
(1998) 02 MP CK 0030
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2548 of 1997

Kailash Joshi

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 04-02-1998

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 8

Citation : AIR 1999 MP 41 : (1998) 2 JLJ 375 : (1999) 1 MPLJ 522

Hon'ble Judges : D.P.S. Chauhan, J

Bench : Single Bench

Advocate : Rakesh Jain, for the Appellant; S.L. Saxena, General, Ravindra Kishore and Manindra Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

D.P.S. Chauhan, J.

By means of this petition, petitioner Kailash Joshi has approached this Court seeking the relief for quashing the Order dated 8-5-1997, Annexure-P/1 to the petition and for a direction to the Commission of Inquiry into the affairs of Churhat Children Welfare Society (for brevity, hereinafter referred to as the Commission) for summoning Shri Arum Singh for his cross-examination.

The order dated 8-5-1997 is the order passed by the Chairman of the Commission rejecting the application of the petitioner for cross-examination, operative portion of which is as extracted below :

"In the result, I find that Shri Kailash Joshi has not made out a case for summoning Shri Arjun Singh to come to the witness-box to give evidence and submit himself for cross-examination."

It is necessary to give brief facts before considering the arguments as advanced by the learned counsel for the petitioner Shri Rakesh Jain as well as learned counsel for the respondent No. 1 State Shri S. L. Saxena, Advocate General of

State of M.P. and Shri Ravindra Shrivastava, representing the respondent No. 2 Shri Arjun Singh.

The petitioner, on the earlier occasion, made an application before the Commission for cross-examination of Shri Arjun Singh, who filed his affidavit before the Commission. The then Chairman of the Commission after hearing the learned counsel for the parties, on 21-10-1994 passed an order saying that Shri Kailash Joshi is not entitled to compel Shri Arjun Singh to submit himself for cross-examination since Rule 13 says that "no party, however, will have the right to insist on oral examination of any deponent of an affidavit."

This order was challenged before this Court by means of Writ Petition No. 3663 of 1994, which was allowed on 10th July, 1995 and the said order of the Commission dated 21-10-1994 was quashed with a direction to the Commission to reconsider the application afresh and proceed with the enquiry in accordance with law. Against this order, L.P.A. No. 99 of 1995 was preferred by Shri Arjun Singh which was decided by the Division Bench of this Court on 18-12-1996 with the observation that it will be open for the Commission of Inquiry in the interest of justice to call Shri Arjun Singh for cross-examination or not to call in accordance with law and the appeal was disposed of in terms of the observation made in the judgment. Consequent upon this, Shri Kailash Joshi, the present petitioner, approached the Commission on the same application for consideration. The Commission considered the application on the merit after hearing the learned counsel for the parties and dismissed the same on 8-5-1997 with a reasoned order. This order is subject-matter of challenge in the present petition.

Learned counsel for the petitioner invited the attention of this Court to the observations made by the learned single Judge in W.P. No. 3663/94 as contained in paragraphs 31 to 35 and submitted that the Tribunal was bound by the observations and it should have called Shri Arjun Singh for cross-examination and in not doing so, the Tribunal has erred inasmuch as the procedure laid down in Regulation 13 framed by the Commission itself in exercise of the power u/s 8 of the Commissions of Inquiry Act, 1952 as amended by the Commissions of Inquiry (Madhya Pradesh Amendment) Act, 1966 (for brevity, hereinafter referred to as "the Act") has not been complied with. The order of the learned single Judge was appealed against. In paragraph 4 of the appellate judgment it is mentioned that "Shri Ravindra Shrivastava, learned counsel for the appellant, has invited our attention to the decision of the Supreme Court in case of State of Jammu and Kashmir Vs. Bakshi Ghulam Mohammad, , to contend that principles of natural justice cannot be stretched to Commission of Inquiry so that any deponent can be called for cross-examination."

On the submission, as advanced by the learned counsel Shri Ravindra Shrivastava, this Court observed as :

"We need not go into this part also. Suffice it to say that the order passed by the learned single Judge is innocuous and it is well within the discretion of the

Commission of Inquiry to consider the application of Shri Kailash Joshi in accordance with law."

Further in paragraph 5 the Court observed that" :-- the order passed by the learned single Judge is purely an innocuous order and not in any way adverse to the appellant." It was further stated that Shri Ravindra Shrivastava, learned counsel for the appellant invited our attention to certain observations made in paragraphs 31-32, 33, 34 and 35 (i) of the order which virtually make it incumbent on the discretion of the Commission of Inquiry to call Shri Arjun Singh for cross-examination. The Court clarified the position by observing as :

"Suffice it to say that these observations will not be read by the Commission of Inquiry as a command, because ultimately it is discretion of the Commission of Inquiry to call or not to call Shri Arjun Singh for cross-examination. Therefore, we are of the opinion that these observations should not be treated as a command on the Authority of Commission of Inquiry for calling Shri Arjun Singh for cross-examination. However, it will be open for the Commission of enquiry in the interest of justice to call Shri Arjun Singh for cross-examination or not to call in accordance with law."

