

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

WEDNESDAY, THE 17TH DAY OF MARCH 2021 / 26TH PHALGUNA, 1942

WP(C).No.5274 OF 2020(H)

PETITIONERS :

- 1 THE STATE PUBLIC INFORMATION OFFICER AND DEPUTY  
SUPERINTENDENT OF POLICE,  
STATE CRIME RECORDS BUREAU,  
THIRUVANANTHAPURAM-695010.
- 2 THE APPELLATE AUTHORITY AND SUPERINTENDENT OF POLICE,  
STATE CRIME RECORDS BUREAU, POLICE HEAD QUARTERS,  
VAZHUTHACADU, THIRUVANANTHAPURAM-695010.

BY GOVERNMENT PLEADER

RESPONDENTS :

- 1 THE STATE INFORMATION COMMISSION,  
REPRESENTED BY ITS SECRETARY, PUNNEN ROAD,  
THIRUVANANTHAPURAM-695001.
- 2 SRI. RADHAKRISHNAN R.,  
16-E, POCKET 3, MAYUR VIHAR POCKET,  
DELHI-110091.

BY SRI. M.AJAY, STANDING COUNSEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
17.03.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"CR"

## **J U D G M E N T**

The 2nd respondent is a journalist and a public spirited citizen. In the year 2010, the State Information Commission had occasion to pass an order in an application filed by the 2nd respondent wherein, he had sought for the following information:

- i) The details of the corrupt Police officers in the State of Kerala, their name, the post which they held, and also the reasons for holding them as corrupt.
- ii) The censures/criticisms made against the State Police by other agencies/Central agencies/Central Government during the past two years.

2. The State Information Commission as per order dated 21.1.2012, vide No. AP599(5)/SIC/ 2010, reminded the State Police of its obligation as a public authority under Section 4 of the Right to Information Act, 2005 to maintain its records duly catalogued and indexed in such a manner as to facilitate the right of information under the Act and also to ensure that all records that are appropriate to be computerised shall within a period of 30 days from 21.1.2012 be computerised and connected through a network so that access to such records is facilitated. Directions were also issued to the State Police Chief to initiate appropriate proceedings to ensure that the directions issued by the State Information Commission are

complied with.

3. On 20/9/2018, an application was lodged by the 2nd respondent before the State Information Officer, Police Headquarters seeking the following information:

I) The steps taken by the State Police to comply with the Order vide No. AP599(5)/SIC/ 2010 of the State Information Commission.

II) Furnish details of

- a) the officers in the State Police Department who are considered to be corrupt, the specific allegation against them and the post that they were holding.
- b) Criminal cases under investigation which were withdrawn after 25.5.2016 and the details of the individuals at whose instance, those cases were withdrawn.
- c) Police officers in the State Police Departments who are accused in criminal cases, their name, rank, post which they are holding and the gist of accusations against them.
- d) Police officers in the State Police Department who are accused of committing atrocities against women, their name, rank, the post which they were holding and the gist of allegations against them.
- e) Political activists who have been categorised as absconders, their name, address and other details.

III. Permission was also sought to inspect the information catalogued by the Police as directed by the State Information Commission vide No. AP599(5)/SIC/2010.

4. On receipt of Ext.P1, the 2nd respondent was informed that the information sought for by him was retained in the Crime Records Bureau

and he was informed that his request would be forwarded to the said office under Section 6(3) of the Act. Later, by Ext.P3 communication, he was informed by the State Public Information Officer that the name and other details of the police officers facing corruption charges or human rights violations cannot be disclosed as the said information is exempted from disclosure under section 8(1)(j) and 8(1)(h) of the Act. However, without naming the officers or their rank, a district wise list was forwarded which revealed that about 59 police officers are facing corruption allegations. He was also requested to check the website of the Kerala Police to get information of the crimes registered by the Kerala Police. Insofar as the withdrawal of criminal cases on or after 25.5.2016 is concerned, the 2nd respondent was informed that the cases are withdrawn by the State and that no records are maintained by the Police Department. Insofar as the details of cases relating to political activists, who are categorised as absconders, the 2nd respondent was asked to approach the State Crime Records Bureau to get such information. Later, he received Exhibit P4 communication from the State Public Information Officer, Crime Records Bureau, that the said organisation is exempted from the purview of the Act by notification dated 7.2.2006 and that the information sought for cannot be disclosed. He was requested to approach the office of the District Police Chief and seek such information.

