



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 1ST DAY OF DECEMBER 2022 / 10TH AGRAHAYANA, 1944

WA NO. 1039 OF 2022

AGAINST THE JUDGMENT IN WP(C) 19962/2022 OF HIGH COURT OF KERALA

APPELLANT/1ST RESPONDENT IN W.P.(C) 19962/2022:

JAYACHANDRAN

AGED 53 YEARS

GENERAL SECRETARY, JOINT COUNCIL OF STATE SERVICE
ORGANIZATIONS, STATE COMMITTEE, E.J.FRANCIS MEMORIAL,
NEAR PRESS CLUB, THIRUVANANTHAPURAM - 695001.

BY ADVS.

V.M.KRISHNAKUMAR

MAYA M.

RENJITH THAMPAN (SR.)

RESPONDENTS/PETITIONERS & 2ND RESPONDENT IN W.P.(C) 19962/2022 :

1 STATE OF KERALA
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO
GOVERNMENT, FINANCE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM. PIN 695 001.

2 STATE PUBLIC INFORMATION OFFICER - 1
AND UNDER SECRETARY TO GOVERNMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 001

3 THE STATE INFORMATION COMMISSION,
REPRESENTED BY ITS SECRETARY, PUNNEN ROAD,
THIRUVANANTHAPURAM - 695001.

BY ADVS.

SRI.M.AJAY FOR R3

SHRI.T.B.HOOD, SPECIAL GOVERNMENT PLEADER TO ADVOCATE
GENERAL FOR R1 & R2

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01.12.2022,
ALONG WITH WA.1040/2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 1ST DAY OF DECEMBER 2022 / 10TH AGRAHAYANA, 1944

WA NO. 1040 OF 2022

AGAINST THE ORDER/JUDGMENTWP(C) 18529/2022 OF HIGH COURT OF KERALA
APPELLANT/PETITIONER IN W.P.(C) NO.18529/2022:

JAYACHANDRAN

AGED 53 YEARS

S/O BALAKRISHNAN NAIR, AGED 53 YEARS, KNRA 65B, LANE 14,
KADAPPATHALA NAGAR, KAWDIAR, THIRUVANANTHAPURAM.

PIN 695 003.

BY ADVS.

V.M.KRISHNAKUMAR

RENJITH THAMPAN (SR.)

RESPONDENTS/RESPONDENTS IN W.P.(C) NO.18529/2022:

- 1 STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM. PIN 695 001.
- 2 ADDITIONAL CHIEF SECRETARY,
DEPARTMENT OF FINANCE, SECRETARIAT, THIRUVANANTHAPURAM.
PIN 695 001.
- 3 THE SECRETARY,
DEPARTMENT OF GENERAL ADMINISTRATION, SECRETARIAT,
THIRUVANANTHAPURAM. PIN 695 001.
- 4 STATE INFORMATION OFFICER.
(OFFICE OF THE CHIEF SECRETARY) SECRETARIAT,
THIRUVANANTHAPURAM. PIN 695 001.
- 5 OFFICER ON SPECIAL DUTY
(APPELLATE AUTHORITY) OFFICE OF CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM. PIN 695 001.
- 6 STATE PUBLIC INFORMATION OFFICER,
FINANCE DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM. PIN
- 695 001.



7 THE STATE INFORMATION COMMISSION,
OFFICE OF THE STATE INFORMATION COMMISSION, PALAYAM,
THIRUVANANTHAPURAM. PIN - 695 001. REPRESENTED BY ITS
SECRETARY.

BY ADVS.

SRI.M.AJAY FOR R7

SHRI.T.B.HOOD, SPECIAL GOVERNMENT PLEADER TO ADVOCATE
GENERAL FOR R1 TO R6

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
01.12.2022, ALONG WITH WA .1039/2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



J U D G M E N T

Dated this the 1st day of December, 2022

SHAJI P.CHALY,J

Captioned writ appeals are connected, filed by one and the same appellant, challenging the common judgment of a learned Single Judge in W.P.© Nos.19962 of 2022 and 18529 of 2022 dated 27.06.2022, whereby the writ petition filed by the State was allowed and the writ petition filed by the appellant was dismissed.

