

Madras High Court  
Madras High Court  
Suyambulingam Primary School vs The District Elementary ... on 18 September, 2009  
BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18/09/2009

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.(MD) No.4425 of 2009

and

W.P.(MD) No.4002 of 2009

Suyambulingam Primary School

represented by its Secretary

T.N.Puthukudi

Puliangudi ... Petitioner in

W.P.No.4425 of 2009

Vs.

1.The District Elementary Educational Officer Tirunelveli District, Tirunelveli.

2.The Additional Assistant Elementary

Educational Officer

Vasudevanallur

Tirunelveli District,

Tirunelveli.

3.A.Victor Selvaraj ... Respondents in

W.P.No.4425 of 2009

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A.Victor Selvaraj ... Petitioner in

W.P.No.4002 of 2009

Vs.

1.The State Information Commission,

No.378, Anna Salai,

Deynampet, Chennai-18.

2.The Chief Public Information Officer/

District Elementary Educational Officer,

Tirunelveli District, Tirunelveli.

3.The Public Information Officer/

Assistant Elementary Educational Officer,

Vasudevanallur,

Tirunelveli District.

4.The Correspondent,

Suyambulingam Elementary School,

T.N.Pudugudi, Puliangudi,

Tirunelveli District. ... Respondents in W.P.No.4002 of 2009

Prayer in W.P.No.4425/09

Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order of the second respondent passed in Na.Ka.No.1000 B2/2008 dated 29.05.2009 and quash the same as illegal, unjust and arbitrary.

Prayer in W.P.No.4002/09

Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the first respondent to take necessary action against the third respondent in pursuance to the petitioner's appeal dated 10.02.2009 under the Right to Information Act 2005 and consequently directing the 3rd and 4th respondents to furnish all the details forthwith as required by the petitioner in his application dated 24.11.2008.

W.P.No.4425/09

!For Petitioner ... Mr.Veera.Kathiravan

^For Respondents

R-1 & R-2 ... Mr.D.Gandhiraj

Government Advocate

R-3 ... Mr.J.ParekhKumar

W.P.No.4002/09

For Petitioner ... Mr.J.ParekhKumar

For Respondents

R-1 to R-3 ... Mr.Pala Ramasamy

Special Government Pleader

R-4 ... Mr.M.S.Velusamy

:ORDER

The petitioner in W.P.No.4425 of 2009 is the fourth respondent in W.P.No.4002 of 2009 and the third respondent in W.P.No.4425 of 2009 is the Writ Petitioner in W.P.No.4002 of 2009. Since the issue involved in these Writ Petitions are identical, they are taken together for final disposal with the consent of all the parties.

2.The order impugned in W.P.No.4425 of 2009 is an order passed by the second respondent, namely, the Additional Assistant Elementary Educational Officer. The second respondent informed the petitioner's School that they are required to furnish the information sought for by third respondent before 04.06.2009 and the School was directed to furnish the same and submit a report to the second respondent.

3.The prayer in W.P.No.4002 of 2009 is to direct the first respondent, the State Information Commission under Right to Information Act 2005 (hereinafter referred to as 'the Act') to take necessary action against the third respondent namely the Public Information Officer in pursuance to the petitioner's appeal dated 10.02.2009 under the provisions of the Right to Information Act 2005 and consequently direct the third and fourth respondents to furnish all details as required by him in his application dated 24.11.2008.

4.The grievance of the petitioner's School is that the order passed by the second respondent is without jurisdiction, since the petitioner School cannot be compelled to furnish information, which they are not required to furnish under Section 8 of the Act. It is further submitted by the Petitioner's School that the third respondent has unnecessarily filed Writ Petitions, sent representations to higher officials and has violated the provisions of the Act. They would further submit that the third respondent is none other than the husband of one Smt.Arunodhaya Selvi, who is working as an Assistant Teacher in the petitioner's School.

5.In view of the ground raised it is submitted by the learned counsel for the petitioner that the second respondent cannot compel the petitioner to disclose certain information, which they are not bound to disclose in terms of Section 8 of the Act. It has become necessary to decide as to whether this order is in accordance with the provisions of the Act.

6.A perusal of the impugned order dated 29.05.2009 reveals that it has been passed in pursuant to a direction issued by the State Information Commission on 29.05.2009. The State Information Commission by the said order has stated that a copy of the representation dated 10.02.2009 received from the third respondent is forwarded to the Public Information Officer, Office of the Assistant Elementary Educational Office, Vasudevanallur, Tirunelveli District and he is directed to supply the information to the petitioner before 04.06.2009 and report. A further warning has also been issued that if information is not furnished before 04.06.2009, the Public Information Officer has to appear in person before the Commission on 08.06.2009 at 02.30 p.m. This direction has been communicated to the third respondent as well as the second respondent,

however, it has not been forwarded to the petitioner School. Thus based on such direction issued by the State Information Commission, the impugned order has been passed. The learned counsel for the petitioner would submit that the State Information Commission has no jurisdiction to issue such a direction to compel a Public Information Commission to reveal certain details, dehors the provisions of the Act. In view of the said stand taken, it has now become necessary to decide as to whether such direction is in accordance with law.

