Sekar

For Respondents/Defendant: K.K. Senthil

Case Note:

Right to information - Disclosure of information - Present petition filed against order by which information seek by Petitioner regarding two registered sale deeds was not furnished - Whether impugned order of not disclosing information seeking by Petitioner was maintainable - Held, RTI Act could not be invoked for all purposes regardless of fact that there was existence of alternative effective mechanism - If such recourse was encouraged and entertained it would destroy very frame work of mechanism which provides for furnishing information under respective department - Therefore, impugned order was maintainable and warrant no interference - Petition dismissed. [15]

ORDER

V. Parthiban, J.

1. The Petitioner has approached this Court invoking Article 226 of the Constitution of India seeking quashment of the order passed by the 1st respondent in Case No. 6114/Enquiry/F/13(40062/F/2012) dated 05.02.2014, and consequently to direct the 3rd respondent to furnish the information and copies of the documents claimed by the petitioner in his application.

2. The case of the petitioner is that he preferred an application on 08.06.2012 under Section 6(1) of the Right to Information Act, 2005, (hereinafter referred to as RTI Act) before the third respondent, seeking certain information regarding two registered sale deeds dated 06.02.1890 and 05.10.1908. In response to the RTI application, it appears the third respondent passed an order on 09.06.2012 furnishing information, not to the satisfaction of the petitioner. The petitioner was therefore constrained to file appeal before the second respondent under Section 19(1) of the RTI Act vide memorandum of appeal dated 27.06.2012. The said appeal came to be rejected by the second respondent on the basis of instruction received from the Inspector General of Registration. Thereafter, the petitioner filed second appeal before the first respondent on 25.08.2012. However, the first respondent vide its

proceedings dated 05.02.2014 dismissed the second appeal, which is impugned in the present writ proceedings. According to the first respondent, the information which is sought by the petitioner would be ascertained from the respective department and therefore, such an application under RTI Act cannot be entertained and therefore held that the second and third respondents have rightly taken decisions, refusing to furnish the information as sought by the petitioner. Number of grounds have been raised in this petition assailing the order passed by the respondents.

3. Mr. C. Arul Vadivel @ Sekar, the learned counsel appearing for the petitioner would principally submit that the provisions of the RTI Act have an overriding effect over other laws and therefore, the order passed by the first respondent refusing information cannot be sustained in law. The learned counsel appearing for the petitioner would emphasis the fact that Right to Information Act was defined under Section 2(j) of the RTI Act would include all kinds of information and therefore, there cannot any restriction on dissemination of information sought by the petitioner. He also heavily relied on Section 4 and 22 of the Act. Section 4 imposes obligations on the part of the public authorities, particularly under sub-sections (2), (3) and (4) of Section 4 of the Act. The learned counsel appearing for the petitioner also heavily relied on Section 22 of the RTI Act, which reads as follows:

"22. Act to have overriding effect. - The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (10 of 1923), any any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

According to the learned counsel for the petitioner, the information and the expressions incorporated in the Act have wide amplitude and therefore, the information sought cannot be refused unless the same falls under Section 8 of the RTI Act, which exhaustively provides exemptions from disclosure of informations. The information sought by the petitioner does not fall within any of the exemptions under Section 8 of the Act and therefore, the petitioner's right to get information under the RTI Act cannot be denied under any circumstances. In any case, the learned counsel appearing for the petitioner would contend that it is not the case of the respondents that the information sought by the petitioner is one that falls within the exemptions provided under Section 8 of the Act. When such is the case of the petitioner, the impugned order passed by the first respondent in refusing to divulge the information is untenable in law and the same is without any justification and cannot draw any support from the provisions of the RTI Act.

4. In support of his submissions, the learned counsel appearing for the petitioner relied on the following decisions:

"(i) University of Calcutta v. Pritam Rooj [MANU/WB/0084/2009 : AIR 2009 CALCUTTA 97] and

(ii) CBSC v. Aditya Bandopadhyay [MANU/SC/0932/2011 : (2011) 8 SCC 497]."

5. In the first decision cited above, the Calcutta High Court has held that if there is no express bar under Section 8 of the RTI Act, then the information sought by the person concerned can be provided with such information. It has also emphasized the fact that the provisions of R.T.I. Act is to be considered in tune with the information

seekers. The Calcutta High Court further held that the RTI Act being beneficial statute the provisions of the Act must have its full play thereby promoting the idea of good and transparent governance even if results in inconvenience to some and has the possibility of rendering a system in vogue unworkable, the inconvenience or hardship caused thereby has to yield to the larger public interest which is sought to be guaranteed by its operation. The learned counsel appearing for the petitioner emphasized the fact that the Calcutta High Court has recognized the overriding effect of Section 22 of the RTI Act.

