

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 17.03.2023**

CORAM

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

**W.P.No.32329 of 2017**

M.Loganathan,  
Advocate, M.Sc., B.L.,  
S/o.R.Murugesan,  
Thalaivasal Complex,  
3<sup>rd</sup> Floor,  
525, Cross-Cut Road,  
Coimbatore – 641 012.

...Petitioner

Vs.

1.Tamil Nadu Public Information Commission,  
No.2, Sir Thiyagaraya Road,  
Eldams Road,  
Teynampet,  
Chennai – 600 018.

2.The Managing Director and Appellant Authority,  
TASMAC,  
Chennai.

3.The Public Information Officer cum  
Chief General Manager,  
4<sup>th</sup> Floor, C.M.D.A. Tower II,  
Egmore,  
Chennai – 600 008.

..Respondents

**Prayer :** Writ Petition filed Under Article 226 of the Constitution of India,  
to issue a Writ of Certiorarified Mandamus, calling for the records relating

to the 1<sup>st</sup> respondent impugned order in S.A.No.11163/ Re-Enquiry/A/2015 dated 01.11.2017 to quash the same and consequentially direct the 3<sup>rd</sup> respondent to provide the information sought for under the RTI Act by the petitioner.

For Petitioner : Mr.A.Suresh Kumar  
For M/s.K.M.Vijayan Associates

For R1 & R3 : Mr.Niranjana Rajagopal  
For M/s.G.R.Associates

For R2 : Mr.J.Ravindran  
Additional Advocate General  
Assisted by  
Mr.K.Sathish Kumar

### **ORDER**

The writ on hand has been instituted to quash the order of rejection, rejecting the application submitted by the writ petitioner under the Right to Information Act, 2005 [in short, 'RTI Act'] to provide information with reference to Question No.2 raised in the application submitted by the petitioner.

2. The petitioner is an Advocate by Profession and served as Electoral Secretary of Coimbatore Bar Association. The petitioner is involved in various public activities and also a Public Information activist. The

petitioner submitted an application to the 2<sup>nd</sup> respondent / TASMACH to provide certain informations.

3. The petitioner in his application sought for six informations with reference to the activities of the 2<sup>nd</sup> respondent / TASMACH. In respect of five questions, informations were already provided to the writ petitioner admittedly. Regarding the query that the details of purchase from the respective Distillery and Breweries, the 2<sup>nd</sup> respondent has not furnished the details.

4. The said information was denied to the petitioner under Section 8(1)(d) of the RTI Act. Against the rejection order, the petitioner preferred an appeal before the State Information Commission. But, State Information Commission concurred with the Public Information Officer and rejected the appeal filed by the petitioner. Thus, the petitioner is constrained to move the present writ petition.

5. The learned counsel for the petitioner mainly contended that the informations sought for by the petitioner would not fall under Section 8(1)(d) of the RTI Act. The 2<sup>nd</sup> respondent denied information to question

No.2 on the ground that the information is a commercial confidence, which is exempted under Section 8(1)(d) of the RTI Act. The State Information Commission without even looking into the information, rejected the appeal, which is in violation of the provisions of the RTI Act. The informations sought for regarding the purchase of Distillery and Breweries from various factories would not fall under the definition of commercial confidence and therefore, the order impugned is liable to be set aside.

6. The learned counsel for the petitioner relied on the following judgments:

(a) In the case of ***Electronics Corporation of Tamil Nadu Limited, Represented by its Managing Director Vs. Tamil Nadu Information Commission, Represented by its Registrar*** passed in W.P.No.3784 of 2008 dated 05.01.2010, wherein the Hon'ble High Court of Madras held as follows:

*“15.It is not clear as to how Section 8(1)(a) is attracted to the present case. There is no economic interest of the State involved in the inspection report of the Corporation. Similarly, reliance placed upon Section 8(1)(i) is also not attracted in the present case, as information sought for was not relating to Cabinet minutes and also Secretaries and the*

*other officers. Even there, the first proviso to the said sub-section enables those information can be divulged once a final decision is taken.*