7.The third respondent herein, has filed W.P.No.4002 of 2009 to take necessary action against the third respondent School based on the petitioner's appeal dated 10.02.2009. In fact, the petitioner's appeal had been taken on file and an order has also been passed on 27.05.2009 by the State Information Commission and consequential orders have also been passed by the Public Information Officer, which is impugned in W.P.No.4425 of 2009. Therefore, it is to be noted that the petitioner in W.P.No.4002 of 2009 has initiated simultaneous proceedings both before the State Information Commission as well as before this Court.

8.It is to be noted that originally the petitioner in W.P.No.4002 of 2009 had sought for certain information and thereafter, the second respondent by order dated 09.12.2008 has furnished the information. The grievance of the petitioner is that such information is not full compliance of his request. Therefore, he has preferred an appeal to the State Information Commission.

9.In such circumstances, it is to be seen as to how the State Information Commission should proceed with the matter based on an appeal filed by the petitioner in W.P.No.4002 of 2009. In terms of Section 19 of the Act any person, who does not receive a decision within the time specified in Section 7(1) or (3) or (3) (a) or is aggrieved by any decision of the Central Public Information Officer or State Public Information Officer may within 30 days from the date of expiry of that period or from receipt of the such decision prefer an appeal to such Officer, who is a senior in rank to the Central Public Information Officer or State Information Officer is the case may be. Proviso to Sub Rule (1) state that the said Officer may admit the appeal after the expiry of 30 days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. In terms of Sub Clause (3), a second appeal against the decision under Sub Section (1) shall lie within 90 days from the date on which the decision should have been made or was actually received before the Central Information Commission or State Information Commission. In terms of Sub-Section 4, if the decision of the Central Public Information Officer or the State Public Information Officer against which an appeal is preferred relates to information or a third party. The Central Information Commission or State Information Commission shall give a reasonable opportunity of being heard to that third party. In terms of Sub-Section 5, the onus to prove that the denial of a request is justified is on the person, who denies the request. In terms of Sub Section 6, an appeal shall be disposed of within 30 days or within such extended period of not exceeding total of 45 days. In terms of Sub-Section 9, the Commission shall give notice of its decision including any right of appeal to the petitioner and the Public Authority. In terms of Section 10, the Commission shall decide the appeal in accordance with such procedure as may be prescribed.

10.In exercise of the powers conferred under Section 27(e) and (f) of the Act, the Central Information Commission Appeal procedure Rules 2005 (hereinafter referred to as 'the Rules') has been enacted. The Rules 5, 6 and 7 would be relevant for the purpose of this case. In terms of Rule 5, a procedure has been stipulated for the purpose of deciding an appeal. Rule 6 deals with service of notice by Commission and Rule 7 deals with personal presence of the appellant or complainant. In view of the said procedure contemplated, the Commission herein, the Public Information Officer, who decided the first appeal or such person against whom a complaint is made, hear the third party and receive evidence on affidavit from the Information Commission, who decided the first appeal from the person against whom the complaint lies or the third party. The mode of services has also been contemplated. It is only thereafter the procedure under Rule 7 is to be complied with for enforcing personal appearance for the appellant or the complainant.

11.In this background, if the order passed by the State Information Commission is perused, it is totally in violation of the procedure stipulated under the Rules. In fact, the third party in the case has not been given any notice and the Public Information Officer has not been heard in the matter but a direction has been issued to

furnish the information and report before the State Information Commission with the further direction that if he fails to furnish the information within the cut of date, he has to appear in person. The procedure adopted is contrary to the rules and therefore the same is illegal.

12. In view of the said order being illegal, the consequential proceedings issued by the Additional Assistant Elementary Educational Officer, namely, the second respondent, dated 29.05.2009, is also illegal and the same is quashed. Accordingly W.P.No.4425 of 2009 is allowed. However, it is open to the State Information Commission to proceed further in case 3561/2009 in accordance with law after hearing the parties.

13. Insofar as W.P.No.4002 of 2009 is concerned, it is to be noted that the petitioner after having invoked the remedy under the provisions of the Act by filing an appeal before the State Information Commission has parallelly resorted to filing the present Writ Petition with the aforesaid prayer.

14. The learned Government Advocate by relying upon the counter affidavit would submit that the petitioner has no locus standi to demand such information and the petitioner's wife is in the habit of making complaints against the Management and unnecessarily interfering in the administration of the School. It is further submitted that all the information sought for has been furnished to the petitioner and the Writ Petition is the sheer abuse of law and intended to cause hindrance and hardship both to the Department as well as the School.

15. In my view the petitioner cannot be allowed to invoke such parallel remedies especially, when he has availed the statutory appeal remedy available under the Act. In view of the same, W.P.No.4002 of 2009 fails and accordingly the same is dismissed. No costs. Consequently connected Miscellaneous Petition is also closed.

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To

1. The District Elementary Educational Officer Tirunelveli District, Tirunelveli.

2. The Additional Assistant Elementary

Educational Officer

Vasudevanallur

Tirunelveli District,

Tirunelveli.

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No.378, Anna Salai,

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