
(2010) 01 RAJ CK 0002
In the Rajasthan High Court

Kashi Purohit and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-01-2010

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 3

Citation : (2010) 1 WLN 217

Hon'ble Judges : R.C. Gandhi, J;Mahesh Bhagwati, J

Bench : Division Bench

Judgement

R.C. Gandhi, J.—By means of this public interest litigation petition, the petitioners seek issuance of Writ of Mandamus quashing order dated January 23, 2009, being ultra vires, non-est and bad in the eyes of law; further issuance of appropriate writ or direction declaring that the Council of Ministers, without having resolved and passed in the Legislative Assembly as contemplated u/s 3 of the Commissions of Inquiry Act, 1952(hereinafter referred to as "the Act of 1952"), cannot appoint a Commission to investigate into any definite matter of public significance, and inconsistent with the touch stone of rules and the Law; further direction declaring that no Commission can be constituted by the newly elected Government to look into and investigate the decisions taken by the previous Council of Ministers, to wreak vengeance, being impermissible in law.

2. The petitioners have averred in the petition that they do not owe allegiance to any political party and are interested in the well governance of the State by any political party in power and are aggrieved because of the fact that the aim and object behind the move to appoint a Commission by the Respondent-State Government vide order dated 23.01.2009 is to wreak vengeance against the previous Government, therefore, suffers from political vendetta with which it is motivated rather than the idea of doing justice to the public. The petitioners do not at all support the mal-practices and acts of misconduct, illegalities and arbitrariness, rampant at large in the administrative circles.

3. It has been further averred by the petitioners that the impugned order is an

eye wash as the Commission known as Justice N.N. Mathur Commission (hereinafter referred to as "the Commission") has been constituted ignoring the provisions of the Act of 1952 to fulfill the political agenda of the Government reflected in the Political Manifesto of the party in power and broadly campaigned during the Assembly Elections of 2008, maligning the previous Government being corrupt. The petitioners are not against the investigation of the mal practices of the previous Government and that the present Government has the power to appoint a Commission for inquiry into matter of great public significance. Notwithstanding that the Commission has been appointed in derogation to the procedure provided in the Act of 1952 framed by the Legislature. Such a Commission of Inquiry to investigate the affairs and decisions taken under the regime of the previous Government will set a bad practice in the State and the whole democratic setup will be demolished by such action.

4. It is stated that the Commission will inquire into illegalities committed in the land acquisition cases by the governing bodies of 32 Zila Parishads, 241 Tehsils, 237 Panchayat Samities, 9,188 Gram Panchayats, 183 Municipalities and 222 cities and towns of the State which give rise to a situation whether the Commission so appointed will make a fishing and roving inquiry. It is also averred that the purpose of the Act of 1952 has become blurred and the Commission so appointed is a formality and will not take the purpose of punishing the guilty to logical end. The report, if any, submitted by the Commission will not meet the requisite purpose and that no inquiry has been ordered for any year preceding to the year 2004, presumably because what has been done by the Government of the political party in power before the earlier Government was fair and honest and there was no element of corruption, fraud, misconduct, misappropriation of funds, scam, nepotism, etc.

5. The petitioners have also relied upon the judgment delivered by the Supreme Court in case title State of Madhya Pradesh v. Thakur Bharat Singh reported in AIR 1967 SC 1170 wherein the Apex Court held that every act done by the Government or by its officers, must, if it is to operate to the prejudice of any person, should be supported by some legislative authority. In the present case, the appointment of the Commission is not in accordance with the spirit of the judgment(supra) and impugned order deserves to be set aside.

6. It is also averred in the petition that so far as the money to be spent for the function of the Commission is concerned, it shall be a wastage of public exchequer and the Commission will meet the same fate as other Commissions such as Justice B. N. Kripal Commission to probe into the bombing of the Air India Flight No. 182 on 23.06.1985 where 329 passengers including crew died; The Phukan Commission to probe into the fictitious defence deals; Justice Amir Das Commission to probe into the alleged connections of political leaders with a banned outfit; Justice Ali Ahmed Commission to look into excess withdrawal in 1996; Justice R.C.P. Sinha and Justice Samsul Commission to investigate the Bhagalpur Communal riots in 1989; Justice Sadanand Mukherjee Commission to

probe into the Kahalgaon Police firing. It has also been pleaded by the petitioners in the petition that after years of investigations and submission of voluminous reports, it again required some committees to suggest measures to implement the recommendations. The present Commission being a fact finding Commission and it is not mandatory for the Government to implement it and shall result into the loss of the public ex-chequer and wastage of time as well.

7. It is further averred that the Commission has been asked to inquire into the malpractices, corruption from the year 2004 to 2008 which period belongs to the Government run by the political party, in opposition at present, is indicative of a clear message of political vendetta. It is stated whether it is permissible for a political party to wreak political vendetta at the cost of public ex-chequer unless there are reasons to believe so and that the period should not have been restricted in fair play and justice. It is also averred that the appointment of the Commission is a device to fulfill the manifesto of the political party in power whereas the general belief of the public is that even after the submission of the report by the Commission no action will be taken, being the report so submitted not mandatory in character and the Commission not appointed under any statutory provisions of law.