5. The 2nd respondent challenged the order by preferring an

appeal under Section 19 of the Act before the First Appellate Authority. However, by Ext.P9 order, his request was rejected.

6. In the said circumstances, he approached the State Information Commission and filed an appeal under Section 19(3) of the Act.

7. By Ext.P11 order dated 24.4.2019, the State Information Commissioner came to the conclusion that the information sought by the party respondent under clause (a) to (e) of the application cannot be denied relying on Section 24(4) of the RTI Act. However, it was held that the information sought against clause (d) was vague and it relates only to allegations. As an interim measure, a direction was issued to the State Public Information Officer, State Crime Records Bureau to compile the information sought for by the 2nd respondent which are available in the records of the Kerala Police Department in the State of Kerala and also to produce it before the Commission in a sealed cover within a time frame. In compliance with the said directions, the information was gathered from various sources and the same was compiled as directed by the State Information Commission and was produced in a sealed cover. The Commission, after perusal of the records, held that though the State Crime Records Bureau is an Organization exempted from the purview of the RTI Act by orders issued by the Government in exercise of powers vested under Section 24(4) of the Act, 2005, it would not provide a blanket cover for the Organization to shield information of matters relating

to corruption and violation of human rights. After considering the proviso to Section 24(4) of the Act, it was held that the information pertaining to the allegations of corruption and human right violations cannot be excluded under the said provision. The State Information Commission proceeded to categorize the cases into four types. The cases in which police officers were convicted on corruption charges or were removed from service after a due process of inquiry formed the first category. The second category comprised of those police officers who were convicted by a court of law or were removed from service after due inquiry for committing acts of violation of human rights such as use of abusive language, misbehaviour towards complainants, wrongful confinement, sexual abuse, rape etc. The third category of cases were those wherein, the investigating officer had laid the final report before Court based on materials collected by him during investigation and wherein, the allegations were of commission of corruption or human rights violation. The fourth category of cases were those wherein, the investigation is still pending against the accused. Insofar as the first three categories are concerned, the State Information Commission was of the view that the information sought for by the applicant should be disclosed. Insofar as the fourth category is concerned, it was held that the details of the officer concerned shall not be disclosed under the RTI Act. Directions were issued to segregate the cases accordingly and to publish the information

in the website of the Kerala Police as provided under Section 4 of the RTI Act in order to enable every citizen to have access to the said information from the website. The above order is under challenge in this Writ Petition.

8. I have heard Smt. Mable C. Kurian, the learned Government Pleader who appeared for the appellants, Sri. M. Ajay, the learned Standing Counsel appearing for the State Information Commission and Sri. Radhakrishnan, who appeared in person.

9. It is submitted by the learned Government Pleader that the order passed by the 1st respondent cannot be sustained in view of Exts.P5 to P7 notifications issued by the Government invoking the powers under Section 24(4) of the Act. She would further contend that the directions issued by the State Information Commission to publish the information in the website of the Kerala Police is squarely against Section 4(1)(b) of the Act as the said provision mandates only disclosure of information under clause (i) to (xvii) and that too with regard to organizational matters. According to the learned Government Pleader, if the information sought for by the 2nd respondent is disclosed to the public it would demoralize the entire police force. She would further contend that a person against whom a finding of guilt has not been arrived at by a Court of law is presumed to be innocent and in that view of the matter, the State Commission was not justified in ordering the disclosure of the name and

details of those police officers against whom final report has been laid as it would clearly be protected under section 8(1)(j) of the Act.

10. Sri. M. Ajay, the learned Standing Counsel appearing for the State Information Commission, submitted that the Right to Freedom of Speech and Expression enshrined under Article 19(1)(a) of the Constitution of India (for short 'the Constitution') encompasses the right to impart and receive information. It is contended that the information sought by the 2nd respondent was of corrupt officers in the police force and of those officers who had indulged in human rights violations. He would urge that the citizens have every right to receive information about the law enforcement officers and the manner in which the police department functions to initiate corrective measures, which is the essence of democracy.

