

(2013) 07 OHC CK 0006

In the Orissa High Court

Case No : Writ Petition (C) No. 10966 of 2013

Dr. Anup Kumar Nath Sharma and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 09-07-2013

Acts Referred:

Citation : (2013) 116 CLT 958

Hon'ble Judges : C. Nagappan, C.J;Indrajit Mahanty, J

Bench : Division Bench

Advocate : B.N. Mohanty and S.N. Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

Indrajit Mahanty, J.—In this writ application, the Petitioners, who are all doctors in Government service have sought to challenge the Order Dated 20.04.2013 passed by the Justice P.K. Mohanty Commission of Inquiry into the Kalinga Nagar Police Firing, by which order a petition filed by the present Petitioners with a prayer seeking permission to cross-examine Dr. Rajendra Kumar Pattnaik, the then Additional District Medical Officer, District Headquarters Hospital, Jajpur & Sri Abhimanyu Das, the then I.I.C., Jajpur Police Station first & thereafter, to be permitted to file their show cause to the notice u/s 8B of the Commissions of Inquiry Act, 1952 came to be rejected. Mr. B.N. Mohanty, Learned Counsel appearing for the Petitioners submits that the Commission of Inquiry had issued notices to the present Petitioners dated 25.06.2012 u/s 5(2) of the Commissions of Inquiry Act, 1952 read with Rule-8 of the Orissa Commissions of Inquiry-Rules, 1979. Pursuant to the aforesaid notices, the Petitioners filed their affidavits before the Commission of Inquiry on 17.07.2012, whereafter, the Petitioners were examined-in-chief & cross-examined both by the Counsel of the State as well as the Commission on 22.09.2012 & 29.09.2012.

Thereafter, it appears that the Commission has issued notices to the Petitioners dated 22.03.2013 u/s 8B of the Commissions of Inquiry Act, 1952. On receipt of

such notices u/s 8B the Petitioners had filed a joint petition with a prayer to cross-examine two witnesses (named hereinabove) before submission of their statements of defence & such petition upon being rejected by the impugned Order Dated 20.04.2013, the present writ application has come to be filed.

2. Mr. Mohanty, Learned Counsel for the Petitioners submits that the Petitioners are likely to be gravely prejudiced since their prayer to cross-examine the two witnesses & to submit their show cause thereafter came to be rejected. Reliance was placed on the Judgments of the Hon''ble Supreme Court in the case of (1) Smt. Kiran Bedi Vs. Committee of Inquiry and Another, (2) State of Bihar Vs. Lal Krishna Advani and Others, & on the Judgment of the Hon''ble Andhra Pradesh High Court in the case of Md. Ibrahim Khan Vs. Susheel Kumar and Another, in order to support their contentions that in normal practice in a trial, an accused is to be given an opportunity to cross-examine the witnesses, before leading the defence evidence & thereafter, accused statement is to be recorded. Therefore, it is claimed that the Commission has erroneously rejected the petition filed on behalf of the Petitioners.

3. Insofar as the case of Kiran Bedi (supra) is concerned, the Hon''ble Supreme Court was considering a situation where the Commission of Inquiry without issuing notices to the Petitioners therein u/s 8B of the Act was compelling them to enter the witness box "at the initial stage of inquiry" which was held to be discriminatory in the fact situation of the said case.

In the present case at hand, the Petitioner has participated in the initial inquiry by filing their affidavits pursuant to notices issued u/s 5(2) of the 1952 Act read with Rule-8 of the 1979 Rules & also appeared before the Commission for being examined & cross-examined.

The Hon''ble Supreme Court in the aforesaid case came to hold that in the said case the Inquiry Committee was under misapprehension that the Petitioners therein were not covered by Section 8B, merely because no notices under that Section had been issued to them & therefore, held that the failure to issue the formal notices u/s 8B to the Petitioners therein would constitute no justification for not treating such a person to be covered by that Section, if otherwise, the ingredients of the said Section are made out. Therefore, in the present circumstance, since the Petitioners have never challenged the notices u/s 5(2) issued to them & have instead submitted their affidavits in response to such notices & have further been examined & cross-examined before the Commission, the same is no longer available for questioning in the present case.

