

'C.R.'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

WEDNESDAY, THE 20TH DAY OF JULY 2022 / 29TH ASHADHA, 1944

WP(C) NO. 23224 OF 2022

PETITIONER/S:

M.P. CHOTHY, AGED 72 YEARS
S/O.KALAMBAN PAINKAN, MACHERIKKUDY HOUSE,
IRINGOLE KARA, PERUMBAVOOR VILLAGE,
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BY ADV M.P. CHOTHY (Party-In-Person)

RESPONDENT/S:

- 1 REGISTRAR GENERAL
HIGH COURT OF KERALA, ERNAKULAM, COCHIN - 682 031
- 2 SHERISTADAR & APPELLATE AUTHORITY UNDER RTS ACT
PRINCIPAL DISTRICT COURT, ERNAKULAM, COCHIN - 682 011.
- 3 PUBLIC INFORMATION OFFICER
PRINCIPAL DISTRICT COURT, ERNAKULAM, COCHIN - 11.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
20.07.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'C.R.'

JUDGMENT

The petitioner, a retired Class I officer and presently a practicing lawyer, made an application under the Right to Information Act, 2005 (hereinafter referred to as 'the RTI Act' for short), before the Public Information Officer, District Court, Ernakulam (herein after referred to as 'PIO') seeking copies of 'A' diary of civil and criminal postings of the cases for the period from 01.12.2021 to 14.04.2022'. The said application was rejected by the PIO by Ext.P1 letter stating that the information sought for can be obtained on submitting copy application and besides, those information is available in the website of the Court, Court notice board and in the Kiosk of the District Court. It was also informed that, the 'A' diary being part of court proceedings, the matter was brought to the notice of the Hon'ble Judge and the application was rejected on 18.04.2022 and it is not possible to give information in

terms of Sections 2.8(V), 3(a) and 8B (*sic*) of the RTI Act.

2. Against Ext.P1, the petitioner preferred an appeal under Section 19 (2) of the RTI Act before the Appellate Authority, the 2nd respondent. The Appellate Authority, by Ext.P3, rejected the appeal stating that the information sought for by the petitioner relates to judicial proceedings and the High Court as per Rule 12 of the Right to Information (Subordinate Courts and Tribunals) Rules, 2006 (hereinafter referred to as 'the Rule' for short) has directed all Subordinate Courts in the State that no information relating to any Judicial Proceedings shall be disclosed under the said Act. The petitioner states that he has not preferred a second appeal against Ext.P3 order.

3. Ext.P1 issued by the PIO and Ext.P3 order of the Appellate Authority are impugned in the writ petition. Besides, the petitioner has sought to quash Rule 12 of the Rules contending that the said provision is in violation of the fundamental right of the petitioner guaranteed under

Article 19(1)(a) of the Constitution of India and the provisions of the Act.

4. Heard the petitioner who appeared in person.

5. Rule 72 (1) of the Criminal Rules of Practice, Kerala, 1982 reads as follows;

'72. **Diary.**- Every Court shall maintain a diary in Administrative Form No.10. The entries shall be signed by the Presiding Officer on the day to which they relate.'

6. Rule 382 of the Civil Rules of Practice, Kerala, 1971 reads as under;

'382. **A Diary.**- In all suits, appeals, and miscellaneous proceedings, a general diary shall be maintained setting out only the judicial work done in each case. Entries such as filing of suits, appeals, petitions and issue and return of processes, etc., which are only ministerial, shall be omitted. The A Diary shall be signed by the Judge himself.'

7. 'A' diary is thus the record of the sum and substance of the judicial work of each case taken up for consideration on a day, signed by the Presiding Officer.

8. Right to Information (Subordinate Courts and Tribunals) Rules, 2006 has been framed by the High Court in exercise of the powers conferred under sub-section (1) of Section 28 of the Act read with Article 235 of the Constitution of India. Rule 12 of the said Rules reads as follows:

“Rule-12. No application for information or document relating to any judicial proceedings shall be entertained under these rules.”

The provisions of the Right to Information (Subordinate Courts and Tribunals) Rules, 2006 are in *pari materia* with the Kerala High Court (Right to Information) Rules, 2006 framed by the High Court in exercise of the powers conferred under sub-section (1) of Section 28 of the RTI Act.

9. The copies of 'A' diary of civil and criminal postings of the cases' requested by the petitioner relate to judicial proceedings and such application for information cannot be entertained under the Rules.

