
(1991) 07 AP CK 0018
In the Andhra Pradesh High Court
Case No : Writ Petition No. 16209/90

Arun Shridhar Bondale

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 11-07-1991

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 8B, 8C
Constitution of India, 1950 — Article 226

Citation : (1992) 1 ALT 634 : (1992) 1 APLJ 223

Hon'ble Judges : Sivaraman Nair, J;M.N. Rao, J

Bench : Division Bench

Advocate : A.T.M. Rangaramanujam, for the Appellant; A.G., Govt. Pleader, for Home for the Respondents 1 and 2, C. Padmanabha Reddy, for the Respondent No. 3 and S. Satyanarayana Prasad, for the Respondent No. 5, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Rao, J.—On 10th March, 1990, in the Hussain Sagar Lake of Hyderabad City a tragic event occurred. The beigest statute of Lord Buddha was to be erected on that day in the centre of the lake on a high platform specially constructed and named the Rock of Gibraltar. When the statute was put on a barge for being taken to the Rock of Gibraltar, the statute sank resulting in considerable damage: some lives also were lost. In connection with that incident; the Government of Andhra Pradesh, by G.O.Rt.No. 1049, General Administration Department, dt.13-3-90 appointed Shri Justice P.A. Chowdary, a retired judge of this court, as Commission of Inquiry under the Commissions of Inquiry Act, 1952. The terms of reference of the Commission, as notified in the Government Order, are as follows:-

"(i) to find out circumstances leading to the accident resulting in sinking of the Buddha Statute and other equipment and also loss of life in the Hussain Sagar Lake at Hyderabad on 10th March, 1990:

(ii) to identify the person or persons, if any responsible for the above incident's,

(iii) to point out lapses on the part of any officer or authority or persons if any in connection with the above incidents; and

(iv) to find out whether the transport company was appointed after due consideration of its capacity to organise transport of the statue upto Gibraltar rock and whether the procedure of its appointment was followed properly".

Pursuant to the notification the Commission of Inquiry commenced its proceedings; a publication was issued in newspapers on 4-5-90 by the Commission inviting interested persons involved in the matter to file their affidavits. As the response was poor the Commission sent written notices on 9-5-90 to the third respondent M/s. ABC India Limited the petitioner a naval architect engaged by the third respondent in connection with designing the modular barge on which the statue was to be transported from the shore to the rock of Gibraltar, and certain other persons including the Chief Engineer (Mechanical), Hyderabad. In respect of point (iv) of the term of reference relating to the question whether the third respondent transport company was appointed after due consideration of its capacity to take up that work and whether proper procedure was followed in its appointment one Shri D.Rajender Kumar Engineer-in-Chief (Retired) was examined as C.W.I (Commission witness No. 1) on 7-9-90. Notices were not issued to other parties: only respondent No. 3 was served with a notice about the date of his evidence. The petitioner who was engaged by the third respondent for fabrication of the modular project in response to the notice issued by the Commission of Inquiry on 9-5-90 entered appearance through a counsel Shri A.T.M. Rangaramanujam, who filed his vakalat on 5-9-90.

2. On 24-9-90 the petitioner's affidavit averring the details about the work entrusted to him and other related matters which was sworn to on 20-9-90 was filed in the Commission. On 7-9-90 the recording of evidence of C.W.1, Shri Rajender Kumar was over. A memo was filed on behalf of the petitioner by his counsel before the Commission stating "the petitioners advocate was present today at 10.30 a.m. and was told that the Honourable Judge is not sitting today and hence it is humbly prayed that this Honourable Court may be pleased to hold the enquiry on next date on which date the counsel for the petitioner wants to cross-examine C.W.I Shri Rajender Kumar who was examined in the case in the interests of justice". Two similar applications were filed on behalf of respondent Nos. 5 and 6. On these petitions arguments were heard on 11-10-90 by the Commission and they were dismissed by a reasoned order dt.12-10-90.