11. Sri. Radhakrishnan, the seeker of information, who appeared in person submitted that the right of the citizen to be informed about the manner in which the law enforcement system in the State is functioning is a right conferred to him under the Constitution. The people of the country have a right to know about bad sheep in the police force and manner in which they are being dealt with by the department. Such information is required to instil confidence in the mind of the public. By keeping relevant information under wraps and in secrecy, the right of the citizen to be well informed and exercise sound judgment on the conduct of the Government



and its policies is being stifled. The citizens will be able to carry out the role cast upon them efficiently only when they have full access to information with regard to the functioning of the Government. According to Mr. Radhakrishnan, only if the citizen has information at his fingertips that he will be able to speak about the ills affecting the system. It is further contended that the information sought by him was denied on the sole ground that the information regarding corrupt officials are in the Crime Records Bureau and that the said organisation is exempted under Section 24 of the Act. Sri.Radhakrishnan would rely on the proviso to Section 24 (4) and it was argued that the information pertaining to the allegations of corruption and human rights violations cannot be excluded under the sub section.

12. I have anxiously considered the submissions and I have perused the records.

13. The Act 22 of 2005 was enacted to harmonise the conflicting interests while preserving the paramountcy of the democratic ideal and provide for furnishing of certain information to the citizens who desire to have it. The basic purpose of the Act is to set up a practical regime of right to information for the citizens to secure and access information under the control of the public authorities. The intention is to provide and promote transparency and accountability in the functioning of the authorities. This right of the public to be informed of the various aspects

of governance by the State is a prerequisite of the democratic value.

14. In **State of UP v. Raj Narain**<sup>1</sup>, the reason for demand for concept of the right to information was explained by the Apex Court in the following words :

74. "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 was, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security, see *New York Times Co. v. United States*, (1971) 29 Law Ed. 822 : 403 U.S. 713. To cover with a 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 or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption."

15. In **S.P. Gupta v. Union of India**<sup>2</sup> , it was held this in para 65 of the judgment as follows:

65. The demand for openness in the government is based

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1[AIR 1975 SC 865]

2 [1981 Supp SCC 87]

principally on two reasons. It is now widely accepted that democracy does not consist merely in people exercising their franchise once in five years to choose their rules and, once the vote is cast, then retiring in passivity and not taking any interest in the government. Today it is common ground that democracy has a more positive content and its orchestration has to be continuous and pervasive. This means *inter alia* that people should not only cast intelligent and rational votes but should also exercise sound judgment on the conduct of the government and the merits of public policies, so that democracy does not remain merely a sporadic exercise in voting but becomes a continuous process of government - an attitude and habit of mind. But this important role people can fulfil in a democracy only if it is an open government where there is full access to information in regard to the functioning of the government."

16. In **Namit Sharma V Union of India**<sup>3</sup>, it was observed thus by the Apex Court:

The value of any freedom is determined by the extent to which the citizens are able to enjoy such freedom. Ours is a constitutional democracy and it is axiomatic that citizens have the right to know about the affairs of the Government which, having been elected by them, seeks to formulate some policies of governance aimed at their welfare. However, like any other freedom, this freedom also has limitations. It is a settled proposition that the Right to Freedom of Speech and Expression enshrined under Article 19(1)(a) of the Constitution of India (for short 'the Constitution') encompasses the right to impart and

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3[(2013) 1 SCC 745]

receive information. The Right to Information has been stated to be one of the important facets of proper governance. With the passage of time, this concept has not only developed in the field of law, but also has attained new dimensions in its application. This court while highlighting the need for the society and its entitlement to know has observed that public interest is better served by effective application of the right to information. This freedom has been accepted in one form or the other in various parts of the world. This Court, in absence of any statutory law, in the case of Secretary, Ministry of Information and Broadcasting, Government of India & Ors. v. Cricket Association of Bengal & Anr. [(1995) 2 SCC 161] held as under :

“The democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolized either by a partisan central authority or by private individuals or oligarchy organizations. This is particularly so in a country like ours where about 65 per cent of the population is illiterate and hardly 1 ½ per cent of the population has access to the print media which is not subject to pre-censorship.”

**Reforms and Anr.**<sup>4</sup> recognising the voters' right to know the antecedents of the candidates and the right to information which stems from Article 19(1)(a) of the Constitution, it was held that directions could be issued by the Court to subserve public interest in creating an informed citizenry, observing:

46. [...] The right to get information in democracy is recognised all throughout and it is natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of the International Covenant of Civil and Political Rights which is as under:

(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

18. In the case on hand, the State Information Commission, by the impugned order, has issued directions to the concerned authority of the State Crime Records Bureau to divulge with the aid of the proviso to Section 24 (4) of the RTI Act as follows:

1. the name, details and brief facts of the case of those police personnel in the State of Kerala who have been found guilty by a court of law or dismissed from service on charges of corruption or human rights violation and
2. the name, details and brief facts of the case of those

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4 [(2002) 5 SCC 294]

police officers against whom charges of corruption and human rights violation has been established through investigation

3. A further direction was issued to publish the above details in the website of the Kerala Police as provided under section 4 of the Act.

