

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2009

CORAM

THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.NO.16070 of 2009

and

M.P.NO.1 OF 2009

M.Kaliaperumal

.. Petitioner

Vs.

1.The Central Information Commissioner,
O/o the Central Information Commission,
Block No.IV, 5th Floor,
Old JNV Campus,
New Delhi-110 067.

2.The Appellate Authority-cum-
Director of Postal Services,
O/o the Post Master General,
Vijayawada-520 010.
State of Andrapradesh.

3.The Public Information Officer-cum-
Superintendent of Post Offices,
Gudur Division,
Gudur (NL)-524 101.
State of Andhrapradesh

.. Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records from the third respondent's impugned order Proc.No.E/AC/Mis./DIgs/2008-09/Gudur, dated 16.05.2008 which was confirmed by the second respondent's impugned order Proc.No.PG/RTI Act 61/2008, Vijayawada-10, dated 2.7.2008 and

the first respondent's impugned order CIC/AD/A/09/00413, dated 01.05.2009, quash the same and to direct the respondents to furnish the information sought for as per petitioner's application dated 11.3.2008 under Section 6 of RTI Act.

For Petitioner : Mr.T.P.Kathiravan

For Respondents : Mr.G.Jehanathan, CGC

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ORDER

Heard both sides.

2.The petitioner has come forward to challenge the order of the third respondent, i.e. The Public Information Officer-cum-Superintendent of Post Offices, Gudur Division, State of Andhrapradesh, challenging the order, dated 16.5.2008 which was confirmed by the second respondent vide his order, dated 2.7.2008 and the first respondent's order dated 1.5.2009. After setting aside those orders the petitioner wanted the information sought in his application, dated 11.3.2008 under Section 6 of the Right To Information Act (for short RTI Act).

3.In his representation, dated 11.3.2008, the petitioner sought for an information relating to one K.Ramachandra Rao, a retired time-scale Sub-Post Master, who was drawing his pension from Gudur Head Post Office, Nellore District. In the residential address of the said person given in the official document, i.e. No.4/7/156, Nelcost Road, Gudur, Nellore District, State of Andhrapradesh, he was not available. The reason why the petitioner wanted to know his address was that the petitioner had secured a judgment and decree against him before the VII Assistant City Civil Court, Chennai in O.S.No.764 of 1997, dated 16.12.1998. The petitioner wanted to execute the decree. Therefore, he wanted his address. However, the petitioner was informed that the information sought for cannot be granted to him since the reasons adduced by him were not convincing and the representation related to private litigation cases between the petitioner and the retired pensioner Ramachandra Rao and it did not come under the purview of a Public Interest Litigations.

4.The petitioner filed an appeal against the said order to the second respondent. In the appeal, the petitioner stated that the said Ramachandra Rao had committed forgery and the Court had also awarded costs in his civil suit. Therefore, he was not able to take further civil and criminal action against him. The appellate authority dismissed the appeal in terms of Section 8(1) (j) r/w Section 11 of the Act. It was stated that there is no relationship with any public activity or interest and the

information sought for related to a third party. Such information cannot be furnished as no public interest was involved.

5. The petitioner filed a second appeal, dated 25.7.2008 before the first respondent. It was stated that the information is required for the legal prosecution of Government of India's pensioner. The said person is liable for criminal prosecution. Hence the information sought for was neither prohibited under Section 8(j) nor under 8(d) of the RTI Act.

6. The first respondent, by an order, dated 1.5.2009 in paragraph 5 held as follows:

"5.The Commission observed, based on the documents provided, that there is a private litigation case between the Appellant and Mr.Ramachandra Rao and that there is no relationship of the disclosure with any public activity or interest and is of the opinion that the address can be provided by the Court to the Applicant, if required and denies the information under Section 8(1)(g) of the RTI Act."