3. Alleging that on 11-10-90 when arguments were heard on the application filed by the petitioner to recall C.W.I for cross examination, the learned judge who presided over the Commission commented in the open Court-hall of the Commission about the competency of the counsel whether he know the provisions of the Commissions of Inquiry Act and also whether he knew any law and further threatened my advocate that he will impose costs of rupees ten thousands for having filed the petition on 5-9-90 for recalling Mr. Rajender

Kumar for the purpose of cross-examination on my behalf", this writ petition was filed inter alia, seeking a mandamus declaring that the enquiry conducted by the Commission is illegal and opposed to principles of natural justice and the order passed on 12-10-90 rejecting the application to recall C.W.I for cross-examination is also illegal and consequently direct the first respondent, State Government, "to appoint some other Judge as the Inquiry Officer". In the affidavit filed in support of the writ petition, apart from the other allegations, it was averred that the learned Judge showed disrespect to the counsel in the court-hall and when the petitioner met the presiding Judge on 26-10-90, he was informed by the Judge that costs between rupees five thousands and rupees ten thousands would be imposed "in the event of my Advocate insisting on cross-examination of Mr. Rajender Kumar (C.W.I) and others". The order passed on 12-10-90 rejecting the request for cross-examination of C.W.I was also not communicated. Without formulating any procedure as required u/s 8, the Commission commenced its proceedings. The entire proceedings it was averred, were vitiated because of impermissible bias.

4. The learned Judge, who was appointed as the Presiding Officer of the Commission of Inquiry, was not made party co no mine. The second respondent in the writ petition is described in the cause title as "Commission of enquiry into sinking of Buddha Statue in Hussain Sagar lake at Hyderabad presided over by Honourable Shri Justice P.A. Chowdary, Secretariat Buildings, Hyderabad?" No counter-affidavit was filed by the learned Judge. The Secretary to the Commission of Inquiry, one Shri J. Francis, filed counter-affidavit on behalf of the second respondent asserting that he, was present at the time when the arguments were heard and he denied the specific allegations of bias attributed to the learned judge. Shri Rajender Kumar C.W.I, was examined in respect of question No. 4 (No. iv in the terms of reference) which related to matters concerning the appointment of third respondent for organising the transportation of the statue and the procedure followed in relation thereto. As the petitioner, on his own showing, was engaged by the third respondent after appointment as the agency to organise the transportation of the statute, "is not and cannot in any manner be concerned with the enquiry on question No. 4 of the terms of reference..... It is significant to note that even the contractor, respondent No. 3, who had employed the petitioner, did not seek to cross-examine C.W.I as there is obviously nothing in his evidence which could effect their interests. When the main contractor himself did not intend to cross-examine C.W.I there can be no justification whatsoever for the petitioner to seek cross-examination of allegations of bias attributed to the learned judge. Shri Rajender Kumar C.W.I, was examined in respect of question No. 4 (No. iv in the terms of reference) which related to matters concerning the appointment of third respondent for organising the transportation of the statue and the procedure followed in relation thereto. As the petitioner, on his own showing, was engaged by the third respondent after appointment as the agency to organise the transportation of the statute, "is not and cannot in any manner be concerned with the enquiry on

question No. 4 of the terms of reference..... It is significant to note that even the contractor, respondent No. 3, who had employed the petitioner, did not seek to cross-examine C.W.I as there is obviously nothing in his evidence which could effect their interests. When the main contractor himself did not intend to cross-examine C.W.I there can be no justification whatsoever for the petitioner to seek cross-examination of C.W.I". The petitioner not being a person prejudicially affected by the evidence of C.W.I, has no right to cross examine C.W.I u/s 8B of the Commissions of Inquiry Act". Even after dismissal of the application on 12-10-90, the petitioner "has taken part on the subsequent proceedings of the commission without raising any question of unfairness or bias or violation of the principles of natural justice in conducting the enquiry". There is no obligation cast on the Commission to supply copies of proceedings or evidence to parties but the same will be furnished only on request and payment of necessary charges.

5. On behalf of the first respondent the State Government a counter-affidavit was filed opposing the petitioner's prayer taking the stand that the filing of the present writ petition has affected the enquiry and that the petitioner's contentions are devoid of merit.

6. Shri A.T.M. Rangaramanujam, learned counsel for the petitioner, has contended that the Commission of Inquiry has no power to impose costs and the observations made by the learned Judge on 11-10-90, insinuating the competency of the counsel are highly derogatory in nature and the same constitute impermissible bias rendering the learned Judge disqualified from proceeding further with the enquiry. The cross-examination of C.W.I was necessary since at least one aspect of what was stated in the evidence was required to be tested by way of cross-examination. When it was obligatory on the part of the Commission to formulate the procedure for conducting the enquiry the learned judge did not choose to notify any procedure, and there from, the minimum requirement on the part of the learned Judge was to comply with the principles of natural justice. The petitioner's right to cross examine C.W.I flows from the language of Section 8B read with Section 8C of the Commissions of Inquiry Act since he is a person likely to be prejudicially affected and, therefore, he has a right to cross-examine the witness. Opposing this contention, the learned Advocate-General submitted that the Commission of Inquiry is a fact finding body, that no obligation is cast on the Government to accept its findings, it is not a court and therefore the procedural intricacies of the Evidence Act have no application. The doctrine of bias applies only to judicial and quasi-judicial bodies and as the Commission of Inquiry answers the description of neither the doctrine has no application. Even so the learned Judge has followed the principles of natural justice and has been conducting the enquiry conforming to the principles of fair-play. The petitioner was engaged by the third respondent and as the evidence of C.W.I rested only to the engagement of the third respondent by the Government as a contractor in connection with the transportation of the statue, he is not a person likely to be prejudicially affected within the meaning of Section 8B of the Commissions of Inquiry Act and