19. The petitioners are fighting tooth and nail and contend that the said directions are to be unsettled for various reasons.

20. To have a clear understanding of the issues involved, it would be apposite to have a brief look at the provisions of the Right to Information Act, 2005.

21. The “right to information” has been defined in Section 2(j) as follows:

- “2. (j) “**right to information**” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—
- (i) inspection of work, documents, records;
  - (ii) taking notes, extracts *or certified copies of documents or records*;
  - (iii) taking certified samples of material;
  - (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;”

22. Section 4 of the Act deals with the obligation of public authorities to maintain records and to provide information suo moto to the public so that the public need to resort to the use of the provisions of the Act. Section 4 reads as follows:

4. Obligations of public authorities:

(1) Every public authority shall—

- (a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;
- (b) publish within one hundred and twenty days from the enactment of this Act—
  - (i) the particulars of its organisation, functions and duties;
  - (ii) the powers and duties of its officers and employees;
  - (iii) the procedure followed in the decision-making process, including channels of supervision and accountability;
  - (iv) the norms set by it for the discharge of its functions;
  - (v) the rules, regulations instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;
  - (vi) a statement of the categories of documents that are held by it or under its control;
  - (vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
  - (viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;
  - (ix) a directory of its officers and employees;

- (x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
  - (xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
  - (xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
  - (xiii) particulars of recipients of concessions, permits or authorisations granted by it;
  - (xiv) details in respect of the information, available to or held by it, reduced in an electronic form;
  - (xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
  - (xvi) the names, designations and other particulars of the Public Information Officers;
  - (xvii) such other information as may be prescribed;
- and thereafter update these publications every year;
- (c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;
  - (d) provide reasons for its administrative or quasi-judicial decisions to affected persons.
- (2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.
  - (3) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.
  - (4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be,



available free or at such cost of the medium or the print cost price as may be prescribed.

Explanation.—For the purposes of sub-sections (3) and (4), “disseminated” means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

23. Section 8 deals with exemption from disclosure of information, which reads as follows:

Section 8. Exemption from disclosure of Information (1)  
Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

- (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- (b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- (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;
- (e) information available to a person in his fiduciary relationship,

unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

- (f) information received in confidence from foreign Government;
- (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- (h) information which would impede the process of investigation or apprehension or prosecution of offenders;
- (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

- (j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the Appellate Authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

- (2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.
- (3) xxxxxxxxxxxxxxxxx

( emphasis supplied )

24. Section 24 of the Act reads as follows :

24. Act not to apply to certain organisations.—

- (1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in Section 7, such information shall be provided within forty-five days from the date of the receipt of request.

- (2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that

Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule.

(3) Every notification issued under sub-section (2) shall be laid before each House of Parliament.

(4) Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in Section 7, such information shall be provided within forty-five days from the date of the receipt of request.

(5) Every notification issued under sub-section (4) shall be laid before the State Legislature.

25. The effect of the provisions and scheme of the RTI Act is to divide "information" into three categories. They are:

(i) Information which promotes transparency and accountability in the working of every public authority, disclosure of which may also help in containing or discouraging corruption

[enumerated in Clauses (b) and (c) of Section 4(1) of the RTI Act.

(ii) Other information held by public authority [that is, all information other than those falling under Clauses (b) and (c) of Section 4(1) of the RTI Act].

(iii) Information which is not held by or under the control of any public authority and which cannot be accessed by a public authority under any law for the time being in force.

Information under the third category does not fall within the scope of the RTI Act. Section 3 of the RTI Act gives every citizen the right to "information" held by or under the control of a public authority, which falls either under the first or second category. In regard to the information falling under the first category, there is also a special responsibility upon the public authorities to suo motu publish and disseminate such information so that they will be easily and readily accessible to the public without any need to access them by having recourse to Section 6 of the RTI Act. There is no such obligation to publish and disseminate the other information which falls under the second category.