7.It is this order which is under challenge. Notice was issued to the respondents. The third respondent had also filed a counter affidavit, dated 25.9.2009, justifying the denial of information. In paragraphs 21 and 22 of the counter affidavit, it was averred as follows:

"21.I submit that the petitioner states that no prejudice will be caused to the said pensioner Sri.K.Ramachandra Rao if his residence address is furnished and he is liable for criminal prosecution for having committed forgery in production of promissory note. This department is no way connection with these things.

22.I submit that there is no violation of Article 14,16 & 19 of Constitution of India as alleged in this para since the information was not furnished as it relates to personal information and has not relationship to any public activity or interest under Section 8(1)J of RTI Act, 2005 (Annexure-R2)."

8.The short question that arises for consideration is whether the petitioner is entitled to get the information sought for by him?

9.The exemptions for refusing to grant information is listed under Section 8(1) of the RTI Act. It is relevant to extract the relevant exemptions found in Sections 8(1)(d),(e),(g),(h) and (j) of the RTI Act, which reads as follows:

8(1)(d)information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e)information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

....

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

....

(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."

10. It can be seen that the refusal by the respondents was not hit by any of the exemptions provided above. In this context, it is necessary to refer to certain legal precedents which may have a bearing on this issue.

11. This Court vide its judgment in V.V. Mineral Vs. The Director of Geology & mining, Chennai and others reported in 2007 (4) MLJ 394 held that the motive of a person seeking information is not relevant with reference to a third party documents. In paragraphs 16 and 17 of the said judgment, it was observed as follows:

"16. From the above it is clear that when RTI Act was enacted it does not give any full immunity for disclosure of a third party document. But, on the other hand, it gives the authorities under RTI Act to weigh the pros and cons of weighing the conflict of interest between private commercial interest and public interest in the disclosure of such information.

17. Therefore, no total immunity can be claimed by any so-called third party. Further, if it is not a matter covered by Section 8(1)(d) of the Act, the question of any denial by the Information Officer does not arise. Therefore, on appeal preferred by the petitioner, the first respondent held that it is not an issue covered by Section 8(1)(d) of the Act. If it is only covered by Section 8(1)(d) of the Act, the question of denial of information by the authority may arise."

12. Subsequently, this Court in A.C. Sekar Vs. Deputy Registrar of Co-operative Societies, Thiruvannamalai District and others reported in 2008 (2) MLJ 733 held that an information even relating to the attendance put in by a third party was considered to be relevant and such information cannot be denied on the ground that it is coming under the private domain. In paragraph 9 of the said judgment, it was observed as follows:

"9. Therefore, the attempt of the petitioner to thwart the direction issued by the first respondent cannot be countenanced by this Court. In fact, in these

days, when there is an increasing allegation of misfeasance and malfeasance committed in fair price shops are coming to the notice of the public, the RTI Act can be potent weapon to check such illegal and criminal activities of the staff employed in those shops. If ultimately by furnishing of such information, the affairs of the Society can be brought to the attention of the authorities, who are in charge of supply of essential commodities, it can stem the tide of further rot into the system."

13. Similarly, when the list of loan defaulters together with their photographs were sought to be published by the Nationalized Bank in Newspapers, the same was challenged by placing reliance upon the right to privacy and also by stating that the Banking Laws provided secrecy clause. V.Ramasubramanian, J. vide his judgment in K.J.Doraisamy Vs. The Assistant General Manager, State Bank of India, Erode Branch, Erode-638 001 reported in 2006 (5) CTC 829 rejected such claims. In doing so, he also placed reliance upon the provisions of the RTI Act and rejected the right of privacy claimed by the petitioner therein. In paragraph 31, he has observed as follows:

"31. Lastly, with the advent of the Right to Information Act, 2005, the Bank has become obliged to disclose information to the public. Section 3 of the said Act entitles all citizens to a right to information. Section 4(2) of the said Act provides as follows:

"(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo moto to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information."

