



Personnel and Administrative
Reforms (AR.III) Department,
Secretariat,
Chennai – 600 009.
சார்வரி, புரட்டாசி 19
திருவள்ளூர் ஆண்டு 2051

Letter No. 23779/AR.III/2020-1, Dated 05.10.2020

From
Dr.S. SWARNA, I.A.S.,
Secretary to Government.

To

1. All Secretaries to Government,
Department of Secretariat,
Chennai – 600 009. (w.e.)
2. All Heads of the Departments. (w.e.)

Sir,

Sub: Right to Information Act, 2005 – W.P.No.17677 of
2010 – Orders of the Hon'ble High Court of
Madras – Copy – Communicated – Regarding.

Ref: Orders of the Hon'ble High Court of Madras,
dated 07.09.2020.

I am directed to enclose a copy of the orders of the Hon'ble High Court of Madras, dated 07.09.2020 passed in W.P.No.17677 of 2010 for information and further follow-up action. A copy of this may be circulated to the Public Sector Undertakings, Corporations and other State Government organizations under your control.

Yours faithfully,


for Secretary to Government.


6.10.2020

Copy to:

All Sections of Personnel and Administrative Reforms Department
Personnel and Administrative Reforms (AR - II) Department. (with a request to upload a copy of the reference in the intranet website).

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
16.07.2020	07.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.17677 OF 2010
AND M.P.NO.1 OF 2010

The Tamil Nadu Public Service Commission
Rep. by its Secretary,
Greams Road,
Chennai-600 006.

...Petitioner

-vs-

Mr.P.Muthian
Deputy Collector (Retired)
No.3, Sri Ram Nagar,
Kallanai Road,
Thiruvanaikaval,
Trichirappalli-620 005.

...Respondent

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the impugned order dated 20.11.2009 made in Case No.6109/Enquiry/2009 on the file of the Tamil Nadu Information Commission and to quash the same as void, unlawful, unjust and unconstitutional.

For Petitioner : Dr.M.Devendran, Senior Counsel

For Respondent : No Appearance
(Name Printed)

O R D E R

The Writ Petition has been filed, challenging the order of the respondent passed in Case No.6109/Enquiry/2009 on the file of the Tamil Nadu Information Commission dated 20.11.2009, by which the information sought for by the respondent herein was directed to be supplied free of cost within three weeks.

Ei 0099514

2. It was the case of the Tamil Nadu Public Service Commission (hereinafter referred to as the 'TNPSC'), represented by its Secretary that TNPSC is a Constitutional Body, created under Article 315 of the Constitution of India to carry out several functions and duties enumerated under Article 320 of the Constitution of India. The main duty of TNPSC is to conduct examinations and make selections to the services of the State in addition to the allied functions of extension of consultation in respect of disciplinary matters, recruitment methods, etc.

2.1. It was the further case of TNPSC that the respondent herein addressed a letter dated 06.10.2008 to Public Information Officer, Chennai seeking for the following information:

a) Total number of vacancies called for the years 2006, 2007 and 2008;

b) Number of seats allocated to the Backward Community out of the total number of vacancies called for the years 2006, 2007 and 2008;

c) Number of seats allocated to the Most Backward Community out of the total number of vacancies called for the years 2006, 2007 and 2008;

d) Out of seats allocated to the Backward Community, the list of the selected candidates from the sub-castes of Muthuraja and Muthriyar;

e) Out of seat allocated to the Most Backward Community, the list of selected candidates from the sub-castes Ambalakarar;

f) Out of seat allocated to the Most Backward Community, the list of selected candidates from Vanniya Kula Shatriar sub-castes (Vanniyar, Vanniya, Vanniya Gounder, Kandara, Padayachi Palli and Agni Kular Shathriar)."

2.2. It was also the case of TNPSC that though the details sought for in respect of a to c were furnished to the respondent, it was replied that other queries are exempted under Section 8 (1)(d) of the Right to Information Act, 2005 (in short 'RTI Act'). Aggrieved by the said reply, the respondent approached the Second Appellate Authority, namely, Tamil Nadu Information Commission (in short 'TNIC') and the said TNIC called for the Public Information Officer for enquiry and thereafter, passed the impugned order dated 20.11.2009, which is unjust, illegal, improper and an arbitrary exercise of power.

