



Before The State Information Commission, Kerala
Punnen Road, Thiruvananthapuram-695 039.

Tel:0471 2335199, Fax:0471 2330920
Email: sic@infokerala.org.in

AP.No.299/2007/SIC
File No.3694/SIC-Gen2/2007

Smt.Beena Sarasan,
TC.9/5-1, C1, Tennis Club Enclave,
Kowdiar.P.O
Thiruvananthapuram-695 003. } Appellant

Vs

Public Information Officer
Centre for Earth Science Studies,
Akkulam,
Thiruvananthapuram-695 031.

Appellate Authority,
Centre for Earth Science Studies,
Akkulam,
Thiruvananthapuram-695 031.

Dr.M.Krishnan Nair,
Elankath House, Elankom Gardens,
Vellayambalam,
Thiruvananthapuram. } Respondents

ORDER

This is a second appeal preferred u/s.19(3) of the Right to Information Act. The appellant/requester Smt.Beena Sarasan had preferred a request on the 11th of October, 2006 before the State Public Information Officer, Centre for Earth Science Studies, Akkulam, Trivandrum. The request as such could be reproduced as follows:-

"Copy of CRZ status report prepared by CESS in June 2002 at the request of Dr.M.Krishnan Nair, Elankom Gardens, Vellayambalam, Trivandrum in respect

of Re-survey No.359/2 & 359/7 of Kottukal Village, Trivandrum District". This request u/s.6 of RTI Act was marked as Ext A1.

This Ext A1 request was considered by the Public Information Officer of CESS and on the 3rd of November 2006, a reply was given to the requester directing her to remit Rs.25/- towards the cost for getting a copy of the CRZ Status Report. But immediately on the same day, a detailed order was pronounced by the PIO rejecting the information. This order was marked as Ext A2. The reasons alleged were u/s.11(1) of the RTI Act. A notice was given to Dr.M.Krishnan Nair and he had opposed the furnishing of the information. Therefore, the information was denied u/s.8(1)(e) and 8(1)(j) of the RTI Act. Thereupon aggrieved by this order Ext A2, Smt.Beena Sarasan had preferred a first appeal before the Appellate Authority ie., the Director, CESS. The appeal memorandum together with the contents were marked as Ext A3. The appeal was rejected vide order dated 10.1.2007 and the same was marked as Ext A4. The appellate authority had found that the information was a study report prepared for the purpose of Dr.M.Krishnan Nair on payment of fees. There was a fiduciary relationship existing in between Dr.Krishnan Nair and CESS and hence this information could not be disseminated to a stranger. That was the reason why the appellant had approached the State Information Commission, Kerala with a second appeal. The order of the Director, CESS was already produced and marked as ExtA4.

The report of the Director, CESS was called for. Statements of both sides were obtained. An affidavit of the third party was also filed. The appellant, the respondents and the third party were heard in person.

The questions that arise for consideration are;

1. Whether the Appellate Authority is expected to make a speaking order while disposing of an appeal against the orders of the State Public Information Officer?
2. Whether furnishing of the information in the present case is hit by Section 8(1)(e) of the RTI Act?
3. Whether the furnishing of information is hit by Section 8(1)(j)?
4. Whether Section 11 gives a protection to the third party from disseminating the information obtained by him to any other person other than him?

Question No.1: It is a common and general question applicable to all appeals preferred against the orders of the Appellate Authorities u/s.19(1) of the RTI Act. The first Appellate Order of the Appellate Authority is an appeal against the order of the Public Information Officer. Naturally, the order should have been a speaking order and the substantive reasoning thereon should find a place in the appeal order. In the instant case, Ext A2, is the detailed order of the Public Information Officer. In Ext A2 three reasons are given for denying the request. They are (i) the fiduciary relationship between a third party and CESS (ii)

absence of any public interest and (iii) invasion into the privacy of an individual. While upholding this decision, the Appellate Authority had stated that there was a fiduciary relationship between CESS and Dr.M.Krishnan Nair, a third party. There was no larger public interest involved in the request Ext A1 and, therefore, the request was denied. It was true that Ext A4 order of the Appellate Authorities was not an order in its details but, however, the reasons mentioned in Ext A2 were reproduced and it was passed in full conformity with Ext A2 order. Therefore, the contention that the Appellate Authority had not pronounced a speaking order was not of much importance in this case. A concurring order need not be an elaborative one because the concurring officer was agreeing with the reasoning of the Public Information Officer who had pronounced a lengthy and detailed order. Therefore, the Commission finds no irregularity in pronouncing Ext A4 order, a brief and short one. However, it was advisable for the first appeal to suffice his order with reasoning.

