

W.P. (C) No.26497/2023



2024:KER:62132

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

TUESDAY, THE 13TH DAY OF AUGUST 2024 / 22ND SRAVANA, 1946

WP(C) NO. 26497 OF 2024

PETITIONER:

SAJIMON PARAYIL
AGED 57 YEARS
S/O. T S RAJAPPAN, PURAVA OCEANA, FLAT NO: 11 C,
MARINE DRIVE, ERNAKULAM, PIN - 682031

BY ADVS.
SAIBY JOSE KIDANGOOR
BENNY ANTONY PAREL
P.M.MOHAMMED SALIH
NAZRIN BANU
AMEER SALIM
IRINE MATHEW

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY SECRETARY
DEPARTMENT OF CULTURAL AFFAIRS, GOVERNMENT
SECRETARIAT THIRUVANANTHAPURAM, PIN - 695001
- 2 STATE INFORMATION COMMISSION KERALA
REPRESENTED BY THE CHIEF INFORMATION
COMMISSIONER, PUNNEN ROAD, THIRUVANANTHAPURAM,
PIN - 695001



- 3 STATE PUBLIC INFORMATION OFFICER
CULTURAL AFFAIRS (B) SECTION, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001

- 4 THE APPELLATE AUTHORITY
CULTURAL AFFAIRS (B) SECTION, GOVERNMENT
SECRETARIATE, THIRUVANANTHAPURAM, PIN - 695001

- 5 LESLY JOHN
T.C 15/1647 MINCHIN ROAD, THYCAUD,
THIRUVANANTHAPURAM, PIN - 695001

- 6 ANIRU ASHOKAN
CORRESPONDENT, MADHYAMAM DAILY NEWS, GANDHARI
AMMAN COVIL ROAD, THIRUVANATHAPURAM, PIN - 695014

- 7 MANOJ VIAJAYARAJ
KARITHANDICKAL HOUSE, IRAVIPEROOR P.O THIRUVALLA,
PATHANAMTHITTA, PIN - 689101

- 8 AJITH KUMAR
T.C 6/1766(2), SANTHARAGHAVAM, PTPM NAGAR,
THIRUVANATHAPURAM, PIN - 695038

- 9 ULLAS. A S
REPORTER, MANORAMA ONLINE, NEAR AROOR TOLL
GATE, BYE-PASS ROAD, ALAPPUZHA, PIN - 688534

- 10 KERALA WOMEN'S COMMISSION
REPRESENTED BY ITS MEMBER SECRETARY NEAR LOURDES
CHURCH, P.M.G. PATTOM P.O THIRUVANANTHAPURAM
(IMPLEADED AS PER ORDER DATED 13.8.24 IN IA
2/2024)

- 11 WOMEN IN CINEMA COLLECTIVE (WCC)
A REGISTERED ORGANIZATION, REGISTERED UNDER THE
PROVISIONS OF TRAVANCORE COCHIN LITERARY,
SCIENTIFIC AND CHARITABLE SOCIETIES REGISTRATION



ACT,1955, REPRESENTED BY ITS MANAGING COMMITTEE MEMBER, ASHA ACHY JOSEPH, HAVING OFFICE AT WOMEN IN CINEMA COLLECTIVE FOUNDATION, C/O MAMANGAM, STADION 68, 3RD FLOOR, BEHIND KALOOR INTERNATIONAL STADIUM, PALARIVATTOM, KOCHI (IMPEADED AS PER ORDER DATED 13.8.24 IN IA 3/2024)

12 NADIRA MEHRIN
D/O.NAVAS M, RESIDING AT TC 48/319, MITHRA NAGAR, PARUTHIKUZHY, PONTURA P.O, THIRUVANANTHAPURAM (IMPEADED AS PER ORDER DATED 13.8.24 IN IA 4/2024)

13 SANJANA CHANDRAN, AGED 26 YEARS, D/O.BALACHANDRAN RESIDING AT YAVARIPARAMBIL HOUSE, CHERUKULATHOOR POST, KOZHIKODE - 673 008

