

Case relating to RTI:

Parties : The Tamil Nadu Public Service Commission, Rep. by its Secretary, Chennai Versus The Tamil Nadu Information Commission, Rep. by its Registrar & Others

Court : High Court of Judicature at Madras

Case No : W.A.No.1130 of 2010 & M.P.Nos.1 & 2 of 2010

Judges: THE HONOURABLE CHIEF JUSTICE MR. M.Y. EQBAL & THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

Appearing Advocates : For the Appellant: K. Surendranath, Advocate. For the Respondents: R2 - N. Subramanian, Advocate, R3 - M. Ravindran, Addl. Solicitor General for S. Raghupathy SCGSC.

Date of Judgment : 12-01-2011

Head Note :-

Letters patent Act - Clause 15 - Right to Information Act, 2005 - Section 8 & 19(3) -appellant filed the writ petition for issuance of writ of Certiorari to quash the order passed by the Tamil Nadu Information Commission/first respondent - second respondent submitted an application under Act, and sought for information relating to the recruitment to the post of Assistant Engineer - second respondent filed an appeal to the appellate authority, rejected - first respondent by order directed the information to be supplied to the second respondent - Aggrieved by such order, TNPSC filed writ petition - learned Single Judge, dismissed writ petition - Aggrieved by, filed appeal – dismissed.

Comparative Citations:

2011 (1) CTC 641, 2011 (3) MLJ 401

Judgment :-

(PRAYER: Writ appeal filed under clause 15 of the letters patent against the order dated 07.01.2010 passed in W.P.No.22479 of 2009.)

THE HON'BLE THE CHIEF JUSTICE & T.S. SIVAGNANAM, J.

1. This appeal by Tamil Nadu Public Service Commission (TNPSC for short) is directed against the Judgment and order dated 07.01.2010 of a learned Single Judge dismissing the writ petition in W.P.No.22479 of 2009.

2. The appellant filed the writ petition for issuance of writ of Certiorari to quash the order dated 11.06.2009 passed by the Tamil Nadu Information Commission, the first respondent herein.

3. The facts of the case lies in a narrow campus. The second respondent herein submitted an application under the Right to Information Act, 2005 (hereinafter referred to as the Act) and sought for information relating to the recruitment to the post of Assistant Engineer (Civil) in the

Public Works Department in the examination conducted during 1999. The second respondent in the said application sought for the following details: -1. How many A.E(Civil) were selected by C.E.S. 1999 (TNEB) through TNPSC?

2. The name of the selected A.Es (Civil), the total marks secured by them, their rank, their community status (ST/SC/MBC/BC/FC) as per the following format.

Sl. No.

Name

Total Marks obtained (Written Test & Oral Interview)

Rank awarded by TNPSC

Communal Status (ST/SC/MBC/ BC/FC)

4. The TNPSC by their reply dated 20.06.2008 stated that totally 210 candidates were selected to the post of Assistant Engineer and in respect of the second query namely, regarding total marks secured by them, the TNPSC stated as follows: -"The name and other details were published in the TNPSC Bulletin No.12 dated 01.06.2003. The category and community wise details were also specified and published therein."

5. Not being satisfied with the reply given by the TNPSC, the second respondent filed an appeal to the appellate authority, which was rejected. Aggrieved by the same, the second respondent preferred a second appeal under Section 19(3) of the Act before the Tamil Nadu Information Commission, first respondent herein by appeal petition dated 27.11.2008. The first respondent by order dated 27.05.2009, directed the information to be supplied to the second respondent within three days. Aggrieved by such order, the TNPSC preferred the writ petition. The learned Single Judge, who heard the writ petition, by his order dated 07.01.2010 dismissed the writ petition. Aggrieved by the same, the present appeal has been preferred.

6. The learned counsel appearing for the appellant submitted that the information sought for by the second respondent would come within the exemption provided under Section 8(1)(d) of the Act and therefore, they are not bound to furnish the same. Further, it is contended that the appellant is not bound to furnish the information, in terms of Section 8(1)(e) as the information available with the appellant is in their fiduciary relationship and therefore exempted. The learned counsel further submitted that there is inordinate delay on the part of second respondent in seeking for the information and therefore, furnishing of such information will lead to various other complications and therefore, the order passed by the learned Single Judge calls for interference.

7. Per contra, the learned counsel appearing for the second respondent would submit that the provisions of Section 8(1)(d) and 8(1)(e) of the Act are not attracted to the case on hand and there is no delay on the part of the second respondent in seeking for the information as the

application was made within a reasonable time from the date on which, the second respondent came to know that certain persons who secured the lower mark in the exam have been given, undue placement in the merit list. Further, it is submitted that the appellant is in possession of the information sought for and in respect of another selection conducted for the post of Assistant Engineer in Rural Development Department, which was conducted in 1997 information was furnished in 2006 and therefore, the writ appeal is devoid of merits.

8. We have heard the submissions on either side and perused the materials available on record.

9. Admittedly, the TNPSC has not stated that the information sought for is not available with them, but have attempted to take shelter under Section 8(1)(d) and (e) of the Act. The information sought for pertains to an examination, which has been conducted less than 20 years back from the date on which the information was sought and in terms of Section 8(3), the appellant is bound to furnish the information in respect of matters, which have taken place 20 years before the date on which, the request is made under Section 6 of the Act. Therefore, the question of incorporating the theory of laches in the case on hand does not arise. However even factually the second respondent has stated that only in the month of June 2008, he came to know that all was not well in the final merit list/selection list published for the selection to the post of Assistant Engineer, PWD, during 1999 and immediately, the second respondent filed the application requesting for information. Therefore, the only question to be decided in the present case is as to whether the appellant is entitled to seek exemption under Section 8(1)(d) and (e) of the Act.

10. In our view, the stand taken by the TNPSC by relying upon under Section 8(1)(d) & (e) of the Act is wholly misconceived. The information sought for by the second respondent pertains to a selection to the post of Assistant Engineers in which selection process, the second respondent also participated. In no manner, it could be stated that the information sought for could be considered as a "commercial confidence", "trade secret" or "intellectual property" if disclosed would harm the competitive position of a third party. The complaint of the second respondent is that a person who has secured lesser mark has had an unfair advantage, by being placed higher in the merit/select list and the second respondent was not aware of the same, since the bulletin published by the TNPSC during the relevant time did not contain the marks secured by the candidates. Likewise, it cannot be stated that the information available with the Commission is held in fiduciary relationship as the Commission is the recruiting body. Therefore, the first respondent rightly ordered that the information has to be supplied and the stand taken by the TNPSC was not tenable. This finding of the first respondent was also confirmed by the learned Single Judge.

11. As noticed by the learned Single Judge, the information sought for by the second respondent is available with the appellant and therefore, in our view, the learned Single Judge

was perfectly right in holding that the information sought for has to be furnished.

12. In the result, we find no grounds to interfere with the order passed in the writ petition. Hence, the writ appeal fails and it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.