26. The first category refers to the information specified in Clause (b) to Sub-section (1) to Section 4 which consists of as many as seventeen sub-clauses on diverse subjects stated therein. It also refers to Clause (c) to Sub-section (1) to Section 4 by which public authority is

required to publish all relevant facts while formulating important public policies or pronouncing its decision which affects the public. The rationale behind these clauses is to disseminate most of the information which is in the public interest and promote openness and transparency in Government. ( See **Central Public Information Officer, Supreme Court of India vs. Subhash Chandra Agarwal** <sup>5</sup>)

27. Let us now consider the contention of the petitioners that the information sought for by the 2nd respondent is exempted from disclosure under Section 24 of the Act. Of course by Exhibit P5 notification, the State Government in exercise of powers under sub section (4) of Act 22 of 2005 has specified the State Crime Records Bureau, as an organisation to which the provisions of the Act shall not apply. The Crime records bureau is an organisation which maintains and analyzes crime statistics in the State. (See <https://keralapolice.gov.in/page/state-crime-records-bureau>). The information which the State Information Commission has ordered to divulge pertains to corrupt officers and those officers who have committed human rights violations. The proviso to Section 24(4) says that the information pertaining to the allegations of corruption and human rights violations cannot be excluded under this sub-section.

28. In **Yashwant Sinha and Others v Central Bureau of**

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5(2020 (5) SCC 481)

**Investigation**<sup>6</sup>, it was held by the Apex Court that information pertaining to allegation of corruption and human rights violations should be excluded from privilege of secrecy and should be made accessible by virtue of the proviso. The Apex Court went on to hold that even such information which is exempted from disclosure in respect of matters set out in Section 8 (1) (a) which include information the disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence can also be waived if by balancing process, public interest in disclosure comparatively outweighs harm to protected interest. There cannot be any doubt that no purpose would be served in keeping the details of the corrupt officers a secret and by shielding it from the eyes of the citizen as the public interest in the disclosure far outweighs the harm to protected interest. In that view of the matter, the petitioner cannot bank on section 24 to deny the information which has been sought by the party respondent.

29. The second contention raised by the learned Government Pleader is that the information sought for is protected from disclosure under Section 8 (1) (j) of the Act. Section 8 (1) (j) grants exemption only in respect of information which relates to personal information the disclosure of which has no relationship to any public activity or interest.

The details of corrupt officers or those officers who have been found

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6[(2019) 6 SCC 1]

guilty or against whom the final report has been laid cannot be regarded as personal information, the disclosure of which has no relationship to any public activity or interest. It is the information that every citizen is entitled to have access to. Equally feeble is the contention that disclosure of which information would disable the morale of the police force.

30. The next question is whether the Kerala Police can be required to publish the information of corrupt officers and human rights violators in the website of the Kerala Police. Under Section 4 of the Act, it is the obligation of the public authorities to maintain all its records duly catalogued and indexed in a manner so as to facilitate the right to information under the Act and ensure that all records that are appropriate to be computerized are computerized and connected through a network, subject to availability of resources so that access to such records are facilitated. Sub clause (b) of Section 4(1) of the Act mandates that within 120 days from the enactment of the Act, the public authorities are obliged to publish the information as detailed in Section 4(1)(b)(i) to (xvii). In other words, Section 4 does not merely oblige the public authority to give information on being asked for it by a citizen but requires it to suo moto make the information accessible. The specific contention of the petitioner is that the information sought for by the petitioner would not come within the purview of clause (i) to (xvii) of Section 4 of the Act and therefore, there cannot be a direction to the Department to publish the same in the



website. It would be profitable to bear in mind that the order of the State Information Commission dated 21.1.2012 vide No. AP 599(5)/SIC/2010 requiring the police to maintain its records, duly catalogued and indexed has not been subjected to any challenge. The said order stands unchallenged. However, while passing Ext.P12, the State Information Commissioner has ordered that the details of corrupt officers who have been found guilty in a Court of law or dismissed from service on charges of corruption and against whom, charges of corruption or human rights violation has been established through investigation should be uploaded in the website of the police to enable easy access. At this juncture, it needs to be borne in mind that Section 8 of the Act exempts certain information from being disclosed. Section 8 (2) however states that notwithstanding anything in the Official Secrets Act, 1923, nor any of the exemptions permissible in accordance with sub section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harms to the protected interest. Conjointly reading Section 4 which deals with obligations of public authorities and Section 8 which details the exempted categories of information, what the authority should bear in mind is that the provisions of the Act should not be interpreted in such a manner as to impose a fetter on the right to information. In other words, the provisions are to be read in such a manner which would further public interest as it is essential for the fulfillment and preservation of democratic

ideals.