*16. Therefore, the only relevant question is whether the exemption under Section 8(1)(d) is available to the petitioner. The said exemption relating to commercial confidence, trade secrets itself had not made absolute embargo. In those cases, if the competent authority is satisfied that larger public interest warrants disclosure, then such an information should be furnished. Therefore, the petitioner ELCOT cannot deny in furnishing the information about their survey of a particular place for acquiring those lands. If the petitioner ELCOT had to purchase the land either by direct negotiations, failing which to invoke the provisions of the land acquisition Acts (either Central Act or State enactments). In such cases, any notification issued for acquiring lands are always a matter of public record. A citizen, who solely survives on the existence of the said land, if apprehensive about the land being taken away by some other authority, is entitled to know whether those lands are to be acquired by such authority so that, they can legitimately object to the acquisition of their lands on grounds which are available to them under law.”*

(b) In the case of ***Reserve Bank of India Vs. Jayantilal N.Mistry***, reported in **(2016) 3 SCC 525**, wherein the Apex Court defined the scope of

'fiduciary relationship' as under:

*“The scope of fiduciary relationship consists of the following rules:*

*(i) No conflict rule — A fiduciary must not place himself in a position where his own interests conflict with that of his customer or the beneficiary. There must be ‘real sensible possibility of conflict’.*

*(ii) No profit rule — A fiduciary must not profit from his position at the expense of his customer, the beneficiary.*

*(iii) Undivided loyalty rule — A fiduciary owes undivided loyalty to the beneficiary, not to place himself in a position where his duty towards one person conflicts with a duty that he owes to another customer. A consequence of this duty is that a fiduciary must make available to a customer all the information that is relevant to the customer's affairs.*

*(iv) Duty of confidentiality — A fiduciary must only use information obtained in confidence and must not use it for his own advantage, or for the benefit of another person.”*

*The term ‘fiduciary’ refers to a person having a duty to act for the benefit of another, showing good faith and candour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term ‘fiduciary relationship’ is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction(s). The term also refers to a person who holds a thing*

*in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and is expected not to disclose the thing or information to any third party.”*

7. Relying on the above judgments, the learned counsel for the petitioner reiterated that no reason has been furnished for the purpose of invoking Section 8(1)(d) of the RTI Act and therefore, the order impugned is untenable.

8. The learned Additional Advocate General appearing on behalf of the second respondent, through Video Conferencing, objected the contentions raised by the petitioner by stating that various business orders, transactions are being carried out by the 2<sup>nd</sup> respondent / TASMAL. The 2<sup>nd</sup> respondent purchase Liquors from various companies, considering the brand name, price, etc., and those business confidentialities cannot be disclosed to the information seekers and thus, it is exempted under Section 8(1)(d) of the RTI Act. In the event of disclosing such business transactions, the

confidentiality being maintained between the second respondent and the suppliers would get affected and the competitive position of the third party, which all are determined, would also get affected. Therefore, the information sought for by the writ petitioner squarely falls under the exemption clause 'commercial confidence' under Section 8(1)(d) of the RTI Act.

9. In support of the said contention, the learned Additional Advocate General appearing on behalf of the second respondent / TASMAC relied on the following judgments:

(a) In the case of *Union Public Service Commission Vs. Gourhari Kamila* reported in *(2014) 13 SCC 653*, wherein the Apex Court made following observations:

“9.....

40.....

41.....

\*\*\*\*

43.....

44. *We may next consider whether an examining body would be entitled to claim exemption under Section 8(1)(e) of the RTI Act, even assuming that it is in a fiduciary relationship with the examinee. That section provides that notwithstanding anything*



*contained in the Act, there shall be no obligation to give any citizen information available to a person in his fiduciary relationship [Ed. : These words have been emphasised in original.] . This would only mean that even if the relationship is fiduciary, the exemption would operate in regard to giving access to the information held in fiduciary relationship, to third parties. There is no question of the fiduciary withholding information relating to the beneficiary, from the beneficiary himself.”*

(b) In the case of ***Naresh Trehan Vs. Rakesh Kumar Gupta***, reported in ***2014 SCC OnLine Del 6600***, the Delhi High Court made the following observations:

*“14. The income tax returns filed by an assessee and further information that is provided during the assessment proceedings may also include confidential information relating to the business or the affairs of an assessee. An assessee is expected to truly and fairly disclose particulars relevant for the purposes of assessment of income tax. The nature of the disclosure required is not limited only to information that has been placed by an assessee in public domain but would also include information which an assessee may consider confidential. As a matter of illustration, one may consider a case of a manufacturer who manufactures and deals in multiple products for supplies to different agencies. In the normal course, an Assessing Officer would require an assessee to disclose profit margins on sales of such products. Such information would clearly disclose the pricing policy of the assessee and public disclosure of*

