

(2016) 03 AHC CK 0205
In the Allahabad High Court
Case No : Misc. Bench No. 5085 of 2016

Allama Zamir Naqvi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 3, Section 7
Constitution of India, 1950 — Article 226
Protection of Human Rights Act, 1993 — Section 24 (3)

Citation : (2016) 5 ADJ 81 : (2016) 3 AILLJ 515 : (2016) 3 AllWC 2604

Hon'ble Judges : Amreshwar Pratap Sahi and Attau Rahman Masoodi, JJ.

Bench : Division Bench

Advocate : Asok Pande, for the Appellant; C.S.C. and A.S. Rakhra, for the Respondent

Final Decision : Dismissed

Judgement

1. This petition in the shape of a Public Interest Litigation has been filed praying for quashing of the report of Vishnu Sahai Commission that was appointed by the State Government under the Commissions of Inquiry Act, 1952 [hereinafter referred to as "the 1952 Act"] to enquire, investigate and report on the Muzaffarnagar Communal Riots that occurred in the year 2012. The main ground of challenge is to the eligibility of Justice Vishnu Sahai, Retired Judge and former Acting Chief Justice of the Allahabad High Court to chair the said Commission due to the alleged disability under Section 24 (3) of the Protection of Human Rights Act, 1993.

2. Shri Asok Pande, learned counsel for the petitioner urges that Justice Vishnu Sahai who is a former Member of the U.P. Human Rights Commission, after having ceased to hold office as a Member, was ineligible for further employment under the Government of a State or a Government of India. According to him, his appointment as a one-man Commission under the Commissions of Inquiry Act, 1952 amounted to an employment under the State Government and therefore

the entire exercise undertaken by him to enquire into the Muzaffarnagar Communal Riots was without any authority, and by an incompetent person. Consequently, the report and its acceptance are all illegal and therefore, the State Government should be directed to re-appoint some other Judge to head the Commission and to enquire into the riots, or in the alternative direct the Central Bureau of Investigation (CBI) to investigate the role of politicians and the bureaucrats involved in the riots.

3. The petition was vehemently opposed by the State contending that not only the enquiry is over and the report submitted, but the same has also been accepted by both the Houses of Legislature and consequently, the Commission having become *functus officio*, any challenge raised to it should not be entertained at this stage. It is also urged by the learned Additional Advocate General that the appointment of the Commission was made way back more than three years ago, and no challenge having been raised and the Commission having completed its enquiry, the petition also suffers from laches and lack of bona fides.

4. It is also submitted that even otherwise on merits, under the 1952 Act, the appointment of a Commission under Section 3 is only for the purpose of making an enquiry in a matter of public importance, and the appointment of a Commission is not an "employment" either under the 1952 Act or under the Commissions of Inquiry (Central) Rules, 1972. It is also urged that this is not even a re-employment under the State nor is the appointee on the Commission an employee under the State Government. It is also urged that the State Government does not exercise any control over the Commission during its function. The powers of the Commission are to be regulated by a procedure that can be regulated by itself subject to the Rules framed thereunder. Not only this, the Commission has the power to regulate its own procedure in respect of any matter for which no provision is made in the Rules. The Commission ceases to exist only on a notification under Section 7 of the 1952 Act.

5. Having heard learned counsel for the parties and having gone through the provisions, the first issue is about the stage of the challenge raised to the appointment of the Commission. The fact that the Commission has already submitted its report which has been accepted by the two Houses of Legislature is undisputed. The Commission therefore has already concluded its enquiry and with the submission of the report has ceased to exist. The challenge raised therefore at this belated stage to the eligibility of the chairperson of the Commission does not deserve to be entertained.

6. It is true that mere speed is not the test of justice, but delayed action that may reflect a sudden upraise to target a calculated harm long after the cause arose, will have a considerable influence on a decision making process. Discretion under Article 226 of the Constitution in a professed public cause has to be exercised cautiously that may ultimately serve the good of the community. Raising an issue for merely publicizing a past stale act cuts at the root of

credibility of an action. On the other hand a truth, even if spoken at last should not be ignored, and at times as Thomas Jefferson said "Delay is preferable to error." Delays are however fraught with dangers especially when they are an outcome of some casual afterthought. Delay in law long after a cause arises, does not give strength nor does it mature or ripen the cause.