2. W.P.© No.19962/2022 was against the order passed by the State Information Commission dated 14.3.2022 in AP No.1287(6)/2021/SIC and the correction order passed by the State Right to Information Commission, Kerala in the above appeal dated nil, whereas W.P.© No.18529/2022 was filed by the appellant seeking direction to State Information Officer and the State Information Commission to comply with its orders specified above. The learned Single Judge, after considering the rival submissions, has allowed the writ petition filed by the State and dismissed the writ petition filed by the appellant. Brief material facts for the disposal of the appeals, discernible from W.A No.1039/2022 are as follows:

3. National Pension system was implemented in the State for the Government employees appointed on or after 1.4.2013. The State Government as per an order dated 7.11.2018 bearing G.O.(P) No.172/2018/Fin., constituted a committee to review the national pension system implemented in the State. The Committee



submitted a report on 30.4.2021. The appellant filed Exhibit P2 application dated 24.5.2021 before the State Public Information Officer, Office of the Chief Secretary, Secretariat, Thiruvananthapuram under the Right to Information Act, 2005, requesting to provide a copy of the report submitted by the committee. The said application was received by the State Public Information Officer on 27.5.2021. Since the information sought for was concerning the Finance Department, the application was transferred to the State Public Information Officer of the Finance Department as required under section 6(3) of the Act, 2005.

4. According to the State Government, transfer of the said application was intimated to the appellant as per Exhibit P3 letter dated 28.5.2021. It is further submitted that upon transfer, Exhibit P2 application was received by the State Public Information Officer – 1 & Under Secretary to Government, Finance (Information) Department, who is the second petitioner in the writ petition. On 3.6.2021, the State Public Information Officer, as per Exhibit P4 letter dated 1.7.2021, informed the appellant that steps are taken by the Government to examine the report in detail and take a policy decision in the matter.

5. In the meanwhile, the appellant filed an appeal dated 1.7.2021 before the Appellate Authority in General Administration (Strictly Confidential) Department on 2.7.2021, contending that though Exhibit P2 application was transferred to the Finance Department, he had not received any reply from that Department even after lapse of one month. The Appellate Authority in General Administration (Strictly



Confidential), as per Exhibit P5 order dated 30.7.2021, disposed of the appeal stating that since the application was already transferred to the Finance Department, the grievance, if any, of the appellant must to be raised before the Appellate Authority in the Finance Department. However, without exhausting the remedy of appeal before the Appellate Authority in Finance Department, the appellant filed Exhibit P6 appeal before the State Information Commission. The State Information Commission as per Exhibit P8 order dated 14.3.20211 disposed of the appeal directing the State Public Information Officer (SE Department), Government Secretariat, Thiruvananthapuram – the first opposite party in the appeal, to provide the copy of the report to the appellant. Later, the State Information Commission by Exhibit P9 order dated 18.4.2022 directed the State Information Commission – I, Finance (Information) Department, Government Secretariat, Thiruvananthapuram, to provide the copy of the report as per Exhibit P9 order. It is thus challenging the legality and correctness of the said orders passed by the State Information Commission, the writ petition was filed by the State Government.

6. As pointed out above, the appellant has filed the connection writ appeals, seeking to enforce the said orders passed by the State Information Commission. The learned Single Judge, after considering the rival submissions of the parties including the State Information Commission, has allowed the writ petition filed by the State and dismissed the writ petition filed by the appellant, holding that the information sought for by the appellant is one under section 8(1)(i) of the Act, 2005 and the



prohibition contained thereunder is absolute. Therefore, it is held that the prohibitory stipulation under section 8(1)(i) does not permit disclosure of information on the satisfaction of larger public interest. It was also held that the exemption from disclosure under section 8(1)(i) applies to cabinet papers including records of deliberations of the Council of Ministers, the Secretaries and other officers. It was further held that the proviso to section 8(1)(i) provides that if Council of Ministers takes a decision on cases brought before the Council and the matter is complete or over, the exemption from disclosure of information ceases and the decision of Council of Ministers, the reasons thereof and the material on the basis of which the decisions were taken, shall be made public. Therefore, it was held that only at that stage, the State Public Information Officer can provide material, on the basis of which, the decisions were taken by the Council of Ministers. It was further held that the exemption from disclosure available to cabinet papers referred to in section 8(1)(i) will equally apply to potential cabinet papers not brought before the Council. It is thus challenging the legality and correctness of the findings rendered by the learned Single Judge, the appeals are preferred.

7. We have heard learned Senior Counsel for the appellant Sri.Ranjith Thampan, assisted by Adv.V.M.Krishnakumar, learned Special Government Pleader Sri.T.B.Hood for the State and its officials, Sri.M.Ajay for the State Information Commission and perused the pleadings and materials on record.

8. The paramount contention advanced by the appellant is that the final report



submitted by the committee for reviewing the functioning of the participatory pension scheme is not exempted under section 8(1)(i) of the Act, 2005. It is further contended that in view of section 4(1)(c) of the Act, 2005, the State Government was statutorily bound to publish the relevant materials while formulating a policy decision. Therefore, it is contended that even before taking a policy decision and while formulating the policy decision, the relevant material is to be published in view of section 4(1)(c) of Act, 2005. Accordingly, it is submitted that before a decision to act on the report is taken and taking a stand that at a future point of time, the Government may take a policy decision and hence the report is a cabinet paper, cannot stand scrutiny of law.