therefore he has no right u/s 8C to cross-examine C.W.I. It is within the scope or the power of the Commission to make inquiries whether it has. power to award costs and in the context of the circumstances, namely, the urgency to complete the proceedings, the endeavours made by certain parties to procrastinate the inquiry, there is no basis to draw the inference that the Commission was biased against the petitioner. In fact the petitioner was not present at the time when the alleged remarks were made but he claims that his counsel has informed him as to what transpired "in the court-hall of the Commission". Any observations made by the Commission directed against an advocate, even if true, do not constitute bias against the party who engaged the counsel. As the learned Judge was not made party-respondent co no mine there is no need for him to file any counter-affidavit traversing the allegations contained in the petitioner's affidavit. Shri S.S.N. Prasad, the learned counsel for the fifth respondent, addressed arguments supporting the pleas raised by the petitioner.

7. Before considering the rival contentions urged before us it is necessary to notice the basic facts which are not in controversy. On 23-7-90, the office of the "Commission of Inquiry addressed a letter, by registered post acknowledgement due, to the petitioner bringing to his notice the appointment of Shri Justice P.A. Chowdary as the Commission of Inquiry and sought certain particulars from him namely:

- "1. The design calculations of the modular barge including stability calculation;
2. The loadout procedures as adopted on 9-3-90 and 10-3-90.
3. Classification certificate obtained from Bureau veritas: and
4. All other information regarding the circumstances that led to drowning of Buddha Statue into Lake."

He was requested to attend the Commission on 7-8-90 and 8-8-90 to discuss on the above subject in detail. Enclosed to the above letter were copies of the affidavits dt.19-5-90 and 31-5-90 filed by M/s ABC India Limited, the third respondent. In reply to that, the petitioner sent a letter dt.4-8-90 requesting for another date. Preferably in the last week of August or in the first week of September, to appear before the Commission. He also requested the Commission to furnish him "all the other affidavits and the documents filed before the Commission in respect of the enquiry". A reply was sent to him by the Secretary to the Commission on 9-8-90 informing "we have so far received two affidavits....." Thereafter, on 5-9-90, Shri Rangaramanujam filed vakalat on behalf of the petitioner. C.W.I was examined on 7-9-90. The memo filed by Shri Rangaramanujam, learned counsel for the petitioner, seeking recall of C.W.I for cross-examination was on 24-9-90. On the same day the petitioner's affidavit, sworn to on 20-9-90, adverting to the facts claimed to be within his knowledge in respect of the matters within the purview of the Commission of Inquiry, was also filed. Arguments were heard on the memo for recalling C.W.I on 11-10-90 and the same was dismissed on 12-10-190. At the time when the alleged remarks

were made by the Commission of Inquiry on 11-10-90, when arguments "were heard on the application for recall of C.W.I, the petitioner was not present. The allegations mentioned by him in the affidavit filed in support of the present writ petition are based upon the information which his advocate has passed on to him."

8. A Commission of Inquiry, it is now firmly established by a plethora of case law, is not a Court, (see; Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, , State of Jammu and Kashmir Vs. Bakshi Ghulam Mohammad, , K. Ballabh v. Commission of Inquiry, AIR 1969 S.C. 528 and Md. Ibrahim Khan Vs. Susheel Kumar and Another, . It has no power to render any definitive judgment. Its findings do not bind anyone, not even the Government which appoints it. The nature of the judicial process, as customarily understood, has no application so far as the Commission of Inquiry is concerned, it is inquisitorial and not adversative in nature. Reviewing the entire case-law on this aspect, the Supreme Court, in a recent decision, in Bali Ram v. Justice B.Lentin, AIR 1988 S.C. 2284 held;

"A Commission of Inquiry is not a Court properly so called. A Commission is obviously appointed by the appropriate Government "for the information of it mind in order for it to decide as to the cause of action to be followed. It is therefore, a fact finding body and is not required to adjudicate upon the rights of the parties and has no adjudicatory functions. The Government is not bound to accept its recommendations or act upon its findings. The mere fact that the procedure adopted by it is of a legal character and it has the power to administer the oath will not impart to it the status of a Court".