The principle of merger applies. The order which is appealed against always merges in the appellate order and it loses its independent existence. Since the appellate Court has already considered the paragraphs to which the attention of this Court was invited by the learned counsel for the petitioner, this Court is not supposed to reconsider the same and express its opinion.

The next submission is regarding the non-observance of Regulation 13. Regulation 13, as contained in the order of the Writ Petition No. 3663/96 dated 10-7-1995, is extracted as below :

"(13) After examination of all the statements that may be furnished in response to the notice, issued under Sections 11 and 5 of the Act, the Commission may, if it considers necessary in the interest of Justice, call upon any person filing an affidavit to give oral evidence and submit himself to cross-examination. In such a case the affidavit already filed by the person may be treated as part of his examination-in-chief. If the Commission decides under Sections 11 and 5 to record oral evidence, it shall first record the evidence, if any, produced by the State Government and the other persons prosecuting the allegations with regard to the subject-matter of the inquiry against the respondents as mentioned in Misc. Petition No. 3909/87 Kailash Joshi v. State of Madhya Pradesh. No party, however, will have the right to insist on oral examination of any deponent of an affidavit."

So far as the right of the person is concerned, the regulation itself spells out. It needs no interpretation.

The question to be seen is whether the Tribunal has acted having regard to the observations made by this Court in L.P.A. No. 99/95 or not.

The observation was that "ultimately it is the discretion of the Commission of enquiry to call or not to call Shri Arjun Singh for cross-examination.....

However, it will be open for the Commission of enquiry in the interest of justice to call Shri Arjun Singh for cross-examination or not to call in accordance with law."

The decision of the Commission on the application is comprised in 32 pages. In paragraph 19 the Tribunal found that Shri Arjun Singh on 5-4-1989 was only asked to produce documents, if any, pertaining to the Society and the notice issued to him further reads that it was open to him (Shri Arjun Singh) if he, so likes to file an affidavit regarding facts within his knowledge and relating to the affairs of the Churhat Children's Welfare Society and Lottery. The Commission in paragraph 26 stated that : "Shri Arjun Singh has stated in clear terms in this affidavit dated 9-7-1989 which he filed in response to a summons dated 5-4-1989 that he has nothing to do with the functioning of the Society, No contrary material has been placed in support of the present application of Shri Kailash Joshi. During the course of argument, learned counsel for the Society took me through the evidence of the various witnesses examined on behalf of Shri Kailash Joshi as well as by the State and by the Society. From the record of evidence which I have gone through myself, apart from having been taken through by learned counsel, no material could be found therein as against Shri Arjun Singh so as to elicit an explanation from him, by calling him to the witness-box."

The another argument made on behalf of Shri Kailash Joshi before the Commission was that notice was issued by the Commission to Shri Arjun Singh, that he participated in the proceedings by appearing through counsel and by cross-examining all the witnesses and that therefore he should submit himself for cross-examination. The Tribunal observed that in such a context, Shri Kailash Joshi who set the law in motion for the constitution of this Commission, has led evidence and examined witnesses on his behalf after witnesses were examined on behalf of the State. For the Society, its Secretary was examined. As already noticed, the evidence on record does not disclose any material which requires an explanation from Shri Arjun Singh. Only the Society that has to answer the various issues raised by way of the terms of Reference. It is not the case of Shri Kailash Joshi in his evidence that Shri Arjun Singh played any part in the functioning of the Society. No evidence is placed to substantiate the allegation that any profit earned by the Society had been diverted towards the construction of a house at Kerwa Dam so to elicit an explanation from Shri Arjun Singh, and the Commission said that if interest of justice requires on the materials on record that Shri Arjun Singh has to explain in the witness-box before the Commission, certainly the Commission can compel him to appear before, the Commission and give evidence. It was also observed that : "Admittedly, as already discussed, neither in the High Court in M.P. No. 3909 of 1987, nor in the evidence let in before the Commission, is there any material warranting Shri

Arjun Singh to give an explanation by entering the witness-box."

The point of Regulation was also considered and in Paragraph 35 the Commission observed as :

"..... Under Clause 13 of the Regulation, the Commission may, if it considers necessary in the interest of justice, to call upon any person filing an affidavit to give oral evidence and submit himself to cross-examination. No party will have the right to insist on oral examination of any deponent of an affidavit. According to this clause of the Regulation, merely because a person has filed an affidavit any other party cannot compel his examination for being cross-examined. He must make out a case for such a claim. If the materials placed before the Commission are such which require an explanation by a person with reference to the terms of Reference, then, the Commission, in the interest of justice, may summon that person to the witness-box to submit himself for cross-examination. In the instant case, as already found, neither the judgment of the High Court in M.P. No. 3909 of 1987, nor the evidence placed before the Commission, warrants an explanation from Shri Arjun Singh so as to compel him to come to the witness-box for the purpose of cross-examination."

In view of above, the findings recorded by the Commission cannot be said to be in derogation of the order of this Court passed in L.P.A. No. 99/95 nor they can be said to be contrary to the interest of justice. I do not find it a case for interference.

The petition is sans merit. It is rejected.