But more significantly, the Hon''ble Supreme Court in paragraph-17 of the aforesaid Judgment has come to state as follows:

recourse to process u/s 8B is not confined to any particular stage & if not earlier, at any rate, as soon as the Committee made the aforesaid unequivocal declaration of its intention in its interim report, it should have issued notice u/s 8B to the two Petitioners, if it was of the view as it seems to be, for which view

there is apparently no justification, that issue of formal notice u/s 8B was the sine qua non for attracting that Section.

4. In the case at hand as would appear from the impugned order & the pleadings of the Petitioners, Section 8B not being confined to any particular stage, it is apparent that, the inquiry Committee having been prima facie satisfied of the likelihood of the Petitioners being prejudicially affected, has issued the Petitioners notices u/s 8B &, therefore, the procedure adopted by the Commission of Inquiry appears to in consonance with the Judgment of the Hon"ble Supreme Court referred to hereinabove.

5. Insofar as the case of State of Bihar (supra) is concerned, in the said Judgment the Hon"ble Supreme Court came to observe that one is entitled to have & preserve one's reputation & one also has a right to protect it. An individual has a right to safeguard his own reputation & therefore, principles of natural justice have to be complied with "before being adversely commented upon by a Commission of Inquiry."

In the circumstance of the present case, it is clear that the Commission of Enquiry is yet to come any conclusion or render any adverse comment (if at all) against the Petitioners & in compliance of Section 8B read with Rule-12 has issued necessary notices to the Petitioners in order to afford the Petitioners an opportunity to safeguard their personal reputations from being adversely affected. Therefore, we are of the considered view that the impugned action of the Commission of Inquiry, in the present case, is also in consonance with the Judgment of the Hon"ble Supreme Court in the aforesaid regard as well.

6. Insofar as the contention of the Petitioners that they are in the position of an accused & therefore, ought to be given an opportunity to cross-examine the witnesses before leading their defence evidence. The aforesaid contention is merely noted to be rejected, since it is well settled that in an inquiry before the Commission, is neither a dispute nor a decision which prejudicially affects any right, & is meant to be an "investigation" & a report of the facts to be ascertained & in fact there is no decision. The Hon"ble Andhra Pradesh High Court in the case of Md. Ibrahim Khan, (Supra) has negated the aforesaid contention in para 41 thereof & we can do no better, than extracting the same hereunder while rejecting this plea of the Petitioner.

41 - Quasi-judicial decision equally pre-supposes as a true judicial decision the existence of a dispute between two or more parties. It involves: (i) presentation of their cases by the parties; (ii) the ascertainment of any disputed facts by the evidence adduced by the parties; (iii) submission of arguments; & (iv) a declaration of the liabilities of the parties. In an inquiry before the Commission, there is neither a dispute nor a decision which prejudicially affects any right. There is an investigation & a mere report of the facts ascertained. There is no decision. Therefore, use of the accolade judicial or quasi-judicial to inquiries before a Commission of Inquiry appointed under the Commissions of Inquiry At is

in appropriate. The Commission is not an adjudicating body, but an assisting body that assesses the facts & assists the Government in the arrival at an appropriate decision.

7. At this stage, it would be relevant also to take note of Rule 12 of the Orissa Commissions of Inquiry Rules, 1979 which is extracted hereunder.

12. Right of cross-examination & representation by legal Practitioners-The State Government, every person referred to in Section 8B of the Act & with the permission of the Commission, any other person whose evidence is recorded under Rule 10.

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

(b) may address the Commission; &

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

It is clear on reading of Section 8B along with Rule 12 that the Petitioners would be permitted to cross-examine the witnesses sought for but only after filing of show cause & leading, of their evidences, if any, whereafter they have a right to seek cross-examination of any witnesses, who may have earlier been examined by the Commission.

Therefore, we are of the considered view that the conclusion reached by the Commission of Inquiry does not suffer from any legal infirmity & we find no justification to entertain the present writ application which, therefore, stands dismissed.

C. Nagappan, C.J.

I agree.