8. On the aforesaid averments and grounds, the petitioners seek to set aside the impugned order of setting up of the Commission.

9. Respondents have filed reply and the supplementary reply stating therein that the petitioners have not approached the Court with clean hands though the petition has been labelled as Public Interest Litigation Petition(PIL). The impugned notification setting up the Mathur Commission has been issued as per the demand of the people in general and commitment of the Government to unearth various acts of misconduct, misappropriation, fraud, negligence, favouritism, nepotism, illegalities, irregularities, improprieties and abuse of power at different levels of governance, causing huge lose to the State exchequer and to bring the guilty to the book. It is stated that the appointment of the Commission is necessary for the purpose of maintaining high standard of public administration being it a recognized and important facet of the administration by the Government. Commission of Inquiry is a matter of discretion of the appropriate Government and it can be set up under executive order of the Government or u/s 3(1) of the Act of 1952 for preliminary verification of the allegations which may justify a statutory inquiry or investigation or departmental action. It is also stated that the Government may in its discretion opt to institute an inquiry u/s 3(1) of the Act of 1952. It is wrong to contend that Commission of Inquiry under impugned notification is bad in law, in absence of the resolution of the Assembly in terms of Section 3 of the Act of 1952.

10. It is further stated that there was outcry from various sections of the society for probe into the controversial land deals and other corruption charges during the period of the previous Government i.e. year 2004 to year 2008. Among those

demanding inquiries include the persons who held high constitutional offices in their lives. The Government has set up an independent multi members Commission of persons of unquestionable integrity by an executive order which is valid in law. It is stated that it is a fact finding body meant only to collect information to instruct the mind of the Government. For the present, provision of Section 3 of the Act of 1952 has not been invoked in anxiety to ensure that image of any individual, political person or otherwise is not adversely affected.

11. The respondents have further stated in their reply that the Government headed by Shri Bhairon Singh Shekhawat constituted a panel of Justice B.P. Beri, Shri Mangal Bihari (Retd) IAS, Shri A.S. Kapoor, former Chairman, Indira Gandhi Canal vide Notification dated 24.08.1990 against the voted out Government. In Orissa, Commission headed by Justice Madholker, was constituted by executive order against the voted out Chief Minister. The previous Government of State of Rajasthan under Executive order dated 02.06.2007 constituted a panel headed by Justice Chopra to probe the Gurjar Agitation. In support of the impugned order, the respondents have relied upon the judgment delivered by the Supreme Court reported in 1969 S.C. 258 pertaining to the Ex-Chief Minister of Bihar. It is stated that the dominant purpose of setting up of the Commission is to promote measures for maintaining purity and integrity of the administrators and not the character assassination of any individual or group. For a Government it is necessary to restore the confidence of the people in the governance, therefore, investigation and probe of allegations is necessary to achieve that purpose. By pleading these averments, the respondents seek dismissal of the writ petition.

12. Heard learned Counsel for the parties and perused the record.

13. Learned Counsel for the petitioners at the very outset has urged that the Commission has been constituted to wreak vengeance, as means of political vendetta, against the earlier Government led by the Opposition Party and with a view to malign it. The intention of the Government to malign the earlier Government has bearing in the manifesto of the party in power presently that the misdeeds of the earlier Government shall be probed and investigated, if the party comes to power. It is further submitted that having come to power, the present Government has appointed the Commission to discredit the fair governance of the earlier Government.

14. On perusal of the impugned Notification dated 23.01.2009, we find that the Commission has been constituted to probe and investigate the specific cases to be referred by the Government to the Commission. The Government has referred a number of cases for its investigation by the Commission. It is the prerogative of the Government that if the Government is of the view that the allotment of the lands or conversion of land use u/s 90B of the Jaipur Development Act, 1982 has not been done in accordance with law and the same was done for extraneous gains, the Government is within its right to have the probe and investigation of such mal-practices and illegalities. The probe has been directed not against the earlier Government or the Leader of the erstwhile House but against the officers

and other authorities associated in the process of the cases and passed orders in such cases. Therefore, we find that there is no substance in the plea of the learned Counsel for the petitioners that the Commission has been constituted to wreak vengeance or settling the scores as political vendetta. The Government wants to have a report from the Commission as to whether the actions of the officers of the State at the relevant time were in accordance with law or orders are passed because of the undue pressure and indifferences of the higher ups. This can only come out after the investigation. We, therefore, reject such argument of the learned Counsel for the petitioners.

