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COMMON ORDER IN

1. AP.No.100/2006/SIC
2. AP.No.101/2006/SIC
3. AP.No.103/2006/SIC
4. AP.No.133/2007/SIC

Shri.M.K.Janardhanan,
Bhavana,
Kunnathupalam,
Kozhikode-673 014.



Appellant

Vs

The Public Information Officer
and
Assistant Commissioner of Police
(Administration)
Kozhikode City, Mananchira,
Kozhikode.



Respondent

ORDER

All the four second appeals are taken up together for disposal for the following reasons. The appellant in all the cases are one and the same. The respondent in all the three cases are also the same. But in AP.133/2007, the DIG, Kannur, the departmental superior of the other appeals, is stated to be the respondent. There is no substantial variation in the request and more or less the

subject matter is the same. The Appellate Authority in all the three cases are also the same. And, hence, a joint trial and disposal was necessitated for the proper adjudication of these appeals. Though these matters are dealt with in a common judgment it would be appropriate to discuss the details of the appeal and the remarks and written statement independently, so as to give a meticulous and careful study of the subject matter of each appeal.

AP.No.103/2006/SIC

The appellant in this case is Shri.M.K.Janardhanan. The second appeal was dated 22.8.2006 and was received in this office on 24.8.2006. The allegations in the appeal are as follows:-

On 24.4.2006, he had preferred a request dated 22.4.2006 before the City Police Commissioner, Calicut. It was a request for "11.02.2005 പ്രകാരം ബോധിപ്പിച്ച ഹർജി പ്രകാരം അന്വേഷണം നടത്തിയ ആന്റി ഗൂ ട്വ സർക്കാർ സബ് ഇൻസ്പെക്ടറുടെ മറുപടി നഷ്ടപ്പെട്ടുപോയിരിക്കയാൽ ആയതിന്റെ പകർപ്പ് അനുവദിച്ചുകിട്ടുന്നതിനുവേ 1 22.4.2006 ന് ബോധിപ്പിച്ച അപേക്ഷ 24.4.2006 ന് കൈപ്പറ്റിയതല്ലാതെ യാതൊരു നടപടിയും സ്വീകരിച്ചിട്ടില്ല".

In the said matter, an appeal was preferred on 15.6.2006 before the Additional Director General of Police, Police HQs, Trivandrum. No reply has been received so far. Furthermore, there was an allegation that the Public Information Officer had behaved indecently and improperly towards the requester on 28.3.2006 when he had approached the Public Information Officer for furnishing the information. This second appeal is supported by 5 enclosures.

The remarks of the Appellate Authority in this appeal was a very detailed remarks running about 6 pages and containing nine enclosures. It was stated that the report from the Public Information Officer was also obtained. The actual request was for certain documents in a dispute between the appellant Mr.Janardhanan and his wife Smt.U.N.Radha. Because the document requested was closely connected with a third party information, notice was given to the said Smt.Radha and copy of the same is also produced. The appellant's wife along with 76 others had preferred a mass petition against the appellant and appellant was demanding the statements of Smt.Radha as well as the statement of 76 signatories to the mass petition preferred against the appellant. The statement of Smt.Radha was also enclosed marked as Ext A1. Smt.Radha had opposed furnishing of information because of the following reason. The appellant after deserting Smt.Radha had illegitimate relationship with his maid-servant Smt.Madhavikutty and was now living as man and wife. All the properties were also transferred in her name. There were ever so many civil and criminal cases between her and her husband and thus there was severe objection from the third party. It was further contented that furnishing of the information was dangerous to the life and liberty of the third party Smt.Radha and the Public Information Officer had therefore, refused the information u/s.8(g) of RTI Act, the same was marked as Ext A2. The Appellate Authority had found the

findings of the Public Information Officer as genuine and correct and, therefore, the first appeal was dismissed by the Appellate Authority.

His wife Smt.U.N.Radha had given a statement before the Public Information officer. The same was marked as Ext A3. She had two sons and her elder son Shri.Ranjith had committed suicide and the other son was away in a foreign country. She was left without any protection and, therefore, releasing of her statement and the statement of other witnesses would jeopardize her life and liberty. She had also alleged illegitimate relationship existing between her husband with one Smt.Sathi, d/o.Pachutty and another woman Smt.Mathavikutty. Hence, the Appellate Authority had found the issues in favour of the Public Information Officer who had refused the information u/s 8(1)(g) of RTI Act.

AP.No.101/2006/SIC

The same Appellant Shri.M.K.Janardhanan had preferred this second appeal against the very same respondent on 22.8.2006 which was entertained as AP.101/2006 on 24.8.2006. The details that could be deduced from the appeal memorandum were as follows:-

On 6.2.2005, he had had preferred a request before the City Police commissioner, Calicut. On 19.5.2005, he had preferred a request under the RTI Act for the copy of the report of his petition dated 6.2.2005 and copies of the statements given by witnesses in the above investigation. The request was rejected under S.8(1)(g) of RTI Act. Therefore, an appeal was preferred before the ADGP. He wanted copies of the enquiry report and copies of all the statements who were questioned by the police consequent to his request dated 21.3.2006. The request dated 21.3.2006 was the petition filed u/s. 6 of RTI Act, the same was marked as Ext A4. The specific request in this Ext A4 was that copy of the investigation details on his complaint dated 2.2.2005 may be made available to him. There was ever so many other allegations also. This appeal memorandum is yet another copy of the original one which we had discussed earlier.