Question Nos. 2 & 3: The cardinal principle in the whole matter is whether a study conducted for and on behalf of one person could be availed of by another simply by asking under the RTI Act. Moreover, on the face of third party objection whether the information could be disseminated discarding the objection thus raised by the third party. For a genuine and reasonable analysis of the incident, a reference to the various aspects of this case was a necessity. The Public Information Officer while disposing of the case had called for the objection of the third party Dr.M.Krishnan Nair. It was stated in Ext A2 " after perusing the case it was found that Dr.M.Krishnan Nair, Elankath House, Elankom Gardens, Vellayambalam, Trivandrum had approached the CESS for preparing CRZ status report of his property. He had paid the specific fee and the work was carried out in the year 2002". Further in paragraph number three it was stated that Dr.Krishnan Nair had expressed his objection for giving the copy of the CRZ report to the appellant.

During the hearing of this case, the affected party Dr.Krishnan Nair was summoned. He had appeared before the Commission and had preferred a detailed objection. In his objection, the following points were high lighted. CESS had undertaken the study on his request for the preparation of CRZ status report on payment of Rs.35,250/-. It was an intellectual property obtained by him the disclosure of which was prohibited u/s.9 of the RTI Act. There was a fiduciary relationship between him and CESS and therefore, disclosure of the information was also prohibited u/s 8(1) (e) of the RTI Act. It was also an invasion into the privacy of an individual u/s.8(1)(j). Furthermore, it was stated that the right conferred by Section 3 of the Act was not an absolute right and the statute provides ample safeguards to protect the interest of third parties.

Smt.Beena Sarasan, the appellant, was also given a reasonable opportunity of hearing. The reasons argued by the appellant in addition to the averments in the appeal memorandum Ext A3 deserves special mention. It was urged that the contention of fiduciary relationship was not maintainable. The said report was prepared to enable Dr.Krishnan Nair to satisfy the conditions laid down by the Govt. of India for obtaining sanction for construction of a resort in

areas coming within the Coastal Regulations Zone. It was for obtaining a no-objection certificate from the Ministry of Environment and Forest, Govt. of India. The study was undertaken by CESS and therefore, there was no fiduciary relationship. It was further submitted that the requester/appellant was also a joint owner of the property in Survey No.359/1, 359/2 and in a way it was study with regard to her property also. Therefore, her property was also involved in the survey. To prove the co-ownership of the same Survey Number the tax receipt and copy of the documents were also produced.

Among other things the contention of the appellant was that the study prepared by CESS was apart of a map prepared for the Government and it was now a document in the public domain. This particular map relates to her property also. There was a larger public interest involved in this case. The CRZ Zone was a continuous line and she had got a right to know exactly where it lies. These were all supporting factors argued by the appellant. The relationship once established by the respondent that a study was conducted on the request of a third party it cannot be argued that the product of the study was a public document prepared for and on behalf of the Government. It was prepared by the CESS and given to the third party and not to the Government. Such a document exclusively prepared for and on behalf of a third party on payment of prescribed fee can never be a document in the public domain and there was no public interest involved at all. The larger interest of the public was not that one generated out of a litigation between two parties or between two neighbours but it was an issue that generated from the general public for the public good. An act done under good faith cannot be stated that it was an act at the larger public interest.