BY ADVS.
M. AJAY
Gokul D Sudhakaran
T.R.S.KUMAR
A.PARVATHI MENON
BINOY VASUDEVAN
A.K.PREETHA
N.KRISHNA PRASAD(K/885/2004)
BHARATH MOHAN(K/1392/2020)
SRIRAM R.B. (K/966/2016)
VAISHNAV DATH S. (K/2263/2019)
P.PARVATHY (K/994/2016)
SREEJITH SREENATH
RINCY KHADER
K.V.RAJESWARI
DEVIKA MOHAN

W.P. (C) No.26497/2023



2024:KER:62132

4

OTHER PRESENT:

SMT. DEEPA NARAYANAN, SR. GP.
SRI. M. AJAY SC FOR STATE INFORMATION COMMISSION.
SMT. PARVATHY MENON. A. SC FOR KWC.
ADV. BINOY VSUDEVAN FOR R11
ADV. A.K. PREETHA FOR R12

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 07.08.2024, THE COURT ON 13.08.2024 DELIVERED
THE FOLLOWING:



V.G.ARUN, J

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W.P(C) No.26497 of 2024

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Dated this the 13th day of August, 2024

JUDGMENT

The challenge in this writ petition is against Ext.P3 order of the State Information Commission, directing the State Public Information Officer (SPIO for short) to provide the information and attested copies of all relevant pages of the Justice K. Hema Committee Report, except the portions exempted from disclosure under Right to information Act, 2005 (the "RTI Act" for short).

2. The facts essential for addressing the challenge are as under:-

An organisation called the 'Women in Cinema Collective', hereinafter referred to as 'WCC', was formed with the prime objective of fighting injustice and the misogynistic trends in the film industry. After its formation, certain untoward incidents



prompted the WCC to seek intervention of the Government to ensure a safe environment for women employed in the Malayalam film industry. Acting on the request, the Government constituted a three member expert committee headed by Justice K. Hema (Retd) to study and make recommendations for solving the issues arising out of gender discrimination in Malayalam Cinema. The terms of reference in the relevant Government Order (G.O. No. 16/2017 CAD dated 01.07.2017) reads as follows:-

- a. Issues faced by women in cinema (like Security etc) and solutions to the problems.*
- b. Service conditions and remuneration for women in cinema.*
- c. Measures to enhance participation of women in all fields connected to cinema.*
- d. How to bring more women into the technical side of cinema, by giving concessions including scholarships etc.*
- e. How to help women into the technical side of cinema when they have to remain out of work due to delivery, child care or other health issues.*
- f. How to ensure gender equality in the content of cinema.*
- g. How to encourage cinemas in which 30% of women are engaged in production activities. "*



7

3. The Justice Hema Committee, after conducting extensive study, including personal interaction with women employees who had faced gender discrimination and harassment, submitted its report to the Government on 31.12.2019. Thereafter, on 11.01.2020, an application under Section 6(1) of the RTI Act was submitted for obtaining a copy of the report. The State Public Information Officer rejected the application and the rejection was affirmed in appeal vide Ext.P2 order of the State Information Commission. Much later, on 13.02.2024, the 5th respondent submitted an application seeking access to the permissible parts of the Justice Hema Committee report, excluding those which cannot be disclosed under the provisions of the RTI Act. The State Public Information Officer having denied the information, an appeal was filed before the State Information Commission. The appeal was considered along with similar appeals and allowed as per Ext P3, with the following directions;

"2. For the purpose, SPIO shall be instrumental as per Section 10(1) and Section 10(2)-(a) and (b) of the RTI Act.

3. The SPIO is directed to provide all the information and



8

attested copies of all relevant pages from the Justice K Hema Committee Report, except which is exempt from disclosure under RTI, Act.

4. To make operational the above mentioned orders, the SPIO is directed to personally scrutinize the Justice K. Hema Committee Report to identify and sever information that is exempt from disclosure.

5. The SPIO should issue notice to the appellants informing that only parts of the requested records, after severance of exempt information, are being provided. The notice should also specify which portions are not being provided.

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7. Since most of the appellants are journalist, the SPIO should ensure that the copies of the Justice K. Hema Committee Report are disseminated simultaneously to all the appellants before 25th July 2024.