Public Authority is defined under Section 2(h) of the Act to include "any body owned, controlled or substantially financed". Therefore, the respondent Bank is a Public Authority within the meaning of the Act and they owe a duty to disseminate information even suo moto.

Certain exemptions are listed out under Section 8 of the Right to Information Act, 2005, two of which are of significance and they read as follows:

-omitted-

Thus the aforesaid provision leaves no room for any doubt that the 'Right to Privacy' fades out in front of the 'Right to Information' and 'larger public interest'.

The said judgment was also confirmed by a division bench of this Court.

14. If it is seen in the context of the above legal precedents, the petitioner's demand for the residential address of a Central Government pensioner

would be denied solely on the ground that the petitioner is pursuing a private civil litigation and therefore, such an information could not be furnished.

15. In the present case, the motive for the demand for a Central Government pensioner's exact whereabouts in execution of a civil court's decree may not be irrelevant. Whether the pensioner really exists on the date of receipt of his pension or whether any fraudulent claims are being made from the Central Government can also be a relevant factor. In those cases, if any person wants to find out whether the pension amount paid by the Central Government is really going to an actual beneficiary or bogus claims are being made, such information cannot be denied.

16. In the present case, a third party though had admittedly given an address in which address he was not to be found. The court notices could not be served on him. Whereas, he is getting pension from a particular post office regularly. A question came up before the Supreme Court as to whether a pensioner goes out of control of the Government once he retired from service and becomes a pensioner. After referring to the relevant rule, the Supreme Court in *State of Maharashtra Vs. M.H. Mazumdar* reported in 1988 (2) SCC 52, in paragraph 5 observed as follows:

"5. The aforesaid two rules empower government to reduce or withdraw a pension. Rule 189 contemplates withholding or withdrawing of a pension or any part of it if the pensioner is found guilty of grave misconduct while he was in service or after the completion of his service. Grant of pension and its continuance to a government servant depend upon the good conduct of the government servant. Rendering satisfactory service maintaining good conduct is a necessary condition for the grant and continuance of pension. Rule 189 expressly confers power on the government to withhold or withdraw any part of the pension payable to a government servant for misconduct which he may have committed while in service. This rule further provides that before any order reducing or withdrawing any part of the pension is made by the competent authority the pensioner must be given opportunity of defence in accordance with the procedure specified in note I to Rule 33 of the Bombay Civil Services Conduct, Discipline and Appeal Rules. The State Government's power to reduce or withhold pension by taking proceedings against a government servant even after his retirement is expressly preserved by the aforesaid rules. The validity of the rules was not challenged either before the High Court or before this Court. In this view, the government has power to reduce the amount of pension payable to the respondent. In *M. Narasimhachar V. State of Mysore* (1960) 1 SCR 971 = AIR 1960 SC 247 and *State of Uttar Pradesh V. Brahm Datt Sharma* (1987) 2 SCC 179 similar rules authorising the government to withhold or reduce the pension granted to the government servant were interpreted and this Court held that merely because a government servant retired from service on attaining the age of superannuation he could not escape the liability for misconduct and negligence or financial irregularities which he may have committed during the period of his service

and the government was entitled to withhold or reduce the pension granted to a government servant."

17. Therefore, if it is seen in the above context, a pensioner does not cease to become totally out of control from the Government. On the contrary, his conduct and character are continuously monitored by the Central Government. In that context, the whereabouts of such pensioner is also very much relevant and it cannot be a private information. The authorities are bound to help in execution of Court orders.

18. Instances are many and news is coming from many parts of India that pension claims are made even in the name of dead persons. Therefore, such information cannot be shut out when a query is made regarding the real address of a Government pensioner.

19. In the light of the above, the impugned orders stands set aside. The writ petition will stand allowed. The respondents are directed to furnish the correct address of K. Ramachandra Rao to the petitioner within thirty days from the date of receipt of copy of this order. No costs. Consequently, the connected MP stands closed.

18.11.2009

Index : Yes

Internet : Yes

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To

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K.CHANDRU, J.

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