*this information may clearly jeopardise the bargaining power available to the assessee since the data as to costs would be available to all agencies dealing with the assessee. It is, thus, essential that information relating to business affairs, which is considered to be confidential by an assessee must remain so, unless it is necessary in larger public interest to disclose the same. If the nature of information is such that disclosure of which may have the propensity of harming one's competitive interests, it would not be necessary to specifically show as to how disclosure of such information would, in fact, harm the competitive interest of a third party. In order to test the applicability of Section 8(1)(d) of the Act it is necessary to first and foremost determine the nature of information and if the nature of information is confidential information relating to the affairs of a private entity that is not obliged to be placed in public domain, then it is necessary to consider whether its disclosure can possibly have an adverse effect on third parties.*

*15. Insofar as the applicability of Section 8(1)(e) of the Act is concerned, I am unable to accept the contention that a fiduciary relationship within the meaning of Section 8(1)(e) of the Act can be attributed to a relationship between an assessee and the income tax authority. The Supreme Court in the case of *CBSE v. Aditya Bandopadhyay* : (2011) 8 SCC 497 had explained that the words “information available to a person in its fiduciary relationship” could not be construed in a wide sense but has to be considered in the normal and recognized sense. The relevant extract of the said decision is quoted below : -*

*“41. In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to the students who participate in an examination, as a Government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the words “information available to a person in his fiduciary relationship” are used in Section 8(1)(e) of the RTI Act in its normal and well-recognised sense, that is, to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary—a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically infirm/mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with reference to a principal, a partner with reference to another partner, a Director of a company with reference to a shareholder, an executor with reference to a legatee, a Receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the employee, and an employee with reference to business dealings/transaction of the employer. We do not find that kind of fiduciary relationship between the examining body and the*

*examinee, with reference to the evaluated answer books,  
that come into the custody of the examining body.”*

10. The learned counsel appearing on behalf of the Tamil Nadu Public Information Commission drew the attention of this Court with reference to the scope of exemption clause as contemplated under Section 8(1)(d) of the RTI Act, wherein, the exemption from disclosure of informations are provided, which is qualified and unqualified. Certain exemptions are qualified and others are unqualified.

11. Let us examine the scope of Section 8(1)(d) of the RTI Act, which reads as under:

***“8.Exemption from disclosure of information – (1)***  
*Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-*

*(a).....*

*(b).....*

*(c) .....*

*(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.”*

12. Thus, the information including 'commercial confidence' and its

disclosure of which would harm the competitive position of third party is exempted. However, the clause further proceeds by stating, “Unless the competent authority is satisfied that larger public interest warrants the disclosure of such information”. Section 8(1)(d) of the RTI Act is to be read along with the proviso to Section 8 of the RTI Act, which stipulates that “Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person”. Thus, the yardstick to be adopted by the Public Information Officer and the State Information Commission is that the nature of information sought for by the information seeker and the materials involved in the informations are to be scrutinized for the purpose of its disclosure with reference to the qualified exemptions and also the larger public interest involved.

13. In the present case, the second query sought for by the writ petitioner in his application is as under:

<i>t/vz;</i>	<i>nfs;tp</i>	<i>gjpy;</i>
1	////////	////////
2	jkpH;ehL khepy thzpgf; fHfk; (TASMAC) khdJ. 2013?2014 kw;Wk; 2014?2015 tiua[yhd Mz;Lfspy; ve;bje;j kJghd	jfty; mwpa[k; chpikr; rl;lk; 2005?d; fPH;. ve;jbthU jftyhdJ. bghJ kf;fspd; eyDf;F mtrpakhdJ vd;W muR fUJfpwnjh me;j jfty; kw;Wk; K:d;whk;