9. That apart, it is contended that in view of section 8(2) of Act, 2005, even if the document is in the exempted category, the public authority can give information of the same, if the applicant establishes that withholding such information produces greater harm than disclosure. It is the further contention of the appellant that in the case on hand, the State Government itself takes a stand that the said document may be required for making a policy decision and therefore, it is better that before taking a policy decision, the people at large are informed of the proposed policy decision so that there will be a transparency in the policy decision especially when the intention of the legislature is to strengthen democracy and introduce highest levels of transparency and openness. That apart, it is contended that in view of section 3 of Act, 2005, all citizens have the right to secure information, which cannot be denied to



the appellant, who is a citizen of India. It is also stated that the State Information Commission, by exercising its power under Chapter 5, has conducted an enquiry and already directed the State Public Information Officer to provide a copy of the report to the appellant within 10 days and since the right to information of the appellant had recognised by the State Information Commission as per its orders, it was not legally correct on the part of the a learned Single Judge to have interfered with the orders passed by the State Information Commission. Various other contentions are also raised assailing the correctness of the judgement of the a learned Single Judge.

10. The learned Special Government Pleader on the other hand advanced arguments supporting the findings rendered by the learned Single Judge. However, the learned Standing Counsel for the State Information Commission has submitted that the report drawn by the State Government in regard to the participatory pension scheme is a confidential report and therefore, before taking a policy decision as is provided under section 4(1)(c) of the Act, 2005, the State Government ought to have published all the relevant facts before formulating the policy on the basis of the report.

11. It is also submitted that the purpose of the Right to Information Act, 2005 is to provide for setting out a practical regime of right to information for citizens to secure access to information under the control of the public authorities, in order to promote transparency and accountability in the working of every public authority and therefore, dismissing an application on the ground that the report is a potential



cabinet paper would defeat the purposes of the Act. Further learned Standing Counsel submitted that the democratic system of Government prevailing in the country requires an informed citizenry and in order to sustain and maintain democracy, transparent of information is a vital and indispensable requirement. It is further contended that it is to contain corruption and to hold the Governments and its instrumentalities accountable to the governed. It also pointed out by the learned Senior Counsel for the appellant as well as learned Standing Counsel for State Information Commission that if the judgment of the learned Single Judge is sustained, it would cause irreparable loss and injury to the citizens and would not be able to secure any information from the decision taken by the Ministers on the pretext that it is a cabinet paper, which is protected under section 8(1)(i) of the Act, 2005.

12. We have evaluated the rival submissions made across the Bar.

13. The paramount contention advanced by the appellant is on the basis of section 4(1)(c) of the Act, 2005. Section 4 deals with obligation of public authorities and it has various facets and clause (c) states that every public authority shall publish all relevant facts while formulating important policies or announcing the decisions, which affect public. But fact remains, section 8(1) of Act, 2005 dealing with exemption from disclosure of information opens with a *non obstante* clause that, notwithstanding anything contained in this Act, there shall be no obligation to give any citizen the information that are delineated thereunder. Exemption granted under



clause (i) of section 8(1) specifies that in accordance with the exemption whenever be read as, “notwithstanding anything contained in this Act, there shall be no obligation to give any citizen cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers.”. The proviso thereto makes it clear 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.

14. Therefore, in our considered view, section 8(1)(i) when read in tandem of the proviso, it is clear that the disclosure of information in regard to the cabinet papers, deliberations of the Council of Ministers, Secretaries and other officers shall be made public only after the decision has been taken and the matter is complete or over. The phraseology employed in section 8(1) as well as the proviso to clause (i) of section 8(1) are imperative in nature and therefore, no disclosure can be made of cabinet papers etc. without the satisfaction of the requirements contained under the proviso to section 8(1)(i).

15. The said view expressed by us would be justified, if clause (j) of section 8(1) is taken into account, which states that 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.

16. Therefore, it is clear and evident that what could be disclosed is clearly enumerated in clause (j) of section 8(1) of Act, 2005. Which thus means, apart from what is permitted to be disclosed, no other information can be disclosed so far as the cabinet papers etc. contained under clause (i) of section 8(1) is concerned. In this context, it would be worthwhile to consider section 7 of Act, 2005 dealing with disposal of request. Sub-section (1) thereto makes it clear that subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or the State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in section 8 of the Act, 2005.