2.3. It was submitted by TNPSC that it, being a Constitutional Functionary, has moral obligation to maintain confidentiality and in the event of furnishing of the details to the respondent, it would harm the interest of third parties and the details regarding caste-wise breakup of the selected candidates got nothing to do with the public activity and such disclosure would amount to invasion of the privacy of individuals, apart from creation of communal discontent and strife. It was stated that the State has stopped the sporting of the caste behind the names of persons and at the time of publication of result, TNPSC used to indicate only the Class of candidates and not otherwise. Therefore, the direction to furnish such details, issued by TNIC is highly unsustainable and untenable.

3. Heard the learned Senior Counsel for the Petitioner-TNPSC. There is no representation for the respondent, despite his name being printed in the cause list.

4. The contention of TNPSC that the details sought for by the respondent are not at all warranted and that it would amount to invasion of privacy, cannot be accepted, especially when the selection itself is based on caste wise quota. The disclosure of caste wise breakup will certainly inure to the benefit of candidates to ascertain as to whether they actually fall under the reservation quota or not. When the general list itself has already been published for public view, as stated in the petition, there is nothing wrong in disclosing the details to the respondent. In the list, the details of caste, including sub-caste have to be necessarily mentioned and the contention that such revelation would create communal disharmony is not acceptable. As long as there is a provision for appointment on the basis of reservation, what prevents the authorities in unearthing those details to the public and when the details sought for by the respondent are furnished, it will throw a clear light / picture as to under what category, a candidate was placed.

5. The apprehension of TNPSC, that in-depth description of castes will create communal unrest, is only an illusion and imaginary and if it is the real concern of TNPSC and the Government, they should think of abolishing the quota system as well as removal of column regarding caste particulars in the school certificate itself, so that the people of Tamil Nadu could stand united under one roof irrespective of caste, creed, religion, etc. at least in the year 2050 and our State will be a model State for the whole of the country.

6. The next plea raised by the learned Senior Counsel for TNPSA that the queries in respect of (d to f) have been rejected only in terms of Section 8 (1)(d) of RTI Act, is wholly unjustified on the ground that the purpose of enactment of RTI Act itself is to ensure transparency in all respects. Moreover, a reading of the said section shows that it relates to commercial confidence, trade secrets, etc., and it does not strictly prohibit the authority concerned from providing such details, as divulging of caste details will surely be beneficial to candidates to doubly ascertain either about their induction or rejection and as such, the quoting of the aforesaid provision is highly irrelevant to the present context, from which, it is apparent that TNPSA had first decided not to give details and thereafter, searched for relevant provisions. For better understanding, Section 8 (1) (d) of the RTI Act is extracted hereunder:

"(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."

7. In the considered opinion of this Court, the Second Appellate Authority has rightly passed the order, holding that every citizen is entitled to transparent view of the functioning of public authorities and the trepidation shown by the Public Authority with regard to the demand of such details by others will not be a ground in denying details to public in contra to the provisions of the RTI Act. This may be one of the rarest of rare cases where the Second Appellate Authority has boldly taken a decision, which does not warrant any interference by this Court, as there is no error apparent on the face of record.

8. The birth of the RTI Act emanated from the suggestions given by Parliamentary Standing Committee, on the basis of which, Home Affairs called for a report of Pranab Nath Mukherjee Committee and also 179th Law Commission report and the constitutional guarantee vis-a-vis Supreme Court observations and thereafter, the Parliament in its wisdom enacted the Act, called Right to Information Act, 2005. On a close scrutiny of the Preamble and the object of the Act, it is manifestly obvious that the scope of freedom of information has been widely spread with the object and purpose to give right to information to its citizens in order to ensure transparency in Government dealings. From bare reading of Section 6 of the Act, it is abundantly clear that any person, who desires to obtain information under the Act shall have to make a request in writing to the authority prescribed under the Act. It is not necessary that a person seeking information is a citizen of the country or has a direct

interest in the matter. As a matter of fact, the provision of Section 6 confers right to information to any person for the obvious reason that right to information flows from the right to expression.