<i>t/vz;</i>	<i>nfs;tp</i>	<i>gipy;</i>
	<p> <i>cw;gj;jp epWtd';fSplkpUe;J</i>  <i>Mz;Lthhpahf vt;tst[ bjhiff;F</i>  <i>midj;J tifahd kJghd';fs;</i>  <i>(o!;oyhPl; kw;Wk; g[UthPl;)</i>  <i>bfhs;Kjy; bra;Js;sJ vd;gJ</i>  <i>gw;wpa tpgu';fs; Mz;L</i>  <i>thhpahft[k;. kJghd cw;gj;jp</i>  <i>epWtd';fs; thhpahft[k;</i>  <i>tH';FkhW nfl;Lf;bfhs;fpnwd;/</i> </p>	<p> <i>jug;gpdhpd; nghl;o epiyf;F jP';fhFk;/</i>  <i>thzpg ek;gfj; jd;ik tpahghu ufrpa';fis</i>  <i>mwpthh;e;j jfty;fs; mspf;fg;gl</i>  <i>ntz;oajpy;iy/ jkpH;ehL jfty; Mizak;</i>  <i>tHf;F vz;/1290-O-B/2009,</i>  <i>ehs;/06/06/2010 d;go ,r;rl;jj;py; jfty;</i>  <i>tH';f ,lkpy;iy vd;gij bjhptpj;Jf;</i>  <i>bfhs;fpnwd;/</i> </p>

14. The above question reveals that the petitioner sought for the details about the Liquor manufacturing company and the quantity of liquor purchased from the respective companies and the purchase rate i.e., the purchase rate involved year wise more specifically for the years 2013-14 and 2014-15. It is not in dispute that the name of the Distillery and Breweries were provided to the petitioner. The second part of the informations sought for has been denied under Section 8(1)(d) of the RTI Act.

15. Pursuant to the interim order passed by this Court, the said

informations sought for by the petitioner has been produced before this Court in a sealed cover. Admittedly, the said informations were not provided before the State Information Commission. Section 11 of the RTI Act provides an opportunity to the third party with reference to the informations of the third party. In such circumstances, a notice becomes mandatory to such third party. However, in the present case, the 2<sup>nd</sup> respondent TASMAL is a party to the contract with the third party, who are the manufacturers of liquor and therefore, all the informations regarding the purchase, fixing of rate, the terms and conditions of contract must be available with the 2<sup>nd</sup> respondent. In view of the fact that the TASMAL itself possess all the details regarding the purchase, fixing of rate etc., they need not seek any further details from the third party to provide the same to the information seeker. However, an objection is raised by the 2<sup>nd</sup> respondent in this regard that certain business transactions of the third party companies are involved and therefore, the notice becomes necessary.

16. This Court is of the considered opinion that it is not a trade secret or any secret involving in the manufacture of liquor. There is no question with reference to the manufacturing of liquor or otherwise. The query sought for is to inform the details regarding the companies, from whom, the

2<sup>nd</sup> respondent purchased the liquors, rate fixed and the brand name of liquors. The Rate fixed between the 'State' and the Private company for procurement cannot be considered as a confidentiality. 'State' is undoubtedly accountable to the public at large. Information can be denied, if any public interest has been involved. Disclosure of the name of the company from where the purchase is made or the rate agreed between the 'State' and the factory cannot be construed as confidential, since the public at large is entitled to know the rate fixed by the 'State' for the purchase of liquors, since it involves public money.

17. In this context, the proviso clause to Section 8 of the RTI Act would apply, wherein the information, which cannot be denied to the Parliament or State Legislature shall not be denied to any person. In the present case, the information if sought for by the Parliament or the State Legislature cannot be denied, since it is the purchase by the State from the Corporation's fund and more over, the manufacturing Secrets and other informations were not sought for by the petitioner. The 2<sup>nd</sup> respondent being a 'State' within the meaning of Article 12 of the Constitution of India, has to conduct its business activities in a transparent manner except in certain security secrets or the manufacturing secrets, which would cause loss of



business in the event of disclosure under the RTI Act. The very idea of exemption is to ensure that in the event of any such disclosure of information, there should not be any business loss or infringement of business rights or infringement of trade secrets or otherwise. However, furnishing the details of the factories from where the procurements are made and the rate fixed for such purchase and the brand name cannot be construed as a trade secret or commercial confidence as far as the 'State' is concerned.

