IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 11TH DAY OF JANUARY 2023 / 21ST POUSHA, 1944

WP(C) NO. 23138 OF 2012

PETITIONER/S:

TONY THOMAS
AGED 52 YEARS
S/O.THOMAS, RESIDING AT KIZHAKKEKKARA, IRUMPAKACHOLA P.O., KANJIRAPPUZHA, PALAKKAD DISTRICT.

BY ADVS.
SRI.C.V.MANUVILSAN
SRI.RAJAN VISHNURAJ
SMT.V.RENUKA
SRI.P.G.SURESH
SMT.K.VIDYA
V.HARISH

RESPONDENT/S:

1 THE STATE PUBLIC INFORMATION OFFICER
SUB REGISTRAR OFFICE, AGALI, PALAKKAD-678581.

2 THE DISTRICT REGISTRAR GENERAL
DISTRICT REGISTRAR OFFICE, CIVIL STATION, PALAKKAD-678001.

3 THE SECRETARY
KERALA STATE INFORMATION COMMISSION, PUNNEN ROAD, THIRUVANANTHAPURAM-695001.

BY ADV SRI.M.AJAY, SC, STATE INFORMATION COMMN

OTHER PRESENT:

SRI.K.M.FAISAL, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11.01.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

W.P.(C) No. 23138 of 2012

Dated this the 11th day of January, 2023

JUDGMENT

The above writ petition is filed with following prayers :

(i) "Call for the records leading to the issuance of Exhibits P2, P4 and P6 and quash the same by way of issuance of a Writ of Certiorari.

(ii) Declare that the RTI Act has an overriding effect on the Registration Act/or Stamp Act and Public Information Officer has no power, jurisdiction or authority to demand the Stamp paper and other papers for issuing the copy of the documents

(iii) Issue a Writ of Mandamus directing the Respondent No.1 to provide informations/documents requested in Exhibit P1 application under RTI without insisting for the fee under Registration Act/or Stamp Act.

(iv) Pass such any other order, direction or reliefs as this Hon'ble Court may deem fit in the interest of justice, equity and good conscience." [SIC]

2. The petitioner filed Ext.P1 application under the Right to Information Act to the 1st respondent requesting copy of book No. 1 and book No.4 of Agali Sub Registrar Office from

1.1.2004 to 31.3.2009. It is the case of the petitioner that in response to Ext.P1, the 1st respondent issued a vague and confusing reply. According to the petitioner, a perusal of Ext.P2 would show that the 1st respondent mixed the RTI Act with the Stamp Act and the Registration Act. According to the petitioner, instead of providing the fee amount, which the petitioner was ready to pay under the RTI Act, vide Ext.P2, the 1st respondent informed the applicant that the fee is to be paid according to Registration Act. In Ext.P2, he gave the information about the number of pages and informed the petitioner that to get copies, the applicant has to remit fee according to Stamp act and Registration Act. Since Ext.P1 was not filed for certified copy of those documents, but a copy of book Nos.1 and 4 under the RTI Act, the contention of the petitioner is that Ext.P2 is unsustainable. Hence, the petitioner filed Ext.P3 appeal before the 2nd respondent who is the appellate authority under the RTI Act. But as per Ext.P4, the 1st appeal was rejected. Against this, 2nd appeal was filed before the 3rd respondent. The same was also rejected as per Ext.P6. Hence, this writ petition.

3. Heard the learned counsel for the petitioner and the

learned Standing Counsel appearing for the 3rd respondent. I also heard the learned Government Pleader.

4. The short point to be decided in this case is when an application is filed under the Right to Information Act, whether the State Public Information Officer (SPIO) can give a reply to the effect that the petitioner has to pay the fee as per the Stamp Act and Registration Act. This point is considered by the Apex Court in ***Institute of Companies Secretaries of India v. Paras Jain*** [2019 (16) SCC 790]. The relevant paragraphs of the judgment are extracted hereunder :

> *10. Thus, it is clear that the avenue for seeking certified copies as well as inspection is provided both in the Right to Information Act as well as the statutory guidelines of the appellant.*
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> *11. We are cognizant of the fact that guidelines of the appellant, framed by its statutory council, are to govern the modalities of its day - to - day concerns and to effectuate smooth functioning of its responsibilities under the Company Secretaries Act, 1980. The guidelines of the appellant may provide for much more than what is provided under the Right to Information Act, such as re - evaluation, re - totalling of answer scripts.*
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> *12. Be that as it may, Guideline 3 of the appellant does not take away from R.4, the Right to Information (Regulation of Fee and Cost) Rules, 2005 which also entitles the candidates to seek inspection and certified copies of their answer scripts.*

In our opinion, the existence of these two avenues is not mutually exclusive and it is up to the candidate to choose either of the routes. Thus, if a candidate seeks information under the provisions of the Right to Information Act, then payment has to be sought under the Rules therein, however, if the information is sought under the guidelines of the appellant, then the appellant is at liberty to charge the candidates as per its guidelines."

5. The Apex Court without any ambiguity submitted in the above judgment that the existence of the two avenues is not mutually exclusive and it is up to the candidate to choose either of the Routes. Thus if a candidate seeks information under the Right to Information Act, then the payment has to be sought under the Rules therein and if the candidate submitted application under the Registration Act and Stamp Act, the candidate has to pay the fee as per that statute. In this case, admittedly, the petitioner submitted the application under Right to Information Act as evident by Ext.P1. Therefore, according to me, the impugned orders are to be set aside and a fresh order has to be passed by the 1st respondent. The 1st respondent has to consider the application strictly in accordance to the Right to Information Act and Rules and inform the petitioner about the

fee that is payable and if the fee is paid, the 1st respondent is bound to supply the information.

Therefore, this writ petition is allowed in the following manner :

1) Exts.P2, P4 and P6 are set aside.
2) The 1st respondent is directed to consider Ext.P1 application afresh in the light of the observation in this judgment and take a decision in it, within 30 days from the date of receipt of a copy of this judgment.

P.V.KUNHIKRISHNAN
JUDGE

SKS

APPENDIX

PETITIONER'S EXHIBITS:

Exhibit P1: A true photocopy of the Application dated 31.03.2009,under RTI Act

Exhibit P2: A true photocopy of the Reply preferred by the 1st Respondent 8 dated 28.04.2009

Exhibit P3; A true photocopy of the First Appeal preferred before the 2nd Respondent dated 04.05.2009

Exhibit P4: A true photocopy of the order passed by the 2nd Respondent in the 1st Appeal dated 05.06.2009

Exhibit P5: A true photocopy of the Second Appeal before the 3rd Respondent dated 13.06.2009

Exhibit P6: A true photocopy of the Order Passed in the 2nd Appeal dated 04.08.2010