10. The petitioner was informed by the PIO that the information requested for can be obtained on submitting copy application. Rule 222 of the Criminal Rules of Practice, Kerala, 1982 deals with application for copies and reads as follows;

“222. **Applications for copies.**-Every application for a copy of a proceeding or document filed in or in the custody of a Court shall be presented by the applicant or his pleader and shall set out the name of the applicant ,his position ,if any, in the proceedings, name of the pleader, if any, and a description of the proceeding or document of which a copy is required.”

11. Rule 239 of the Civil Rules of Practice, Kerala, 1971 deals with similar provision and reads as follows;

“239. **Application for copies.**- (1) Any person entitled to obtain a copy of any proceeding or document filed in or in the custody of the Court, may present an application therefor as in Form No. 47 setting out the name of the applicant, his position in the suit or proceeding if he is a party

thereto, and the description of the document of which copy is required.”

(2) Copies of Judge's minutes or of correspondence, and other papers not strictly Judicial will be granted only under orders of the Judge.

[(3) Any party to the proceeding may, immediately after the judgment or order is pronounced, apply orally to the Court for a carbon copy or photostat copy thereof, and, if the Court so directs, a carbon copy or photostat copy duly certified shall be issued to the party on his making an application for an urgent copy under Rule 246 accompanied by the copying charges required by Rule 248.]

[Provided that in cases where the State Government or the Central Government is a party, a carbon copy may be issued to the State Government or the Central Government, as the case may be, by the office free of cost, on receipt of a written requisition for the same.]

(4) [In LAR cases, a copy of the judgment and decree will be supplied to the concerned government pleader representing the State, free of cost, if applied for.

Provided that the grant of a free copy under sub-rule (4) will not affect the requirements of Rule 258.]”

12. Rule 226 of the Criminal Rules of Practice, Kerala, 1982 deals with application for copies by strangers and reads as under;

“226. Application for copies by strangers.- Except in cases of judgments, applications for the grant of copies of any proceedings or documents by a stranger to the proceedings shall be allowed only by order of the Court obtained on a petition duly verified setting forth the purpose for which the copy is required.”

13. Rule 240 of the Civil Rules of Practice, Kerala, 1971 deals with similar provision and reads as follows;

“240. Application for copies by strangers.- Application for copies of records by persons not parties to the suit or proceedings shall be allowed only by order of the Judge obtained on a duly verified petition setting forth the purpose for which the copy is required. But copies of judgments can be granted to all persons prepared to pay the

prescribed fees for the supply of such copies.”

14. These provisions regarding application for copies under the Rules of Practice in the Subordinate Courts are almost in *pari materia* with Rule 128 and 129 of the Rules of the High Court of Kerala, 1971 framed under Article 225 of the Constitution of India. The copies of 'A' diary of civil and criminal postings of the cases' can be obtained by the petitioner on filing applications under the relevant Rules of Practice.

15. The petitioner was also informed by the PIO that the information sought for by him is available in the website of the Court, Court notice board and in the Kiosk of the Court. Section 4(1)(a) of the RTI Act enjoins every public authority to maintain records in a manner and the form, which would facilitate the right to information under the RTI Act. The information that is required to be placed in public domain is specified under Section 4(1)(b) of the RTI Act. Section 4(2) provides that, it shall be a constant

endeavor of every public authority to take steps in accordance with the requirements of clause (b) of subsection (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 the RTI Act to obtain information. The Apex Court in the **Chief Information Commissioner v. High Court of Gujarat and another [(2020) 4 SCC 702: AIR 2020 SC 4333: 2020 (2) KHC 322: 2020 (2) KLT 739: ILR 2020 (1) Ker 907]** has held that when the information can be obtained through the mechanism provided under the rules made by the High Court, the said mechanism should be preserved and followed and the provisions of the RTI Act shall not be resorted to. Since the copies of 'A' diary of civil and criminal postings of the cases' can be obtained by the petitioner on filing applications under the Rules of Practice, the provisions of the RTI Act shall not be resorted

to.

16. The Apex Court in **Chief Information Commissioner v. High Court of Gujarat** (supra) while considering the question whether Rule 151 of the Gujarat High Court Rules, 1993 stipulating that, for providing copy of documents to the third parties, they are required to file an affidavit stating the reasons for seeking certified copies, suffers from any inconsistency with the provisions of RTI Act, held that the Rules framed by the Gujarat High Court in exercise of the powers under Art.225 of the Constitution of India are in consonance with the provisions of the RTI Act. Rule 151 of the Gujarat High Court Rules, 1993 reads as under;

"151. Parties to proceedings entitled to copies; application by third parties to be accompanied by affidavits. Copies of documents in any Civil or Criminal Proceedings and copies of judgment of the High Court shall not be given to persons other than the parties thereto without the order of the Assistant Registrar. Applications for copies of

documents or judgment made by third parties shall be accompanied by an affidavit stating the grounds on which they are required, provided that such affidavit shall be dispensed with in case of applications made by or on behalf of the Government of the Union, the Government of any State or the Government of any foreign State."

