

Madras High Court  
Madras High Court  
M.Velayutham vs The Registrar on 12 February, 2010  
DATED : 12.02.2010

CORAM

THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.NOs.8068 and 8069 of 2008

and

M.P.NOs.1,2,1 and 2 OF 2008

M.Velayutham .. Petitioner in

W.P.No.8068 of 2008

S.Pandian .. Petitioner in

W.P.No.8069 of 2008

Vs.

1.The Registrar,

Tamil Nadu Information Commission,

Kamadhenu Super Market, I Floor,

Old No.273, New No.379, Anna Salai,

Teynampet,

Chennai-18.

2.The Registrar of Co-operative Societies

(Housing),

4th Main Road, Gandhi Nagar,

Adyar, Chennai-20.

3.N.Irusappan

Ex.President, Rasipuram Teacher

& Govt. Servants Coop Hg.

Welfare Association,

Kattanchampatti Post,

Rasipuram Taluk,

Namakkal District. .. Respondents 1 to 3

in both the petitions

4.The Special Officer,

Rasipuram Teachers and Government

Servants C-operative Housing

Society,

HIG No.86, No.18, Lakshmi Street,

Rasipuram,

Namakkal District. .. Respondent No.4 in

W.P.No.8068 of 2008

These writ petitions are preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records in pursuant to the impugned order passed by the first respondent in Case No.26007/Enquiry/2007, dated 17.3.2008 and to quash the same. For Petitioners : Mr.S.M.Subramaniam

For Respondents : Mr.R.Neelakandan, GA for R 2

Mr.N.Manokaran for R3

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#### COMMON ORDER

Both the writ petitions are filed against the order passed by the State Information Commission, dated 17.3.2008. By the impugned order, the Information Commission held that the first writ petitioner, who was the Secretary of Rasipuram Teachers and Government Servants Co-operative Housing Society, Rasipuram, was to be placed under suspension and he should be relieved of his duties. Further, disciplinary action should be initiated against the other petitioner, who was working as Deputy Registrar of Cooperative Societies (Housing), Salem for disobedience of the order of the Commission. Both petitioners were also directed to be levied with a maximum penalty of Rs.25,000/- for their conduct.

2.Pursuant to this order, the Deputy Registrar, Salem informed the two petitioners that the amount has to be recovered from their salary. In both the writ petitions, notice of motion was ordered on 22.9.2008. Pending notice of motion, an interim stay was granted. Subsequently, the matter came to be listed for final disposal.

3.Heard Mr.S.M.Subramaniam, learned counsel for the petitioner, Mr.R.Neelakandan, learned Government Advocate for second respondent and Mr.N.Manokaran, learned counsel for third respondent.

4.It was the stand of the first petitioner that he along with the other person had submitted a reply to all 33 questions. The third respondent, who was the applicant and is none other than an Ex. President of the Society, being the member of the society was fully aware of the functioning of the society. He was also suffered with a surcharge proceedings for recovering a sum of Rs.17,39,000/-. A complaint made by the third respondent was registered by the Commission. Without notice to him, the Commission had imposed penalty of Rs.25,000/- and that he had not committed any breach of the Right To Information Act. The Cooperative Society under the Tamil Nady Cooperative Societies Act cannot be held to be a &quot;public authority&quot;;

5.In the second writ petition, the stand taken by the petitioner was that the penalty has been imposed without due notice to him and that he was not directly connected with the issue on hand. There was non compliance under Section 18(3) read with Section 20 of the Act.

6.Insofar as the contention that the Cooperative Society is not covered by the provisions of the RTI Act is concerned, it must be stated that this court has already held in A.C.Sekar Vs. The Deputy Registrar of Cooperative Societies, Tiruvannamalai Circle and others reported in 2008 (1) CTC 838 = 2008 (2) MLJ 733 that co-operative societies are also covered by the provisions of the Act and there is no escape from furnishing the information sought for by any applicant.

7.With reference to the imposition of penalty and direction to take disciplinary action by the respective employer covered by Section 20 is concerned, it must be noted that the Supreme Court in Om Kumar v. Union of India reported in (2001) 2 SCC 386 dealt with the scope of judicial review over administrative action affecting fundamental freedoms. The following passages found in paragraphs 54, 59 and 68 may be usefully extracted below: &quot;54. Administrative action in India affecting fundamental freedoms has always been tested on the anvil of proportionality in the last fifty years even though it has not been expressly stated that the principle that is applied is the proportionality principle. For example, a condition in a licence issued to a cinema house to exhibit, at every show, a certain minimum length of approved films was questioned. The restriction was held reasonable (see R.M. Seshadri v. Distt. Magistrate Tanjore<sup>27</sup>). Union of India v. Motion Picture Assn.<sup>28</sup> also related, inter alia, to the validity of licensing conditions. In another case, an order refusing permission to exhibit a film relating to the alleged obnoxious or unjust aspects of reservation policy was held violative of freedom of expression under Article 19(1)(a) (S. Rangarajan v. P. Jagjivan Ram<sup>29</sup>). Cases of surveillance by police came up for consideration in Malak Singh v. State of P&H<sup>30</sup>. Cases of orders relating to movement of goods came up in Bishambhar Dayal Chandra Mohan v. State of U.P.<sup>31</sup> There are hundreds of such cases dealt with by our courts. In all these matters, the proportionality of administrative action affecting the freedoms under Article 19(1) or Article 21 has been tested by the courts as a primary reviewing authority and not on the basis of Wednesbury principles. It may be that the courts did not call this proportionality but it really was. ....

59. But, in E.P. Royappa v. State of T. N.<sup>32</sup> Bhagwati, J laid down another test for purposes of Article 14. It was stated that if the administrative action was arbitrary, it could be struck down under Article 14. This principle is now uniformly followed in all courts more rigorously than the one based on classification. Arbitrary action by the administrator is described as one that is irrational and not based on sound reason. It is also described as one that is unreasonable. ....

68. Thus, when administrative action is attacked as discriminatory under Article 14, the principle of primary review is for the courts by applying proportionality. However, where administrative action is questioned as arbitrary under Article 14, the principle of secondary review based on Wednesbury principles applies.

8.Though in a given case, this Court can go into the proportionality of a punishment, under normal circumstance, if the court is of the opinion that if a punishment requires reconsideration, it should be remanded to the very same authority for reconsideration. This was made clear in Om Kumar's case (cited supra). The following passages found in paragraphs 70 and 71 may be usefully quoted below: &quot;70. In this context, we shall only refer to these cases. In Ranjit Thakur v. Union of India<sup>43</sup> this Court referred to

proportionality in the quantum of punishment but the Court observed that the punishment was shockingly disproportionate to the misconduct proved. In B.C. Chaturvedi v. Union of India<sup>44</sup> this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then, the court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty. It was also so stated in Ganayutham<sup>2</sup>.

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

9. In the light of the above, both the writ petitions will stand partly allowed. The direction to impose penalty to the extent of Rs.25,000/- and a further direction to take disciplinary action without due notice to both the petitioners cannot be sustained and accordingly, set aside. It is left to the first respondent Information Commission to pursue the action further in accordance with law and in the light of the judgment referred to above after hearing the petitioners herein. No costs. Consequently, connected miscellaneous petitions stand closed.

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.

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Note to Registry:

1. Must see that the State/Central Information Commission is not

allowed to be made as party respondents in all W.Ps.

2. Must as a matter of course mark copies of the orders

(final or interim) of this Court to the respective

Information Commissions.

3.In case the Court requires records it may be summoned

by a special notice.

To

1.The Registrar,

Tamil Nadu Information Commission,

Kamadhenu Super Market, I Floor,

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