8. While providing the attested copies of Justice K. Hema Committee Report, the SPIO should ensure that the materials do not lead to the identification of individuals referenced in the said report or compromise their privacy.

9. Even though the SPIO can reasonably sever and disseminate the information due to larger public interest, the following portions from the Justice K. Hema Committee Report are exempt from disclosure:

Para 96 (Page 49)

Para 165 to 196 (Page 21 to 100) and the Appendix



10. After implementing the above orders, the respondents are directed to file a Compliance Report before this Commission by 3.00 pm on 26th July, 2024

11. The State Public Information Officer and the First Appellate Authority are directed to remain personally present before this Commission on 27th July, 2024 @11.30 am, if there is any lapse in compliance of the above orders.

12. The Secretary to Government (Cultural Affairs) is directed to ensure time bound implementation of the above orders without any lapses or loopholes.

47. Grievance, if any, arising from the implementation of the above orders by any of the parties involved in this case maybe brought before this commission, which remains available to adjudicate such matters in accordance with the provisions of the RTI Act. "

Aggrieved, this writ petition is filed.

4. Heard Advocates, Saiby Jose Kidangoor for the petitioner, M. Ajay for the State Information Commission, Deepa Narayanan for the State, N. Krishna Prasad for the applicant, Parvathy Menon for the Women's Commission of Kerala, Binoy Vasudevan and A. K. Preetha for the Women in



Cinema Collective and T.R.S. Kumar for a third party seeking impleadment.

5. Learned Counsel for the petitioner assailed Ext.P3 order on the following grounds:-

(i) The application seeking a copy of the Justice Hema Committee Report was earlier dismissed by Ext.P2 order. Therefore, the State Information Commission committed gross illegality by allowing a second application submitted for that purpose. Efflux of time or change in the individual manning the office of the Chief Information Commissioner are not reasons to pass a different order.

(ii) Issuance of copy of the report even after redacting some portion will make it possible to identify the persons who had given the statement and persons against whom allegations are made, thereby breaching their privacy. In fact, Justice K.Hema (Retd) had alerted the Government about the need to keep the report confidential, since it contains details of sexual assault, harassment and abuse which were disclosed to the committee in privacy in in-camera proceedings.



(iii) As issuance of copies of the report would result in disclosure of information with respect to third parties, the procedure prescribed in Section 11 of the RTI Act was bound to be followed. The Apex Court, in **Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal** [(2020) 5 SCC 481] has held the procedure stipulated in Section 11 to be mandatory when third party interest is involved.

(iv) In the impugned order, the State Information Commission has only dealt with the exemption under Section 8(j), in spite of the report being exempted as per sections 8(1) (e), (g) and (h) as well. Even if Section 8 (1)(j) alone is taken into consideration, Ext.P3 is bad, since the provision prohibits disclosure of personal information. This crucial change brought about to Section 8 (1)(j) by virtue of Section 44(3) of the Digital Personal Data Protection Act, 2023 was omitted to be noticed.

(v) In the light of the categorical finding in Ext.P2 that the report of the Committee cannot be bifurcated as contemplated under Section 10 of the RTI Act, the State Information



Commission went wrong in entering a contrary finding in Ext.P3, that too, without assigning any cogent reasons.

(vi) The 5th respondent is a journalist and his only interest is to capitalise on the report by making up sleazy stories about the persons and the instances mentioned in the report. As such, no public interest is being subserved by issuing copies of the report. On the other hand, the result of unwarranted media coverage about the report would be irreparable damage to individuals and the industry as a whole.

(vii) Based on the recommendations in the report, the Government has already constituted a committee. The applicants, who had never appeared before the committee are more interested in accessing the report rather than taking measures to expedite implementation of the committee's recommendations.

6. The learned Counsel appearing for the State Information Commission commenced his counter argument by challenging the *locus standi* of the petitioner to challenge Ext. P3 order. It is contended that the petitioner is not personally affected by



the impugned order, nor are any of his fundamental rights directly or substantially invaded. In support of the contention, reliance is placed on the Division Bench decision of this Court in **Ferosh M. Basheer (Dr) v. University of Kerala, Tvm.** [ILR 2022 (4) Kerala 819]. According to the Counsel, the very objective of the RTI Act, which is to ensure participatory democracy, will be defeated, if such frivolous challenges are entertained.