6. As regards the second decision of the Hon'ble Apex Court of India, the learned counsel for the petitioner would submit that the Hon'ble Supreme Court of India has held that right to information is a facet of the freedom of "speech and expression" as contained in Article 19(1)(a) of the Constitution of India. The learned counsel would lay emphasize on the rule of the Hon'ble Supreme Court of India in paragraph 36 that Section 22 of the RTI Act will prevail over the provisions of the bye-law/rules of the examining bodies in regard to examinations. As a result, unless the examining body is able to demonstrate that the answer books fall under the exempted category of information described in Section 8(1)(e) of the RTI Act, the examining body will be bound to provide access to an examinee to inspect and take copies of his evaluated answer books, even if such inspection or taking copies is barred under the rules/bye-law of the examining body governing the examination. In the above circumstances, the learned counsel appearing for the petitioner strongly urged this Court to interfere with the impugned order passed by the first respondent as the same is contrary to the mandatory provisions of the RTI Act.

7. Lastly the learned counsel also relied on the decision of the Tamil Nadu Information Commission in Case No. 23086/Enquiry/2007. In the said decision, the Information Commission directed issue copy of the power of attorney to the petitioner therein on the basis of the Government of Tamil Nadu instructions dated 25.04.2007 and 08.08.2007 in respect of documents registered in book No. 3, 4 and 5 as per the provisions under Section 8(1)(j) of the RTI Act. Therefore, the documents sought by the petitioner in the present case is relating to the registration of the sale deed and therefore, there is no impediment in law for the respondents to furnish the information sought.

8. Per contra, Mr. K.K. Senthil, the learned Standing Counsel for the first respondent would strongly contend that the impugned order passed by the first respondent refusing to furnish the information sought by the petitioner is a well considered order, which was passed based on the law laid down by this Court.

9. The learned Standing Counsel for the first respondent has taken this Court through the order passed by the Delhi High Court, which was reported in MANU/DE/2552/2012 in the matter of Registrar of Companies & Ors v. Dharmendra Kumar Garg & Anr. In the above decision, the Delhi High Court in extenso dealt with various provisions of the RTI Act and in paragraph 48 of the order the Delhi High Court has discussed about the information available under the RTI Act and for the sake of clarity the same is extracted below:

"48. In *Sh. K. Lali v. Sh. M.K. Baeri*, Assistant Registrar of Companies & CPIO, F. No. CIC/AT/A/2007/00112, the Central Information Commissioner Sh. A.N. Tiwari squarely considered the very same issue with regard to the interplay between Section 610 of the Companies Act and the rights of a citizen to obtain information under the RTI Act. Sh. A.N. Tiwari by a detailed

and considered decision held that information which can be accessed by resort to Section 610 of the Companies Act cannot be accessed by resort to the provisions of the RTI Act. The discussion found in his aforesaid order on this legal issue reads as follows:

'9. It shall be interesting to examine this proposition. Section 2(j) of the RTI Act speaks of "the right to information accessible under this Act which is held by or under the control of any public authority....". The use of the words "accessible under this Act", "held by" and "under the control of" are crucial in this regard. The inference from the text of this sub-section and, especially the three expressions quoted above, is that an information to which a citizen will have a right should be shown to be a) an information which is accessible under the RTI Act and b) that it is held or is under the control of a certain public authority. This should mean that unless an information is exclusively held and controlled by a public authority, that information cannot be said to be an information accessible under the RTI Act. Inferentially it would mean that once a certain information is placed in the public domain accessible to the citizens either freely, or on payment of a pre-determined price, that information cannot be said to be 'held' or 'under the control of the public authority and, thus would cease to be an information accessible under the RTI Act. This interpretation is further strengthened by the provisions of the RTI Act in Sections 4(2), 4(3) and 4(4), which oblige the public authority to constantly endeavour "to take steps in accordance with the requirement of clause b of sub-section 1 of the Section 4 to provide as much information suo-motu to the public at regular intervals through various means of communication including internet, so that the public have minimum resort to the use of this Act to obtain information." (Section 4 sub-section 2). This Section further elaborates the position. It states that "All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed." The explanation to the subsection 4 of 4 goes on to further clarify that the word "disseminated" used in this Section would mean the medium of communicating the information to the public which include, among others, the internet or any other means including inspection of office of any public authority."

10. In fact the question which was framed before the Delhi High Court is found in paragraph 23 of the judgment, which is also extracted below and the answer to the question that was incorporated in paragraph 39 of the judgment which is also extracted hereunder:

"23. There can be no doubt that the documents kept by the Registrar, which are filed or registered by him, as well as the record of any fact required or authorized to be recorded by the Registrar or registered in pursuance of the Companies Act qualifies as 'information' within the meaning of that

expression as used in Section 2(f) of the RTI Act. However, the question is - whether the mere fact that the said documents/record constitutes information., is sufficient to entitle a citizen to invoke the provisions of the RTI Act to access the same?"

....

39. Therefore, if another statutory provision, created under any other law, vests the right to seek information and provides the mechanism for invoking the said right (which is also statutory, as in this case) that mechanism should be preserved and operated, and not destroyed merely because another general law created to empower the citizens to access information has subsequently been framed."

The effect of the above decision would mean if there is alternative mechanism provided for seeking the information, the same shall be availed before making the application under General Act, namely, RTI Act.

