

(2000) 03 MAD CK 0056
In the Madras High Court
Case No : Writ Petition No. 5004 of 2000

D. Guruswamy

APPELLANT

Vs

The State of Tamil Nadu and 5 others

RESPONDENT

Date of Decision : 23-03-2000

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 8
Protection of Human Rights Act, 1993 — Section 36(1)

Citation : AIR 2000 Mad 373 : (2000) 2 CTC 223

Hon'ble Judges : K.G. Balakrishnan, C.J;K. Govindarajan, J

Bench : Division Bench

Advocate : Petitioner in Person, for the Appellant; Mr. R. Viduthalai, Government Pleader, for the Respondent

Judgement

Judgement pronounced by K.G.Balakrishnan, CJ

1. Petitioner is an advocate who appeared as a witness before the 2nd respondent commission which is appointed under the commissions of

Inquiry Act, 1952 on 27.2.1999. On 23.7.1999 the workers attached to Manjolai Estate had staged, a procession along with their leaders and

when the procession reached the residence of the District Collector of Tirunelveli, some of the leaders of the procession wanted to meet the

Collector. According, to the petitioner, the police officials prevented them from meeting the Collector and encircled thousands of participants of the

rally and forcefully drove them towards the bank of Thamirabarani river and because of the police excess some persons had been forced to flee

away from that place and sustained, injuries and some others who were driven to the river side drowned in the nearby Thamirabarani river. As

there were lot of allegations regarding lapses on the part of Police, a commission

was constituted and a Retired Judge of the Supreme Court

Mr. Justice Mohan was appointed as Commission under the Commissions of Inquiry Act, 1952.

2. The terms of reference are as follows:-

(1) To inquire into the causes and circumstances that led to the use of force by the police on the processionist, of Tirunelveli City on 23.7.1999;

(2) To inquire whether the force used by the police on 23.7.1999 to disperse the processionist was warranted and whether there was any excess

on the part of the police, and if so, to identify the erring police personnel and to indicate the action to be taken against them;

(3) To inquire into the causes and circumstances leading to casualties in this incident on 23.7.1999 at Tirunelveli City and the same appears to have

fixed the date of hearing on 20.9.1999 also at Tirunelveli, Section 36 (1) of Human Rights Act.

It was also specified that the Commission shall not inquire into any matter which is pending before a State Human Rights Commission or any other

Commission duly constituted under any law for the time being in force.

3. Petitioner alleges that he was also a participant in the demonstration held on 23.7.1999 at Tirunelveli and he had witnessed the incident and he

deposed all these facts before the Commission. According to the petitioner, several police officials and officers of the Government of Tamil Nadu

were examined as witnesses before the Commission and that the petitioner filed an application seeking permission to cross examine those

witnesses. Petitioner alleges that u/s 8-C of the Commissions of Inquiry Act, 1952 petitioner has a right to cross examine the witnesses examined

before the Commission. It is argued by the petitioner who appeared in person that as the petitioner was examined as a witness, u/s 8-C of the Act

he has a right to cross examine the officials" examined as witnesses before the Commission.

4. Section 8-C of the said Act reads as follows-

8-C. Right of cross-examination and representation by legal practitioners- The appropriate Government, every person referred to in Section 8-B

and, with the permission of the Commission, any other person whose evidence is recorded by the commission,-

(a.) may cross-examine a witness other than a witness produced by it or him;

(b) may address the Commission? And

(c) may be represented before the Commission by a legal practitioner or, with the permission of the Commission, by any other person.

5. From the above provisions it is clear that the Commission can permit any person to cross examine the witnesses referred to u/s 8-B or any other person whose evidence is recorded by the Commission.

6. Under-Section 8-B it is stated that at any stage of the inquiry, the Commission if it considers necessary to inquire into the conduct of any person or is of opinion that the reputation of any person is likely to be prejudicially affected by the inquiry, the Commission shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence.

7. A reading of Section 8-B and 8-C would show that the Commission can permit any person to cross examine the witnessed, if the reputation of such person is likely to be prejudicially affected by the inquiry. Ofcourse Section 8-C provides that the Commission can also permit any other witnesses to cross examine. But such permission can" normally be given to only such person whose reputation is likely to be prejudicially affected by the inquiry.

8. Petitioner has no case that his reputation is likely to be prejudicially affected by the findings if any to be rendered by the Commission. Under the terms of reference made in the Government Order, the Commission is inquiring into the question whether there was any cause and circumstance that led to the use of force by the police on the processionists of Tirunelveli city on 23.7.1999 and whether the force used by the police on 23.7.1999 to disperse the processionists was warranted and whether there was any excess on the part of the police. The petitioner herein appeared only as a witness and we do not think that every, such witness has got a right to cross examine every Other witnesses examined before the Commission. Moreover, the proceedings of the Commission had to be controlled by the commission and we do not think that a one witness can be permitted to cross examine the other witnesses especially when he has no case that his rights will be prejudicially affected by the report of the Commission.

9. Counsel for the petitioner drew our attention to a decision of Bombay High

Court reported in Sarjerao Kondiba Sagar Vs. P.G. Karnik and

Others, . That was a case where certain incidents of violence occurred and a Commission was appointed and the Commission proposed to

examine that the parties who claimed that the firing was unnecessary or that it was excessive should lead their evidence first and that the officers

who resorted to the firing will lead their evidence later on. This direction of the Commission was challenged and it was held by a Division Bench of

Bombay High Court that the witnesses who support the case that the firing was justified and was not excessive have to give evidence in chief and

be allowed to be cross examined and that the interested political parties or members of the public may adduce counter evidence.

10. The said decision, is of no assistance to the petitioner. In the instant case, the petitioner himself admits that the witnesses were cross examined

by other persons. Petitioner was examined as a witness and he has already given evidence before the Commission. As the petitioner has not

established that his reputation is-likely to be prejudicially affected by the findings to be rendered by the Commission, we feel that the prayer sought

for by the petitioner cannot be granted. Accordingly the writ Petition is dismissed.