7. The contention that in the light of Ext.P2 order the State information Commission could not have issued Ext.P3, is sought to be answered by arguing that principle of *res judicata* is not applicable, as the Commission is not exercising either judicial or quasi judicial function. Support for this argument is drawn from the Supreme Court decision in **Union of India and Another v. Namit Sharma** [(2013) 10 SCC 359]. Relying on the decision in **Institute of Chartered Accountants of India v Shaunak H. Satya and others** [(2011) 8 SCC 781] it is contended that, information can be sought under the RTI Act at different stages or different points of time and what was



exempted from disclosure at one point of time may cease to be exempted at a later point of time. It is pointed out that the application leading to Ext.P2 was filed within few days after the Justice Hema Committee submitted its report, whereas, the State Public Information Officer had submitted in his explanation that the report is under scrutiny by the Government and further, the application leading to Ext.P3 was filed 4 years later. Moreover, in his application, the 5th respondent had specified that he is seeking only the permissible parts of the information after excluding portions, which cannot be disclosed under the relevant provisions of the RTI Act. The State Information Commission examined the report and found it to be in two volumes, the 1st volume being the report prepared by the Committee and the other, the appendix containing exhibits, notes considered as evidence, some video-audio clips and other data kept in a pen drive. After going through the entire pages of the report, the Commission was convinced that the report portion contains only the version of the Committee members and had no



evidence to indicate the persons who had indulged in the incidents quoted in the report or identification marks leading to the identity or hurting the privacy of any person in the field. It was in such circumstances that the State Information Commission directed exemption of certain portions of the report from disclosure and also directed the State Public Information Officer to personally scrutinise the report and sever the information exempted from disclosure. Thereby the Commission ensured that no information relating to third parties is disclosed. The procedure prescribed under Section 11 would apply only if information treated as confidential by the third party is being divulged. For the same reason Section 8(1) (j) also is not attracted.

8. Learned Government Pleader also questioned the *locus standi* of the petitioner and contended that the petitioner has no judicially enforceable right, without which no writ petition is maintainable. To buttress the contention, attention was drawn to paragraph 1 of the statement of facts of the writ petition, wherein the petitioner has stated that he and similarly placed



persons associated with the Malayalam film industry are aggrieved by Ext.P3 order. Reliance is also placed on the decision of the Supreme Court in **Ayaubkhan Noorkhan Pathan v. State of Maharashtra and others** [(2013) 4 SCC 465].

9. Learned Counsel appearing for the 5th respondent pointed out that the RTI Act is intended to give effect to the right to know, which is an integral component of the right to freedom of speech and expression guaranteed in Article 19(1) (a) of the Constitution of India. This invaluable right cannot be circumscribed by raising technical objections, that too by a person who is not in any way affected by the impugned order.

10. Learned Counsel appearing for the members of the Women's Commission as also the members of the Women in Cinema Collective supported Ext.P3 and submitted that the Government of Kerala is the first in the country to initiate measures for protecting the interest of women employed in the film industry. Not only the recommendations of the Justice Hema Committee, but also the reasons which prompted the



committee to make the recommendations should be discussed in public domain prompting the Government to act and thereby reducing the misogynistic tendencies in Malayalam cinema. This would ensure the right to work as well as the right at work for women. On the other hand, the writ petitioner's attempt is to keep the unhealthy practices in the film industry under wraps. Therefore, the writ petition is only to be dismissed.

11. The first contention to be addressed is the challenge against the maintainability of the writ petition, on the ground that the petitioner has no *locus standi*, as his legal right is not infringed. Pertinently, the averment in the writ petition itself is to the effect that the impugned order, if implemented, would adversely affect the film industry at large, compromising privacy, breaching confidentiality and damaging reputations and livelihood of persons within the industry, including the ones who came forward with their view points and testimonials. There is no whisper as to how the petitioner is personally affected by the impugned order. As held by the Apex Court in **Ayaubkhan Noorkhan Pathan's case** (supra), only a person



who has suffered, or suffers from legal injury can challenge the act/action/order etc. There must be judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. A person shall have no *locus standi* to file a writ petition, unless he is personally affected by the impugned order or his fundamental rights have been directly or substantially invaded or there exists an imminent danger of such rights being invaded. The petitioner having failed to demonstrate as to how his legal or fundamental rights are affected by the impugned order, the challenge as to maintainability is liable to be upheld.