The report of the Appellate Authority was also obtained. This time, the report of the ADGP HQs was to the following effect.

The first Appellate Authority had called for the report of the Public Information Officer marked as Ext A5. This report was common in all the cases. The same was produced as Annexure. The request of the appellant u/s.6 of the RTI Act was dated 21.3.2006. The request was for the action taken on a petition allegedly filed by him on 2.2.2005 against his wife, son and certain other persons. Smt.U.N.Radha, the third party involved in this case was his former wife, her statement was recorded. She was given a notice. She opposed the furnishing of the information. Since investigation and enquiry by the police had brought out the fact that there was threat to the life and liberty of the wife of the petitioner (third party) who was now deserted by him the request under RTI Act was not granted. The documents produced on either side required detailed consideration.

AP.No.100/2006/SIC

In this case the formal appeal was seen filed on 22.8.2006 and was entertained as appeal No.100/2006 on 24.8.2006 the same day of other two appeals. In this case the appellant had demanded the following documents:-

"ഹർജിക്കാരന്റെ പേരിൽ 76 പേർ ഒപ്പിട്ട പരാതി പകർത്തുകിട്ടുന്നതിനുവേണ്ടി കോഴിക്കോട്ട് സിറ്റിപോലീസ് കമ്മീഷണറുടെ ഓഫീസിലെ എസ്.പി.ഐ.ഓ -യിന്റെ മുമ്പാകെ അപ്പീൽ ഹർജിയിൽ 20.4.2006 ൽ ബോധിപ്പിച്ച അപേക്ഷ 24.4.2006 ന് കൈപ്പറ്റിയതല്ലാതെ യാതൊരു നടപടിയും സ്വീകരിച്ചിട്ടില്ല യാതൊരു നടപടിയും സ്വീകരിച്ചുകാണുന്നില്ല". This application dated 20.4.2006- was marked as Ext A5.

This request was also of the same demand. This also contained certain enclosures like photocopies of remittance of fee under RTI Act. .

The remarks of the ADGP was obtained. In the detailed remarks it was submitted that the information requested related to a third party information, notice was given to third party. There was strong objection from the side of the third party. There was threat to the life and liberty of the informant and, therefore, the petition was rejected u/s. 8(g) of the RTI Act. And, hence, the first Appellate Authority had also agreed with the Public Information Officer. The relevant details and discussions are almost similar to that of the earlier appeals.

The question that arises for consideration is whether the appeals could be allowed or not?

The common issue in all the appeals are one and the same. But the appellant has managed to diversify the subject matter so as to appear that the request was for three independent information. The dispute was essentially between the appellant and his wife and son. The records would show that the appellant used to file petitions after petitions to so many public authorities on the same subject and repetition of the same would make the entire issue a riddle and complicated one. Here also all the three appeals are seen filed on 24.8.2006. There was not even an interval of a single day. When we meticulously scrutinize the request , it involves two issues first, the investigation concerning the matter was in progress and during the course of the investigation the Police was not inclined to furnish the entire details of third parties who had given certain information against the requester. The second issue, involved in this case was that the life and personal liberty of a third party was supposedly in danger if the matter was made public and connected information provided to the appellant.

The Commission would like to categorically refer to certain aspects. In AP 103/2006, the appellant made an averment that he had filed a petition before the City Police Commissioner on 11.2.2005. This petition was not before the Commission. There was again an averment that this petition was investigated by the Anti Gunda Squad Sub-Inspector and a reply had been furnished to him. That reply had been lost and for the same document he had preferred a request on 22.4.2006. The conspicuous non production of copy of petition dated 11.2.2005 was suspicious and there was no finding whether such a petition was seen received by the City Police Commissioner or not. The request dated

22.4.2006 was marked as Ext A1. It also had referred to a fact that the petitioner had made a complaint before the City Police Commissioner on 11.2.2005 and he had received a reply G3/11904/05 and the same had been lost irrecoverably. He was requesting for the said report dated 11.2.2005. The Public Information Officer and the Appellate Authority had made it clear that no such report was with the Public Information Officer. In the absence of the original petition dated 11.2.2005, and also in the absence of a report by the Anti Gunda Squad Sub-Inspector, it cannot be ordered or found that there was such a report and copy of which could be furnished to the informant.

