

Madras High Court
Madras High Court
S.Chockalingam vs The State Of Tamil Nadu on 16 July, 2010
DATED : 16.07.2010

CORAM :

THE HON BLE MR. JUSTICE S.TAMILVANAN

W.P.No.47700 of 2006

S.Chockalingam ... Petitioner

vs.

1. The State of Tamil Nadu

Rep. by its Chief Information Officer

State Information Commission

No.89, Dr.Alagappa Salai,

Purasaiwalkam, Chennai 84.

2. The Public Information Officer

O/o. The Director of Tribal Welfare

Department of Tribal Welfare

Chepauk, Chennai 5.

3. The Chief Officer (Public Information)

Office of the Director of Tribal Welfare,

Chepauk, Chennai 600 005. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the first respondent herein to consider and pass orders on the Appeal, dated 22.07.2006 filed by the petitioner herein

For petitioner : Mr.V.Babu

For respondents : Ms.R.Sujatha for R1

Mrs.C.K.Vishnupriya, AGP for R2 and R3

O R D E R

Heard both the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

2. This writ petition has been filed under Article 226 of the Constitution of India, seeking an order in the nature of writ of mandamus directing the first respondent herein to consider and pass orders on the appeal, dated 22.07.2006 preferred by the petitioner in accordance with law.

3. According to the petitioner, he is a retired teacher belongs to Sidhar community, which is suppose to be in the community declared as Scheduled Tribe in the sate of Tamil Nadu. According to him, based on the 1940 census of India, the Union Government had issued Gazette B, dated 12.03.1950, containing the list of Scheduled Tribes all over India. In that list of Scheduled Tribes, the community 'Sidhar' was included in Sl.No.37, but subsequently, that community was left out from the State by mistake, hence, the petitioner took steps requesting the State Government to include the community 'Sidhar' in the list of Scheduled Tribe list, based on the Gazette issued by the Government of India in the year 1950.

4. The petitioner has further stated that for getting a copy of the Gazette, the petitioner approached the second respondent under the Right to Information Act and made a representation, dated 28.04.2006 to the second respondent to furnish a copy of the Gazette of the Union Government, dated 12.03.1950. However, copy of the Gazette was not furnished by the second respondent to the petitioner, but the application filed by the petitioner herein was unreasonably rejected. Aggrieved by which, the petitioner preferred appeal before the third respondent on 31.05.2006, however, there was no response.

5. According to the learned counsel appearing for the petitioner, the same is deemed as rejection, since the petitioner had filed the Appeal before the first respondent on 22.07.2006 and there was no response to the same. Though the first respondent has to pass an order within 90 days on the appeal filed by the petitioner, he had not passed the order. Only on 09.07.2010, after filing of the writ petition in the year 2006, the first respondent passed an order, which reads as follows : "...Under Right to Information, only information "held" by a Public Authority can be ordered to be supplied. If it is not "held" by them, they cannot be held liable. Since sincere efforts seems to have been taken and Tamil Nadu State Information Commission has also gone well beyond its normal role of arbitrator and tried to help the petitioner seeking information from the National Commission for Scheduled Tribes, Bhubaneswar on the off chance it may be there, it has to be held it is not available. The law does not ask for the "impossible" to be done. If the petitioner is seeking information, issued by Government of India and it is not "held" by any State authority, he has to approach the appropriate Central Public Information Officer under Government of India who will be under the jurisdiction of Central Information Commission and not Tamil Nadu Information Commission. As such with that advice the complaint case is closed."

6. Learned counsel appearing for the petitioner submitted that though the petitioner had approached the second respondent for getting the information under the Right to Information Act, by way of filing application, there was no proper enquiry conducted by him and copy of the document sought for by the petitioner was also not furnished and therefore, the petitioner preferred appeal, under Section 19 of the Right to Information Act, within the time, however, the relief sought for was not granted.

7. Learned counsel appearing for the petitioner also drew the attention of this Court to Section 19 (1) of the Right to Information Act, which reads as follows:

"Appeal Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority :

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. "

8. As per the proviso to the said section of the Act, the time limit prescribed is 30 days. If no order is passed within 90 days, the petitioner is entitled to prefer appeal and the appellate authority should pass the order within 90 days. In the instant case, these formalities were not followed by the authorities, the respondents herein and there is no convincing reply available in the order, dated 09.07.2010 and further the same was passed subsequent to the filing of the writ petition.

9. It is not in dispute that though the writ petition was filed in the year 2006, the first respondent has passed the order only on 09.07.2010 stating that the information held by a Public Authority can only be ordered to be supplied and if it is not held by them, they cannot be held liable and further stated that since efforts seems to have been taken, Tamil Nadu State Information Commission has gone well beyond its normal role as arbitrator and tried to help the petitioner seeking the information from the National Commission for Scheduled Tribes, Bhubaneswar. The operative portion of the order, dated 09.07.2010 reads as follows : "...Under Right to Information, only information "held" by a Public Authority can be ordered to be supplied. If it is not "held" by them, they cannot be held liable. Since sincere efforts seems to have been taken and Tamil Nadu State Information Commission has also gone well beyond its normal role of arbitrator and tried to help the petitioner seeking information from the National Commission for Scheduled Tribes, Bhubaneswar on the off chance it may be there, it has to be held it is not available. The law does not ask for the "impossible" to be done. If the petitioner is seeking information, issued by Government of India and it is not "held" by any State authority, he has to approach the appropriate Central Public Information Officer under Government of India who will be under the jurisdiction of Central Information Commission and not Tamil Nadu Information Commission. As such with that advice the complaint case is closed."

10. On a perusal of the order passed by the first respondent on 09.07.2010, it is clear that it is not a proper order passed by the original authority, the third respondent herein, as contemplated under the Right to Information Act. Though no order was passed by the original authority, strangely, the first respondent has stated that efforts seems to have been taken and Tamil Nadu State Information Commission has also gone well beyond its normal role of arbitrator and tried to help the petitioner seeking them in supporting materials. As contended by the learned counsel appearing for the petitioner, the order passed by the first respondent is not in accordance with the letter and spirit of the Right to Information Act, 2005. The operative portion of the order shows that the order has not been passed in the letter and spirit of the Right to Information Act, as the orders have been passed belatedly by the respondents with an evasive reply.

11. It is seen that no counter was filed by the respondents in this writ petition. As contended by the learned counsel appearing for the petitioner, the respondents have not disputed the fact that the petitioner had filed application under Right to Information Act to furnish the details and also preferred appeal, as there was improper response. The information sought for by the petitioner from the third respondent is to furnish a copy of the Gazette, dated 12.03.1950, however, there was no proper response and the reason assigned by the appellate authority belatedly is also not convincing, hence, I am of the view that the writ petition has to be allowed to meet the ends of justice and the impugned order is liable to be set aside.

12. In the result, this writ petition is allowed and the impugned order is quashed and the first respondent is directed to consider the appeal preferred by the petitioner, by giving suitable directions to the concerned authorities and after providing reasonable opportunity to the petitioner and pass appropriate order, as contemplated under the Right to Information Act, in its letter and spirit.

13. With the above directions, this writ petition is disposed of. No order as to costs.

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To

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O/o. The Director of Tribal Welfare

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