11. The learned Standing Counsel appearing for the first respondent also relied on the judgment passed by the Division Bench of this Court reported in MANU/TN/0875/2013 : (2013) 5 MLJ 385 in the matter of Registrar General, High Court of Madras v. A. Kanagaraj and another. In paragraph 77 of the order, this Court has held that when there is a self-contained and inbuilt procedure evolved by High Court in regard to the litigants obtaining certified copies of orders pertaining to judicial proceedings as per Rules of High Court, Appellate Side, 1965, which is to be scrupulously followed. In an identical situation, the Hon'ble Division Bench of Court in the decision reported in MANU/TN/0546/2013 : (2013) 5 MLJ 694 in the matter of Registrar General, High Court of Madras v. K.U. Rajasekar set aside the order passed by the Information Commissioner, directing the High Court to provide the information sought by the petitioner therein.

12. The learned Standing Counsel for the first respondent would place heavy reliance on the above decision of this Court reported in MANU/TN/0546/2013 : (2013) 5 MLJ 694 (supra). In the said decision certain information had been sought from the Information Commissioner, which information was covered under the High Court Appellate Side Rules, 1965. In that view of the matter, the Hon'ble Division Bench of this Court has categorically held as follows:

"59.... Therefore, we are of the considered view that the respondent/petitioner (Husband) is entitled to receive copies of Diary notings, hearing records of C.M.S.A. No. 10 of 2007, copies of Grounds of Appeal in C.M.S.A. No. 10 of 2007, Cross Objection No. 48 of 2007, Common Order in C.M.S.A. No. 10 of 2007 and Cross Objection No. 48 of 2007, dated 22.12.2008, only under the relevant provisions of the Rules of High Court, Madras (Appellate Side), 1965. Even the respondent/petitioner can avail the benefit of Rule 4 of the Madras High Court, Right to Information (Regulation of Fee and Cost) Rules, 2007, in any by which the information under Sections 7(1) and (5) of the Right to Information Act, can be provided to him on payment of necessary charges thereto by filing an application in respect of the copies of the order/judgment/statements reports sought for, on payment of Rs. 100/- towards cost, besides the application fee. Therefore, the contrary view taken by the Tamil Nadu Information Commission, Chennai by virtue of its orders dated 27.06.2011 in Case No. 40997/Enquiry/A/2011,

to the effect that the Public Information Officer shall furnish copies of all Diary notings and hearings of records in C.M.S.A. No. 10 of 2007 of High Court to the respondent/petitioner, free of cost, by 11.7.2012 and report compliance, is not a correct one, because of the fact that the independence of judiciary is a basic structure of the Constitution of India and also that in the Constitutional scheme of things judiciary is free from executive and legislature, in the considered opinion of this Court.

60. As such, to prevent an aberration of Justice, we interfere with the orders dated 2.7.2012 in Case No. 40997/Enquiry/A/2011, passed by the Tamil Nadu Information Commission, Chennai - 18 and sets aside the same. Consequently, the writ petition succeeds."

In the circumstances, the learned Standing Counsel appearing for the first respondent would vehemently oppose the contention put forth by the learned counsel appearing for the petitioner and submitted that there is no infirmity in the order passed by the first respondent and the same does not call for interference.

13. As regards the contention of the learned counsel appearing for the petitioner that on the basis of certain clarifications issued by the Government of Tamil Nadu, the Inspector General of Registration was directed to furnish information with regard to certain documents like the Power of Attorney etc and on the basis of which Information Commissioner was directed to issue the document in the third decision cited by the petitioner, the learned Standing Counsel for the first respondent would submit that as regards registration of the sale deed is concerned it is found in Book Nos. 1 and 2, which are in public domain and therefore, the same can be obtained through proper application to be made to the registering authority and the same would be made available to the petitioner, if the application is in order.

14. I have given my anxious consideration to the rival submissions of the parties.

15. Although the learned counsel appearing for the petitioner has elaborately made his submission and taken this Court through the Scheme of RTI Act, particularly, Sections 4, 8 and 22 of the RTI Act, I am unable to persuade myself that RTI Act can be invoked for all purposes regardless of the fact that there is existence of alternative effective mechanism provided under the respective departments for seeking information. If such recourse is encouraged and entertained it will destroy the very frame work of the respective mechanism which provides for furnishing information under the respective department. I do not see any merits in the contentions of the learned counsel for the petitioner that in view of the overriding provisions provided under Section 22 of the RTI ACT any kind of information can be obtained. Such an interpretation would run contrary to the other provisions of the Acts of similar nature and would make such acts otiose and nugatory. The framers of the Act and the object behind the Act would not have envisaged that any information to be sought can be made available only under the RTI Act and not at all through other Acts. Such an interpretation would not advance the letter and spirit of the RTI Act. In the above circumstances, I am inclined to accept the submissions made on behalf of the first respondent and more so I am bound by the decisions passed by the Hon'ble Division Bench of this Court (cited supra).

16. In view of the above discussion and narrative, I do not find any merits in the contentions raised on behalf of the petitioner and therefore, I do not see any infirmity in the order passed by the first respondent. In such view of the matter, the Writ

Petition fails and the same is dismissed as devoid of merits. There shall be no order as to costs.

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