In AP.No.103/2006, the request was for the report dated 22.4.2006, there was no such report and no such petition. In AP -101/2006, the request was for a report on a petition filed on 21.3.2006, the petitioner had produced ever so many documents, copy of complaint dated 21.3.2006 was marked as Ext A4 before this Commission. In AP-100/2006, the request was for a report that he had filed on 20.4.2006, marked as Ext A5. All these petitions were considered elaborately by the first Appellate Authority. The Appellate Authority would say that there were a number of disputes between the appellant and his estranged wife Smt.U.N.Radha. There was a mass petition signed by 76 persons and the first signatory was his wife Smt.U.N.Radha. During the course of the investigation of this mass petition, several persons were questioned and their statements were recorded. Smt.U.N.Radha had submitted a petition on 30.1.2006 before the Asst.Commissioner, City Police, Calicut in which she had alleged that she was an old lady. The marriage between her and the appellant had taken place about 33 years ago. Now their relationship was strained because of the ill-treatment of the requester. He was having illegitimate relationship with one maid servant Smt.Madhavi kutty and all the properties belonging to them were bequeathed to Smt.Madhavikutty. They were staying separately and had two children, one had committed suicide and other boy was away in Gulf countries. Again Smt.Radha had given statements before the Investigating Officers that the requester had another wife one Smt.Sathy yet another maid servant. She was afraid of her husband and any information that she had given to the Police, if divulged to the husband, would be detrimental to her life and security. There were criminal cases pending against him for alleged attempts of assault on her.

The information from all these facts would show that these are information related to third party information and furnishing of such information would result in danger and insecurity to the life and liberty of the third parties. That was why the Public Information Officer and Appellate Authority had resorted to Section 8(1) (g) of RTI Act and rejected the appeal.

There are certain inherent defects in the disposal of the petitions filed under Section 6 of the RTI Act. The Public Information Officer should have resorted to the strict compliance of the provisions of RTI Act. Whether the rejection under Section 8(1) (g) was justified on the face of the investigation conducted by the Public Information Officer or any Officer subordinate to him was a fact finding enquiry only. If the Public Information Officer was definite that the information requested in all the three appeals related to third party

information a written notice should have been given to the third party u/s.11(1) of the RTI Act and such notice should have been issued within 5 days of the receipt of the request. A third party who has got a privilege to be heard u/s.11(1) was expected to prefer his or her objections within 10 days of receipt of such notice issued under Section 11(1) of RTI Act. The 10 days time gap allowable to the third party was as per section 11(2) of the RTI Act. Then the Public Information Officer has to consider objections, if any, by the third party and dispose it of on merits, either admitting/rejecting them. The entire matter was not given individual attention and the spirit of the time bound schedule of the RTI Act was not been observed. It is to be found that in appeal No.103/2006, the request under the RTI Act was dated 22.4.2006 and it was a demand to get the information or action taken report on a petition allegedly filed on 11.2.2005. In appeal No.101/2006, the report Ext A4 was the real petition under RTI Act which demanded the action taken on a petition allegedly filed before the City Police commissioner on 2.2.2005. In AP No.100/2006, the request under RTI Act was Ext A5 *ie.*, dated 20.4.2006 and the demand was for the copy of mass petition signed by 76 persons and the investigation report thereon. The Public Information Officer and the appellate authority had failed to differentiate the independent requests and also had failed to take timely action in each petition u/s.11(1) & (2) of the RTI Act. It was also seen that the appellant was not given a hearing. Therefore, this was a matter to be investigated, enquired into and considered afresh by the Public Information Officer, strictly in tune with the provisions of the RTI Act.

The Appellate Authority's order dated 29.8.2006 indicated that notice u/s.11(1) had been given to three persons who had tendered evidence during the course of the enquiry. Commission specifically checked up with the appellant whether had had received any information on his request thereafter and he had answered in the negative. So the Commission observed that no follow up action had been made in the process of ascertaining whether the third parties would have any objection in providing the information sought for by the appellant and this was a very sad state of affairs. The Commission also observed that, if at all a notice has to be given to the third party, it has to be done by the Public Information Officer and not by the Appellate Authority. In case, the Public Information Officer had not handled this properly it might have remanded to the Public Information Officer to complete the process with a given time limit. This had not been done. Further when a notice is given to the third party, the Act under section 11(1) very clearly specifies that a maximum period of 10 days alone will be available to the third party.

On the whole, the Commission feels that the case has not been handled properly. Therefore, all the 3 cases, AP No.100/2006, 101/2006 and 103/2006 are remanded to the Public Information Officer to go over or denovo and dispose of the case within 45 days after completing all the formalities, unbiased by any recital/observation made on this order.

AP No.133/2007/SIC

The appellant had also filed another appeal on 8.9.2006 on the above said facts. The respondent herein is the Dy.Inspector General of Police, Kannur. On going through this appeal it was found that the regular appeal ought to have been filed before the ADG(P), Police Headquarters, Trivandrum. The Dy.Inspector General of Police was not an appellate authority nor a Public Information Officer. Therefore, this appeal is not of any merit and is dismissed *in-limini*.

Dated this the 7th day of September, 2007.