

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 25TH DAY OF JUNE 2019 / 4TH ASHADHA, 1941

WP(C).No.11202 of 2019

PETITIONER:

ADV. D.B.BINU,
AGED 51 YEARS,
S/O. LATE D.A. BHASKARAN, PRESIDENT, RTI KERALA
FEDERATION, COCHIN CHAMBER OF LAWYERS, PROVIDENCE
ROAD, ERNAKULAM DISTRICT - 682 018

BY ADV. SMT.A.A.SHIBI

RESPONDENTS:

- 1 THE STATE PUBLIC INFORMATION OFFICER
OFFICE OF THE CHIEF ENGINEER, ISW, IDRB, 3RD FLOOR,
VIKASBHAVAN, THIRUVANANTHAPURAM - 695033
- 2 THE APPELLATE AUTHORITY AND CHIEF ENGINEER
INTER STATE WATER (ISW), IDRB, 3RD FLOOR,
VIKASBHAVAN, THIRUVANANTHAPURAM - 695033
- 3 THE STATE INFORMATION COMMISSION KERALA
REPRESENTED BY ITS SECRETARY, PUNNEN ROAD,
THIRUVANANTHAPURAM - 695001
- 4 THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT
WATER RESOURCES (INTER STATE WATER CELL) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695001

BY ADV. SRI.M.AJAY, SC, STATE INFORMATION COMM

SRI.N.B.SUNILNATH,GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
25.06.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R

JUDGMENT

The petitioner, who claims to be a Right to Information activist and the president of a Federation of such activists, impugns Ext.P2 order issued by the Government of Kerala, which ostensibly says that certain types of information cannot be made available to the Public even under the Right to Information Act (for short "RTI Act"). It is the specific case of the petitioner, who does not, however, state to be personally affected by this order, that a directive for omnibus denial of certain information in this manner, which is in gross dis-accord with the mandate of the Right to Information Act, issued on behalf of the Government by its Additional Chief Secretary, appears to be an attempt to subvert the processes of law and the laudatory intent of the said Act.

2. As indicated above, the pleadings on record do not indicate how the petitioner is personally impacted by the said order and therefore, I only propose to consider the

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forensic validity and propriety of the contents of Ext.P2 rather than with any particular personal grievance of the petitioner.

3. From this limited perspective, I must say that I fail to understand how the Government of Kerala could order in Ext.P2 that *“all documents/information related to Inter State matters and documents/information which Government feels privy and the disclosure of the same may hamper the interest of the State shall be exempted from revealing to the public even on request under RTI Act”*, particularly when, under the Right to Information Act is a well defined hierarchy of officers, with the State Information Commission at its head, which is expected to be autonomous and resistant to any pressure from the Executive. It is disquieting that Ext.P2 order appears to be an attempt to influence the various Information Officers and Appellate Authorities under the RTI Act, by dictating that they shall not make available certain types of information, no matter what the mandate of the RTI Act. This certainly is a very dangerous proposition and it

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is incomprehensible how the Government could arrogate to itself the power to issue such an order, knowing fully well that this is gross affront to the provisions of law, because it must certainly be aware that information sought for by an applicant under the RTI Act can only be denied under the specific instances enumerated in Sections 8 and 9 of the said Act and in no other. Whatever be the reason behind issuance of this order and however justified the reason stated therein may be, the incontrovertible fact is that the Government could not have issued this order to pre-empt grant of any information, whatever be its nature, since, it is upto the individual Information Officers, Appellate Authorities and the Information Commission, has to grant or deny such information, guided by the imperatives of the Act; and the apparent attempt of the Government to dictate to them, through the impugned order, can never obtain support in law.

4. Even though I am deeply distressed by the manner in which Ext.P2 order has been worded, I choose

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not to say anything further, lest it may cause severe consequences. I, therefore, leave it there.

5. That said, however, I cannot let Ext.P2 order influence or trample the officials under the RTI Act, while acting under its mandate; and I, consequently, clarify unequivocally that, notwithstanding the contents of the said order, which I cannot find to be worthy of favour from this Court, the various Public Information Officers, Appellate Authorities and the State Information Commission shall only act implicitly in terms of the RTI Act, *de hors* this order, advertent to the exceptions statutorily provided and nothing more, nothing less.

This writ petition is thus ordered.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

bng/26.0619

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APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	TRUE COPY OF ORDER PASSED BY THE 3RD RESPONDENT IN AP.2633(1)/2014/SIC (FILE NO.16156/SIC-G4/2014) DATED 06.03.2017
EXHIBIT P2	TRUE COPY OF GOVERNMENT ORDER NO.G.O. (MS) NO.64/2014/WRD DATED 22.07.2014
EXHIBIT P3	TRUE COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT DATED 11.03.2019 ALONG WITH ITS POSTAL RECEIPT

RESPONDENTS EXHIBITS:NIL