17. The deliberations made above would make it clear that what is exempted from disclosure is cabinet papers including records of deliberations Council of Ministers, Secretaries and other officers and not based on the content of the cabinet papers or other records specified in section 8(1)(i). In order to substantiate the contention advanced, learned Senior Counsel Sri.Ranjith Thampan has invited our attention to the judgment of the Apex Court in **M/s. Doypack Systems Pvt. Ltd. and others v. Union of India and Others** [(1988) 2 SCC 299] and the **Central Public Information Officer, Supreme Court of India v. Subhash Chandra**



Agarwal [(2020)5 SCC 481] and judgment of this Court in **State Public Information Officer and Deputy Superintendent of Police, Tvm. And Another v. State Information Commission, Tvm and Another** [2021 (2) KHC 588].

18. But in our considered opinion, the judgments rendered by the Apex Court as well as learned Single Judge of this Court are entirely in different context, which cannot be equated with the issue at hand. Moreover, the proposition of law laid down in the aforesaid judgments are taken into account by the learned Single Judge while disposing of the writ petitions. Learned Special Government Pleader Sri.T.B.Hood has also invited our attention to the Rules of Business of Government of Kerala and specifically to the 2nd schedule, which deals with cases to be brought before the Council. Entry 20 of the 2nd schedule deals with proposals involving change of policy or practice. Further, Entry 24 specifies that proposals involving any important alterations in the conditions of service of the members of any All India Service or the State Service or in the method of recruitment to the service or post to which appointment is made by the Government. According to the Special Government Pleader, the issue involved in the report is a condition of service of a State Government employees and therefore, the report is to be brought before the Council of Ministers, which is a mandatory requirement as per the Rules of Business. The said argument was advanced since the learned Standing Counsel for the State Information Commission submitted that the report of the committee was never asked to be



placed before the Cabinet. In our view, since as per the Rules of Business of the Government of Kerala, such a requirement is mandated as per the entries in the 2nd schedule, and we have no hesitation to say that the report ought to be placed before the Council in terms of the provisions of the Rules of Business of the Government of Kerala.

19. That apart, learned Special Government Pleader has invited our attention to the Freedom of Information Act, 2000 of the United Kingdom and submitted that as per section 35 of the said Act dealing with formulation of Government policy stipulates that the information held by a Government Department or by Government is exempt information if it relates to the formulation or development of government policy and ministerial communications. So also learned Special Government Pleader has also invited our attention to a book author – Sir Ivor Jennings, in regard to the cabinet Government and has brought our attention specifically to the cabinet secrecy and cabinet minutes propounded thereunder. It states that, “the Cabinet deliberates in secret; its proceedings are confidential. The Privy Councillor's oath imposes an obligation not to disclose information; and the Official Secrets Acts forbid the publication of Cabinet as well as other official documents. But the effective sanction is neither of these. The rule is, primarily, one of practice. Its theoretical basis is that a Cabinet decision is advice to the Queen, whose consent is necessary to its publication. Its practical foundation is the necessity of securing free discussion by which a compromise can be reached, without the risk of publicity for every statement



made and every point given away.”

...

20. So also learned Special Government Pleader has relied upon the judgment in **M/s. Doypack Systems Pvt. Ltd.** (*supra*) relied upon by the learned Advocate General and invited our attention to paragraph 46, which clearly specifies that Cabinet papers are, therefore, protected from disclosure not by reason of their contents but because of the class to which they belong. It is also held therein that the Cabinet papers also include papers brought into existence for the purpose of preparing submission to the Cabinet.

21. Apart from the same, learned Special Government Pleader has invited our attention to the judgment of the Supreme Court of the United States in **United States Fish and Wildlife Service Et. Al v. Sierra Club, INC.**, bearing No.19-547, decided on 4th March, 2021, which considered an issue with respect to disclosure of information held by a federal agency and held that the Act mandates disclosure of documents held by a federal agency unless the documents fall within one of the 9 enumerated exemptions. It was also held therein that the 5th of those exemptions protects inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency. It is further held therein that privilege is rooted in the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news. It is further held that the disclosure of rationale does



not apply, of course, to documents that embody a final decision, because once a decision has been made, the deliberations are done. It was further held that privilege, therefore, distinguishes between predecisional, deliberative documents, which are exempt from disclosure and documents reflecting a final agency decision and the reasons supporting it, which are not considering the contentions put forth by the rival parties. We are of the undoubted opinion that even if the contents of a document is not confidential, once the documents is a subject matter to be placed before the Cabinet so as to take a policy decision, it is the subject matter of exemption as provided under section 8(1)(i) of the Act, 2005.

22. Accordingly, we are of the undoubted opinion that the appellant has not made out any case of jurisdictional error or other legal infirmities justifying our interference in the judgment of the learned Single Judge in an intra court appeal filed under section 5 of the Kerala High Court Act, 1958

Needless to say, writ appeals fail, accordingly it is dismissed.

Sd/-
S.MANIKUMAR,
CHIEF JUSTICE

Sd/-
SHAJI P. CHALY,
JUDGE