12. Be that as it may, it will be inappropriate to dismiss the writ petition without answering the issues involved, which I find to be of general importance. While venturing to answer those issues it is essential to bear in mind that the right to information is essential to make citizens a part of the governing process. The RTI Act envisions an informed citizenry, which is essential to curb corruption and make Governments and its instrumentalities accountable. On the other hand, the right to



privacy is the right to control personal information and protect it from unauthorised access, use or disclosure. This right is vital for individual autonomy, dignity and security. The conflict between the two rights, information and privacy, can lead to complex ethical dilemmas and legal imbroglio. In the case at hand, there is no such conflict, the State Information Commission having incorporated sufficient safeguards in its order to ensure that the privacy of individuals is not breached by issuing copies of the redacted report. While the petitioner's submission is based on mere speculation, the State Information Commission, after careful scrutiny of the document, has vouched that the privacy and anonymity of third parties will not be compromised. The concern expressed by Justice K. Hema also stands allayed by the measures to ensure safety taken by the Commission. Section 10(1) of the RTI Act confers the Commission with the power to provide access to that part of the information which does not contain any information that is exempted from disclosure under the Act and which can reasonably be severed any part that contains exempt



information.

13. The next question is whether, after issuing Ext.P2 order, rejecting the application seeking a copy of the report, the Commission could have passed a different order based on a subsequent application. The answer to this question lies primarily in the fact that the functions of the Information Commission are not quasi judicial, but administrative in nature. This position is discussed and delineated in **Namit Sharma's case** (supra), the relevant portion of which is extracted hereunder:-

"24. It will be clear from the plain and simple language of Sections 18, 19 and 20 of the Act that, under Section 18 the Information Commission has the power and function to receive and inquire into a complaint from any person who is not able to secure information from a public authority; under Section 19 it decides appeals against the decisions of the Central Public Information Officer or the State Public Information Officer relating to information sought by a person; and under Section 20 it can impose a penalty only for the purpose of ensuring that the correct information is furnished to a person seeking information from a public authority. Hence, the functions of the Information Commissions are limited to ensuring that a person who has sought information from a public



authority in accordance with his right to information conferred under Section 3 of the Act is not denied such information except in accordance with the provisions of the Act.”

As the Commission is not exercising judicial or quasi judicial functions, it is not bound by the rule of *res judicata*. Being so, the Commission has the liberty to pass a different order at a distant point of time, taking into account the changed circumstances. As rightly pointed out by the Counsel for the Commission, the application leading to Ext.P2 was filed within days of the Justice Hema Commission submitting the report. The report was to be placed before the Legislative Assembly after scrutiny. Even then the Appellate Authority had informed the State Public information officer that a copy of the report in electronic form can be furnished to the applicant after it is placed before the Assembly.

14. Per contra, the 5th respondent had filed his application after four years, specifying that he is seeking access only to that part of the report which is not exempted from disclosure. The reasons which prompted the Commission to issue copies of the report after redaction is explained in paragraphs 31 to 34



of Ext.P3, extracted hereunder for easy reference:-

“31. Here, in this case, the Committee purposefully made its report in two volumes- The first one is the report prepared by the committee members and other is the Appendix which contains Exhibits, notes considered as evidence and some video-audio clips and some other data kept in pen drive.

32. As this commission went through the entire pages of the report portion, it is evident that the **report contains only the version of the committee members who had discussions with the witnesses and the complainants. It contains no evidence, proving or indicating the persons who had indulged in the incidents quoted in or any specific name or identification marks leading to the identity or hurting the privacy of anyone in the field, except some photo printed quotes and comments added in some paras.**

33. The mandate of Right to Information Act is to provide as much information to citizens as in the maximum possible way. It should be noticed that even those sections which allow immunity in certain cases also make it clear that the information should not be held back if it warranted larger public interest or dealt with correction.