7. A report under the 1952 Act places facts and is only an opinion that touches recommendations. The contents of the report are not so binding so as to frustrate any legal action by an affected person under the law of the land. It only helps the Government to understand and place its point of view before the Houses of Legislature to satisfy the members and to justify its stand on a matter of public issue which can be accepted or rejected. It is open to debate, criticism and appreciation depending upon how it is received and understood, but a perception formed about it does not impede the legal rights of a person under statutory provisions where an affected party can raise the same before a Court of Law. In a case of riot like the present one, any pending criminal matter before a competent court would be governed by the evidence adduced and would not be affected by the report under the 1952 Act.

8. Apart from this, the ground of challenge raised is also not legally sustainable inasmuch as the appointment of a Commission under the 1952 Act is not an employment under the State Government. The Commission is appointed for making an enquiry into a definite matter of public importance as specified and within the time as provided for under a notification. This is not a job assignment but is the institution of an investigative body to make an enquiry in order to ascertain the cause of an incident, which in this case was a communal riot at Muzaffarnagar in the year 2012. It is not an appointment to a cadre under State employment nor does it reflect a master and servant relationship. The Constitution of a Commission for making such an enquiry is therefore not an employment offered to a person to enter State Services.

9. The Commission also has powers that are conferred on it for making enquiry, which does not have any ingredient so as to convert the status of the Commission into an employment under the State Government. These aspects about the absence of any contract of service has been dealt with by our Division Bench in a matter relating to the appointment of the Chairman of the U.P. State Human Rights Commission in Writ Petition No. 162 (MB) of 2016, Dr. Nutan Thakur versus State of U.P. and others. Since the same arguments have been advanced in the present petition, it would not be necessary for us to repeat the reasons given in the aforesaid judgment which also persuade us not to accept the contentions raised in the present writ petition.

10. The other argument with regard to setting up an investigation through the CBI cannot be mixed up with the issue relating to the appointment of a Commission by the Government under the 1952 Act. The issue of transferring a criminal investigation to the CBI has to be founded on appropriate facts which are to be pleaded in order to persuade a Court of Law to pass an order for taking

up the investigation by some other agency. The present writ petition as framed does not bring on record any such material that may impel us to draw a conclusion that the investigation now deserves to be carried out by some other agency.

11. The question of entrusting the investigation to the CBI can only be considered if there is sufficient material as delineated in the case of Secretary, Minor Irrigation & Rural Engineering Services, U.P. and others versus Sahngoo Ram Arya and another [, (2002) 5 SCC 521]. It is no doubt true that the Constitution Bench in the case of State of West Bengal and others versus Committee for Protection of Democratic Rights, West Bengal and others [, (2010) 3 SCC 571] has acknowledged the powers of the Court to order an investigation by the CBI. The powers of the Court are circumscribed and can be exercised only if there is sufficient material to do so as per the ratio in the cases indicated above. Two other judgments may be mentioned where the Supreme Court has traversed the law relating to the powers of the High Court in proceeding to order for a CBI enquiry, namely, Bharati Tamang versus Union of India and others [, (2013) 15 SCC 578] and Mithilesh Kumar Singh versus State of Rajasthan and others [, (2015) 9 SCC 795]. The said issue has also been dealt with in the latest decision of the Supreme Court in the case of Pooja Pal versus Union of India and others [, JT 2016 (1) SC 430].

12. In the absence of any proper material on record, the second relief prayed for also cannot be considered in the wake of lack of essentials. The writ petition sans merit and is hereby rejected. The dismissal of this petition will however not prejudice or curtail the right of any aggrieved person to claim such relief about investigation nor will it impede the powers of the competent Court to do so if necessary in view of the law enunciated by the apex Court and referred to here-in-above.