18. In order to remove the difficulties, Section 8(1)(d) of the RTI Act itself contemplates “Unless the competent authority is satisfied that larger public interest warrants the disclosure of information”. Thus, the information regarding the commercial confidence also can be disclosed, if there is a larger public interest. Undoubtedly, in the present case, the 2<sup>nd</sup> respondent being a 'State', the larger public interest is involved. The 2<sup>nd</sup> respondent Corporation is profiting huge amount from and out of the Liquor business across the State of Tamil Nadu and in respect of question No.4 sought for by the petitioner, the 2<sup>nd</sup> respondent has provided information, stating that for the year 2013-14, the income to the State was a sum of Rs.21,674.89/- Crore and for the year 2014-15, the income to the State was

a sum of Rs.24,073/- Crores. Such a huge income has been derived from and out of the 2<sup>nd</sup> respondent Corporation and the State is utilizing the money and thus, this Court is of the considered opinion that the 2<sup>nd</sup> respondent is accountable to the citizen in larger interest and therefore, all the details regarding procurement, sale, fixing of rate, brand name cannot be construed as a commercial confidence or brought within the definition of 'commercial confidence' under the scope of Section 8(1)(d) of the RTI Act.

19. Section 18 (4) of the RTI Act contemplates “*Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.*”

20. The above provision warrants an information to be placed before the State Information Commission for scrutiny. If at all the Public Information Officer rejects the application of the Information seeker on any one of the exemption clause under Section 8 of the RTI Act, then the State

information Commission is empowered to direct the Public Information Officer to submit the informations in a sealed cover or otherwise for its scrutiny. The State Information Commission has to scrutinize the nature and character of the Information sought for by the information seeker and if the conditions stipulated are not satisfied, then such informations are directed to be provided to the information seeker. However, in the present case, such an exercise was not done, since the Public Information Officer had not furnished the informations with reference to Question No.2 to the State Information Commission.

21. However, the question of justification of information sought for would not arise in the present case and it is for the Public Information Officer to consider the nature of information sought for and take a decision in accordance with the Act.

22. The information provided before this Court through sealed cover by the 2<sup>nd</sup> respondent with reference to Question No.2, in the application submitted by the petitioner, wherein the name of the suppliers and the amount involved has been furnished.

23. Perusal of the information would reveal that there is no commercial confidence involved in such informations and in the larger interest of public, such informations are to be provided to the information seekers since the second respondent / State owned corporation is accountable to the public at large.

24. It is brought to the notice of this Court that the tender process has not been adopted for purchase of liquors and therefore, transparency in purchase of liquors are of paramount importance as far as the State Organizations are concerned. The petitioner being the RTI Activist, is entitled to seek such informations in a larger public interest and the said right is conferred under the Act to the information seekers.

25. Section 3 of the RTI Act enumerates “*Subject to the provisions of this Act, all citizens shall have the right to information*”.

26. The object of the Act indicates that the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central

Information Commission and State Information Commissions and for matters connected therewith or incidental thereto. The very purpose and object of the Act is to promote transparency and accountability in the working of every public authority. The 2<sup>nd</sup> respondent being a 'State owned organization', its functioning must be accountable to the public at large. Therefore, all such informations relating to purchase of liquors, rate fixed, procedures adopted, brand name etc., are to be provided to the information seekers by the 2<sup>nd</sup> respondent, whenever an application is filed under the RTI Act. Thus, the petitioner is entitled for the information sought for with reference to Question No.2 in his application.

27. Accordingly, the order impugned passed by the 1<sup>st</sup> respondent in his order in S.A.No.11163/ Re-Enquiry/A/2015 dated 01.11.2017 stands quashed and the writ petition stands allowed. The 2<sup>nd</sup> respondent is directed to provide the informations, which has been already provided in the sealed cover before the Court to the writ petitioner within a period of two weeks from the date of receipt of a copy of this order. No costs.

28. Sealed cover informations are handed over to the learned counsel appearing on behalf of the 2<sup>nd</sup> respondent, who in turn, shall hand over the same to the Public Information Officer.

**17.03.2023**

Index : Yes  
Speaking order  
Neutral Citation: Yes

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To

1. Tamil Nadu Public Information Commission,  
No.2, Sir Thiyagaraya Road,  
Eldams Road,  
Teynampet,  
Chennai – 600 018.
2. The Managing Director and Appellant Authority,  
TASMAC,  
Chennai.
3. The Public Information Officer cum  
Chief General Manager,  
4<sup>th</sup> Floor, C.M.D.A. Tower II,  
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**S.M.SUBRAMANIAM, J.**

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