34. Therefore, although the order of the commission dated 22.10.2022 numbered A.P. 236(1)/2020/SIC, was relevant at that time, holding the requested information was premature; citing the same observation years later does not align with the best interest of the law.”

15. As held by the Supreme Court in **Shaunak H. Satya's case** (supra), information can be sought under the RTI under different stages or different points of time. What is exempted from disclosure at one point of time may cease to be exempted at a later point of time, depending on the nature of exemption.

16. Now to the contentions based on the exemption clauses contained in Section 8(1) of the RTI Act. Even though the learned Counsel for the petitioner had elaborately argued about the exemptions, particularly Section 8(1)(j), the contentions lose significance when compared to the public interest involved in disclosing the contents of the report. In such circumstances, Section 8(2), providing the public authority with the power to allow access to information, notwithstanding anything contained in Section 8(1), when



public interest outweighs the harm to protected interests, would come into play. As admitted by the Counsel for the petitioner himself, Kerala is the first State to initiate measures to alleviate grievances regarding harassment and discrimination raised by women working in cinemas. If the measures are to attain finality by implementation of the recommendations of the Justice Hema Committee, there has to be debates and discussions in the public domain, prompting the Government to act expeditiously. This can be achieved only by understanding the reasons that had led to the recommendations in the report. The media has a major role in initiating such discussions. Therefore, the apprehension that the applicants may utilise the report to malign individuals is misplaced. The apprehension is based on a misconception about the role of media in nation building. The following eloquent exposition by the Supreme Court in **Printers (Mysore) Ltd. v. CTO [Printers (Mysore) Ltd. v. CTO, (1994) 2 SCC 434]** will dispel the misconception:-



"13. Freedom of Press has always been a cherished right in all democratic countries. The newspapers not only purvey news but also ideas, opinions and ideologies besides much else. They are supposed to guard public interest by bringing to fore the misdeeds, failings and lapses of the Government and other bodies exercising governing power. Rightly, therefore, it has been described as the Fourth Estate. The democratic credentials of a State are judged today by the extent of freedom the Press enjoys in that State. According to Justice Douglas (*An Almanac of Liberty*), 'acceptance by the Government of a dissident Press is a measure of the maturity of the nation'.

18. The vociferous request by the members of the Women in Cinema Collective, at whose request the Justice Hema Committee was constituted and the Women's Commission, the body constituted to uphold women's rights, in support of Ext.P3 itself, is an indication of the public interest involved. As held by the Apex Court in **Yashwant Sinha and others v Central Bureau of Investigation and Another** [(2019) 6 SCC 1], Section 8(2) of the RTI Act manifest legal revolution that has been introduced in that, none of the exemptions declared under Sub-section (1) of Section 8 can stand in the way of the access to information, if the public

W.P. (C) No.26497/2023



2024:KER:62132

26

interest in disclosure overshadows the harm to the protected interest.

19.The challenge on the premise that the procedure under Section 11 is not followed is to be discarded, since the interests of third parties is not being jeopardized by issuing redacted copies of the report.

For the reasons aforementioned, the writ petition is dismissed. The dates mentioned in the order portion of Ext.P3 will stand extended by one week from today.

sd/-

V.G.ARUN, JUDGE

sj

W.P. (C) No.26497/2023



2024:KER:62132

27

APPENDIX OF WP(C) 26497/2024

PETITIONER EXHIBITS

Exhibit P1 A TRUE COPY OF THE GOVERNMENT ORDER NO:
661/2017/CULTURAL AFFAIRS (B) DEPT.
FIXING THE TERMS OF REFERENCE FOR THE
COMMITTEE DATED 16.11.2017

Exhibit P2 A TRUE COPY OF THE PROCEEDINGS AND
ORDER IN APPEAL PETITION NO:
236(1)/2020/SIC DATED 22.10.2020 PASSED
BY THE CHIEF INFORMATION COMMISSIONER

Exhibit P3 A TRUE COPY OF THE ORDER PASSED BY THE
2ND RESPONDENT DATED 05.07/2024

TRUE COPY

PS TO JUDGE