31. In **ICAI V. Shaunak H. Satya** <sup>7</sup>, dealing with the above question, the Apex court occasioned to observe as follows:

“25. Therefore, when Section 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfilment and preservation of democratic ideals. Therefore, in dealing with information not falling under Sections 4(1)(b) and (c), the competent authorities under the RTI Act will not read the exemptions in Section 8 in a restrictive manner but in a practical manner so that the other public interests are preserved and the RTI Act attains a fine balance between its goal of attaining transparency of information and safeguarding the other public interests.

26. Among the ten categories of information which are exempted from disclosure under Section 8 of the RTI Act, six categories which are described in clauses (a), (b), (c), (f), (g) and (h) carry absolute exemption. Information enumerated in clauses (d), (e) and (j) on the other hand get only conditional exemption, that is, the exemption is subject to the overriding power of the competent authority under the RTI Act in larger public interest, to direct disclosure of such information. The information referred to in clause (i) relates to an exemption for a specific period, with an obligation to make the said information public after such period. The information relating to intellectual property and

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<sup>7</sup>[(2011) 8 SCC 781]

the information available to persons in their fiduciary relationship, referred to in clauses (d) and (e) of Section 8(1) do not enjoy absolute exemption. Though exempted, if the competent authority under the Act is satisfied that larger public interest warrants disclosure of such information, such information will have to be disclosed. It is needless to say that the competent authority will have to record reasons for holding that an exempted information should be disclosed in larger public interest.

32. Having considered the entire facts, I am of the view that the information authority cannot shield the name of those officers who have been found guilty or were dismissed from service on charges of corruption or human right violations. The petitioners will not be justified in shielding the names of such officers and will be bound to publish the same notwithstanding the fact that Section 4 does not oblige them to publish such information. However, the information authority under the Police department will not be obliged to publish the names of such officers against whom the offenses have been established on investigation but a conclusive finding has not been arrived at by a court of law. The competent authority will have to bear in mind that while dealing with information not falling within Section 4(1)(b) and (c), the authorities cannot read the exemptions in a restrictive manner but in a practical manner so that public interest is preserved and the RTI Act attains a fine

balance between its goal of attaining transparency of information and safeguarding the other public interest.

33. The challenge to Exhibit P12 will stand repelled except to the limited extent of making it clear that the details of such officers against whom the offenses have been established on investigation but a conclusive finding has not been arrived at by a court of law need not be published in the website of the Kerala Police. All other directions in Exhibit P12 order shall be strictly complied with. The information shall be furnished to the 2nd respondent forthwith and the details as ordered above shall be put up in the website of the Kerala Police within a period of 30 days from 20.3.2021.

This Writ Petition is disposed of.

sd/-

**RAJA VIJAYARAGHAVAN V**

**JUDGE**

PS

**APPENDIX**

**PETITIONER(S) EXHIBITS:**

- EXHIBIT P1 COPY OF THE APPLICATION DATED 20.09.2018 SUBMITTED BY THE 2ND RESPONDENT RECEIVED IN THE POLICE HEAD QUARTERS.
- EXHIBIT P2 COPY OF THE COMMUNICATION NO.i3(RTI) 140092/2018/PHQ DATED 26.09.2018 ISSUED BY THE 1ST PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT P3 COPY OF THE COMMUNICATION (REPLY) DATED 23.10.2018 ISSUED BY THE 1ST PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT P4 COPY OF THE REPLY DATED 20.10.2018 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT P5 COPY OF THE G.O.(P) NO.43/2006/GAD DATED 07.02.2006.
- EXHIBIT P6 COPY OF THE G.O.(P) NO.104/2013/GAD DATED 11.04.2013.
- EXHIBIT P7 COPY OF THE G.O.(P) NO.6/2016/GAD DATED 23.01.2016.
- EXHIBIT P8 COPY OF THE APPEAL SUBMITTED BY THE 2ND RESPONDENT BEFORE THE 2ND PETITIONER.
- EXHIBIT P9 COPY OF THE COMMUNICATION DATED 24.01.2019 ISSUED BY THE 2ND PETITIONER.
- EXHIBIT P10 COPY OF THE SECOND APPEAL SUBMITTED BY THE 2ND RESPONDENT BEFORE THE 1ST RESPONDENT.
- EXHIBIT P11 COPY OF THE ORDER DATED 24.04.2019 PASSED BY THE 1ST RESPONDENT.
- EXHIBIT P12 A COPY OF THE ORDER DATED 05.12.2019 PASSED BY THE COMMISSION.

**PETITIONER(S) EXHIBITS: NIL**

//TRUE COPY// P.A. TO JUDGE