9. The Apex Court, in the case of The State of Uttar Pradesh v. Raj Narain and Others, reported in AIR 1975 SC 65 vividly discussed about the power of the Court to direct production of document and under what circumstances, a privilege can be claimed as contained under contemplated under Section 123 and 162 of the Evidence Act. While discussing the issue, it was specifically held that the people of this country have a right to know every public act, every thing that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its hearing. The Superior Court in the very same judgment further observed as follows:

"... In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor, which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest of bureaucratic routine."

Even the Supreme Court clearly held that the office of Chief Justice will come under the purview of Right to Information (RTI), by observing that transparency does not undermine judicial freedom.

10. Normally, Courts, which come across several cases, reject the request of the claimant in respect of disclosure of documents, on the ground that Writ Petition is pending or on some other reasons. Mere pendency of the matter is not a bar to furnish details even if it pertains to the very same case pending before the Court. Unless or otherwise there is an interim order, then the information need not be given for the present till the disposal of those matters. Now-a-days, the

Officials are used to adopt a tactic answer in mechanical manner that the information sought for is exempted in the light of Section 8(1)(d) of the Act, without actually ascertaining as to whether the information sought falls within the ambit of the said provision. Such Officers must be taught a lesson and in my view, they are unfit to hold the post of Public Information Officer or any other post in connection with the discharge of duties under RTI Act and they should be shown the doors, so that it will be a lesson for other Officers to act in accordance with the terms of the Act, failing which they may also face the similar or more consequences.

11. Though the respondent herein was not present, he filed necessary documents in the matter, based on which, this Court arrived at a conclusion. At the time of orders being reserved in this case, this Court asked the learned Senior Counsel for TNPSC to ascertain and inform this Court whether the errant Officials are still in service and alive and whether they are prepared to tender any apology for their act? Since no report has been filed before this Court to that effect as on date, this Court has proceeded to pass this order on merits on the basis of the available materials.

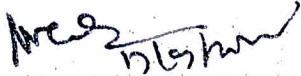
12. In view of what is observed hereinabove, this Court is of the view that the Writ Petition lacks merit acceptance and is liable to be dismissed. Accordingly, this Writ Petition is dismissed. The petitioner / TNPSC is directed to furnish the details to the respondent herein sought for by him within a period of one month from the date of receipt of a copy of this order. Though the Second Appellate Authority directed the Public Information Officer concerned and the Appellate Authority to submit their explanation for the offence committed under the RTI Act, which is in consonance with Section 20 of the RTI Act, it is not known whether the Official concerned submitted their explanation or tendered any apology and it is also not known whether they are still in service or not, as the Writ Petition is of the year 2010. Hence, the petitioner / TNPSC is directed to ascertain the same and inform the actual position, including the names of Officials, who had failed to discharge their official duties as adumbrated under the RTI Act, 2005, along with the compliance report, to the Registrar (Judicial) of this Court, so as to enable this Court to pass further orders in the matter. No costs.

Call on 14.10.2020 for reporting compliance. The Government is directed to circular this order to all its Departments, Public Sector Undertakings, Corporation, etc., so that the Authorities, more particularly under RTI Act, will come

to know of the legal consequences of non-furnishing of the details, which the affected parties / General Public seek for. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//


Sub Assistant Registrar

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To

✓ The Chief Secretary,
Secretariat,
Chennai - 9

Copy to

1.The Registrar Judicial,
High Court, Madras.

2.The Section Officer,
RTI Section,
High Court, Madras.

3.The Chairman,
Tamil Nadu Public Service Commission,
Chennai.

4.The Secretary,
Tamilnadu Public Service Commission,
Greams Road,
Chennai - 6.

PRE-DELIVERY ORDER IN
W.P.No.17677 of 2010

MG(CO)
KKV/17/09/2020

Ei 0099520