The Apex Court observed that the Gujarat High Court Rules, by insisting the third party applicant to file affidavit stating the reasons for which the documents are required do not obstruct, deny or refuse information to the applicant and there is no inconsistency of the said Rules with the provisions of the RTI Act. The Court also observed that the *non obstante clause* under Section 22 of the RTI Act does not mean an implied repeal of the Gujarat High Court Rules and that the said special enactment framed in 1993 cannot be held to be overridden by the RTI Act, 2005, a later general enactment, simply because the latter opens up with a *non obstante clause*, unless there is clear inconsistency between the two legislations.

17. Article 235 of the Constitution of India deals with the control of the High Court over Subordinate Courts. Section 28 of the RTI Act deals with the power to make rules by Competent Authority to carry out the provisions of the RTI Act. Section 2 (e) (iii) of the RTI Act provides that the Chief Justice of the High Court shall be the Competent Authority in the case of a High Court. It is in exercise of the powers conferred under sub-section (1) of Section 28 of the RTI Act read with Article 235 of the Constitution of India the High Court of Kerala has made the Right to Information (Subordinate Courts and Tribunals) Rules, 2006 in respect of Courts subordinate to the High Court and the Motor Accidents Claims Tribunals. The Criminal Rules of Practice, Kerala, 1982 and the Civil Rules of Practice, Kerala, 1971 are framed by the High Court of Kerala to regulate the procedure and practice in the Subordinate Courts. The Criminal Rules of Practice and the Civil Rules of Practice were framed before the

enactment of the RTI Act and provide for grant of copies of any proceedings or documents filed or in the custody of the Court. After the enactment of the RTI Act, to carry out the provisions of the said Act, the High Court has made the Right to Information (Subordinate Courts and Tribunals) Rules, 2006 incorporating provisions for providing information not covered by Criminal Rules of Practice and the Civil Rules of Practice. Since Criminal Rules of Practice and the Civil Rules of Practice provide for provisions for grant of copies of any proceedings or documents filed or in the custody of the Court, the High Court, under Rule 12 of the Right to Information (Subordinate Courts and Tribunals) Rules, 2006, has provided that no application for information or document relating to any judicial proceedings held by and under the control of the public authority, shall be entertained by the PIO. The three Rules made by the High Court, viz; the Criminal Rules of Practice, Kerala, 1982, the Civil Rules of Practice, Kerala,

1971 and Right to Information (Subordinate Courts and Tribunals) Rules, 2006 provide for the mode of furnishing information and are consistent with the provisions of the RTI Act.

18. The Constitution Bench of the Apex Court in **Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal [(2020) 5 SCC 481: 2019 (5) KHC497]**, referring to the decision in **Thalappalam Service Coop. Bank Ltd. v. State of Kerala [(2013) 16 SCC 82]** has observed that, the right to information is not absolute and is subject to the conditions and exemptions under the Act. Since the petitioner has been informed that the copies of 'A' diary of civil and criminal postings of the cases' can be obtained on filing copy applications, there is no denial or refusal of information and none of the fundamental rights of the petitioner have been infringed.

The writ petition therefore fails and is accordingly dismissed. Before parting with the case, a word of caution. In Ext. P1, the Public Information Officer has stated that it is not possible to give information in terms of Sections 2.8(V), 3(a) and 8B of the RTI Act. No such Sections could be traced in the RTI Act. While disposing of request for information, if any provisions of law are to be referred to, the Public Information Officers shall endeavor to quote the correct provisions.

Sd/-

**MURALI PURUSHOTHAMAN
JUDGE**

SB/20/07/2020

APPENDIX OF WP(C) 23224/2022

PETITIONER EXHIBITS

Exhibit P1 TRUE COPY OF REPLY DT. 20/4/2022 ISSUED BY
P.I.O. WITH ENGLISH TRANSLATION.

Exhibit PII TRUE COPY OF APPEAL DT. 26/4/2022 ISSUED BY
PETITIONER.

Exhibit PIII TRUE COPY OF REJECTION ORDER DT. 11/5/2022,
ISSUED BY 2ND RESPONDENT.