The Appellate Authority had also preferred an additional written statement. In the additional statement, the status of CESS was illustrated. The Centre for Earth Science Studies was an Organisation that undertakes Research and studies. It was an organization free to entertain its own clients and at liberty to enter into any contract for the purpose of studies and research work. Dr.Krishnan Nair was one of their clients who had entrusted with them the project of a study report in June 2002. Because the client of CESS was having a contractual liability with CESS, the CESS in its turn was under an obligation and fiduciary relationship with Dr.Krishnan Nair. The study report conducted for him cannot be divulged to any other person under any circumstances and it was the legal contractual liability.

During the argument the appellant had also tried to make out a point that before the Hon'ble High Court a litigation was pending and CESS was one of the defendants in that case. It was the duty of the appellant to prove that the HTL line during the period 2002 was along the coastal area and the study conducted in 2002 in respect of the property of Dr.Krishnan Nair and her own adjoining property was the only source by which she could prove the case before the Hon. High Court.

The purpose of this report, however, relevant for the appellant could be of no importance under the RTI Act and could not be of any concern. When a

document was a requested under the RTI Act, the purpose for which the document was required was outside the purview of screening and the legal authority including the Commission were prohibited from asking the purpose for which the document was asked for. Sub-section 2 of Section 6 would make it clear that an applicant making a request for information shall not be required to give any reason for requesting the information". Here in this appeal, it may be a reason for the appellant to prove that the High Tide waves was passing through the coastal area property of several persons. It so happened that the property in which a study was conducted was the adjoining property of the appellant and that study was conducted in 2002. The purpose for production of such a document before a court at the cost of the third party was objected. the appellant could very well ask the CESS to provide the corresponding findings, if any, to be provided to her not that of the report belonging to the third party. Therefore, whatever be the noble purpose, the respondent had succeeded in establishing the fact that it was outside the purview of the RTI Act.

Now, the Commission like to discuss the proper issue of fiduciary relationship. Fiduciary relationship is the contractual liability between two parties in the interest of their business. Dr.Krishnan Nair entrusted the study with CESS on payment of Rs.35,250/-. CESS had undertaken the work and provided him with the report. He was in the position of a competitive client and it was an intellectual property obtained after payment and provided after a study. The fiduciary relationship with a third party had to be protected in the interest of CESS also. Therefore, the Commission finds Section 8(1) (e) and Section 9 come to the rescue of the third party. The position of third party is a well protected position under the RTI Act. A recent decision of the Hon.High Court of Gujarath deserves special mention. It was held "disclosing of information relating a third party . the Public Information Officer should give opportunity of personal hearing to the third party before imparting such information". (AIR 2007 Gujarath 203). This was a case in which the PIO had afforded an opportunity of hearing the third party. During the appellate stage also u/s.19(4) the third party was heard. Therefore, it is found that there did exist a fiduciary relationship between Dr.Krishnan Nair and the CESS and therefore, the appellant was not entitled for the information requested.

Regarding 'fiduciary relationship' the requester had produced a decision of the Hon.High Court of Kerala in Krishnan Vs Metal Industries Ltd (1992 (2) KLT 519). This decision was with regard to Sections 51 of the Civil Procedure Code. It was neither applicable in respect of the law discussed nor facts presented. Therefore, the decision was not binding on the fiduciary relationship that was mentioned in the RTI Act. Fiduciary relationship could be a trust imposed upon each other by either party to a contract, either by express provision or by implied position.

Question No.4: Section 9 and Section 11 were yet another ground pleaded by the appellate authority and third party. Section 9 clearly prohibits the furnishing of an information if it was an intellectual property or which involve an infringement of copy right subsisting in a person other than the State. A report prepared by

CESS for and on behalf of Dr.Krishnan Nair was not a matter that falls within the ambit of copyright. It was only a work undertaken on a fiduciary relationship. So Section 9 of the RTI Act was wrongly construed in this case. Nevertheless Section 11 was the direct provision concerned to the third party information. A third party information was always protected and the disclosure of the same was mandatory only where the public interest outweighs the private interest or the third parties interest. A study conducted by CESS on the request of a third party was not a matter of public interest. Therefore, the Commission finds no reasons to disagree with the finding of the Public Information Officer.

In the result, for the above said reasons, the appeal is dismissed.

Dated this the 21st day of December, 2007.

Authenticated copy

Secretary to Commission