9. The doctrine of bias comes into play only in adjudications before a judicial body or quasi-judicial body. In Franklin and v. and Ors. Minister of Town and Country Planning, 1947 (2) All England Reports (HL) 280 a leading authority on the principle of application of Bias, Lord Thankarton, of the House of Lords, observed:

"My Lords, I could with that the use of the word "bias" should be confined to its proper sphere. Its proper significance in my opinion, is to denote a departure from the standard of even-handed justice which the law requires from those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that, having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute".

This statement of law was quoted into approved by the Supreme Court in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, . Before a Commission of Inquiry there is no lis nor any dispute to be adjudicated by rendering a definitive judgment. Its findings do not bind anyone. Therefore, the strict legal principle of bias does not apply to a

Commission of Inquiry. Even so, it cannot be said that a Commission of Inquiry functions outside the purview of the principles of natural justice. The duty to act fairly is always inferred in respect of the functioning of a Commission of Inquiry. This duty is implicitly present for the reason that, the Commission of Inquiry, being an inquisitorial body, its recommendations of findings often-times have larger repercussions. When the Commission conducts its proceedings openly and when the advocates are permitted to represent parties, it must act fairly. Any observations made by it must be tempered with discretion and propriety. It is advisable to avoid provoking criticism as to the manner of its functioning.

10. The petitioner alleges that the learned Judges behaved in a disrespectful manner towards his advocate on 11-10-90 by commenting that "whether he (the advocate) knew the provisions of the Commissions of Inquiry Act and also whether he knew any law and further threatened the advocate to impose costs of Rupees ten thousands for having filed the petitioner to recall C.W.I." The Secretary to the Commission, in his affidavit, denies these allegations and asserts that he was present at the time when arguments were heard. The learned Judge has not filed a counter-affidavit. We see considerable force in the submission of the learned Advocate General that the learned Judge was not required to file a counter-affidavit since he was not made a party by name.

Absence of the counter of the learned Judge in this regard, in our view, will not add any further credibility to the allegations contained in the petition. What is more is that the petitioner himself has participated in the subsequent proceedings as can be seen not only from the counter-affidavit filed by the Secretary to the Commission but also in the affidavit filed by the petitioner himself wherein he stated that:

I was asked to inspect the barge by the second respondent and the second respondent on 26-10-90 when I met him told me....." (Paragraph 16)

It appears there was some discussion on 11-10-90 during the course of the arguments whether the Commission of Inquiry had power to impose costs. This is evident from the counter-affidavit filed by the Secretary to the Commission:

"Any examination by the Commission of the scope of its right to impose costs and look for the principles and precedents on the matter cannot amount to offering a threat."

Such an enquiry is undoubtedly within the scope of the functioning of the Commission. No such costs have been awarded is evident from the order dt. 12-10-90.

11. C.W.I was examined on 7-9-90 His examination pertained to question No. 4 relating to the contract awarded to the third respondent. But the third respondent, which had received notice about the evidence of C.W.I, did not choose to cross-examine. The petitioner himself was appointed subsequently by the third respondent for fabrication of the modular barge. It is true that in the

course of his evidence C.W.I stated;

"It could have been better from technical point of view to have got the designs and structural details of the barge checked by Garden Reach of Calcutta, Hindustan Shipyard, etc.,"

The above evidence, in our view, would not have the effect of causing any prejudice to the petitioner. Section 8B of the Commissions of Inquiry Act read;

"Persons likely to be prejudicially affected to be heard.-If, at any stage of the enquiry, the commission:

(a) Considers it necessary to enquiry into the conduct of any person: or

(b) is of opinion that the reputation of any person is likely to be prejudicially affected by the enquiry, the Commission shall give to that person a reasonable opportunity of being heard in the enquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached."

Neither Sub-section (a) nor Sub-section (b) is attracted. The Commission did not think it necessary to inquire into the petitioner's conduct nor has it formed any opinion that the petitioner's reputation was likely to be prejudicially affected by the enquiry. The evidence of G.W.1, including the above extracted portion, would not in any manner cause prejudice to the petitioner. In such circumstances, the petitioner has no right to cross-examine C.W.I u/s 8C of the Commission of Inquiry Act.

12. For the forgoing reasons, the writ petition fails and accordingly it is dismissed. No order as to costs.