15. The next submission of the learned Counsel for the petitioners is that the Commission is only a fact finding body having no statutory recognition and its report will not be having mandatory and statutory character and that the Government may or may not present the report or the action taken report before the Assembly or may shelf it. Therefore, setting up of the Commission is only an eye wash. His submission is that if the Government really wanted to take action against the erring officers who passed the orders in the cases which are being proved as referred by the Government or likely to be referred to the Commission, it should have constituted a statutory Commission in terms of Section 3(1) of the Act of 1952. For appreciation of the plea of the learned Counsel for the petitioners, Section 3 of the Act of 1952 for convenience is extracted below and reads thus:

3. Appointment of Commission.-(1) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by[each House of Parliament or, as the case may be, the Legislature of the State], by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly:

Provided that where any such Commission has been appointed to inquire into any matter-

(a) by the Central Government, no State Government shall, except with the approval of the Central Government, appoint another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government is functioning;

(b) by a State Government, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States.

(2) The Commission may consist of one or more members appointed by the appropriate Government, and where the Commission consists of more than one

member, one of them may be appointed as the Chairman thereof.

(3) The appropriate Government may, at any stage of an inquiry by the Commission fill any vacancy which may have arisen in the office of a member of the Commission(whether consisting of one or more than one member).

(4) The appropriate Government shall cause to be laid before[each House of Parliament or as the case may be, the Legislature of the State], the report, if any, of the Commission on the inquiry made by the Commission under Sub-section (1) together with a memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government.

16. Relying upon the aforesaid provisions of law, learned Counsel has urged that had the Commission been appointed u/s 3 of the Act of 1952, it would have been mandatory and obligatory for the Government to cause the report be laid before the Assembly together with the memorandum of action taken thereon within a stipulated period. His submission is that what weighed with the Government to appoint such a Commission which has no teeth for its follow up action, is only to malign the previous Government. Alternative submission of the learned Counsel is that instead of appointing the Commission, the cases would have been referred by the Government for investigation to some other agency such as Anti Corruption Department, Police Department or the Lokayukta. All these agencies have the full power to investigate, take action and prosecute the defaulting officers in the court of law whereas it is ought to be known whether the Government will take any action on the report and that the Government cannot be compelled to take action as the Commission has not any mandatory character which strengthens his argument that the fact finding Commission is constituted to defame the previous Government in the eyes of the general public.

17. Learned Counsel for the respondents has vehemently opposed the plea of the learned Counsel for the petitioners submitting that the Government is within its prerogative in terms of its executive power to appoint a Commission either under provisions of the Act of 1952 or the Commission as has been constituted by the Government and no fault cannot be found by the Court in formation of the Commission. We feel that it is the prerogative and within the power of the Government either to appoint a Commission under the Act of 1952 or like the present one.

18. Another limb of the argument is that in the past, experience shows as pleaded by the other side that though such commissions were appointed but no action was taken on the reports submitted by such commissions and the report submitted by the Commission will face the same fate and the erring and corrupt officers/officials will not be taken to task, is misplaced.

19. On appreciation of arguments of learned Counsel for the parties, it is gathered that in any democracy of the world, the corruption has not been rooted out even by excellent governance by the popular Government. The reason

perhaps appears to be that in a democracy, there is common interest of the people in the State and personal interest of the individual dealing with the rights of the people which is the trust of the State reposed in the individual authority/officer of the State. When the personal interest gets upper edge over the general interest of the State, though the prescribed procedure may not have been violated, yet for extraneous consideration, dealing with the matter or, over passes the State interest and places his personal interest over the general interest of the State, the element of corruption steps in. There is systematic corruption and negotiated corruption. In case of systematic corruption, it is very hard to crack a nut but in certain cases it is visible and can be investigated and probed. It is very necessary in the interest of the people to watch the interest of the State and keep it ahead to the personal interest of the individual by holding investigation and to prosecute such persons and put them to justice. It can be probed through the Department of Anti Corruption and even in some cases by the Police Department also. Therefore, there cannot be any second thought or opinion that the malpractices, if any, have to be investigated.

20. There appears to be imaginary and presumptive substance in the argument of the learned Counsel for the petitioners that the report submitted by the Commission may not be acted upon but at present it can be said to be a guess work. The cases referred by the Government to the Commission have to be probed and investigated. His further misplaced apprehension is that the Commission being only a fact finding body, its report will not see the light of the day as the follow up action is only the discretion of the Government.

21. Considering the aforesaid submissions it is to be seen whether the work done by the present Commission can provide justice to the people or another agency had to be called for proper legal investigation. This Commission is a fact finding commission as admitted by the respondents. The Government has submitted in the reply that the Commission u/s 3(1) of the Act of 1952 has not been constituted with anxiety that no individual or a group should suffer without any evidence against him/them which indicates that after the submission of the report it will be considered and if there is any evidence found against the guilty, the Government will appoint another Commission, ought to be known, perhaps u/s 3(1) of the Act of 1952. If this is the intention of the Government, it will certainly cause loss to the State ex-chequer and wastage of time. The Government has set up a Commission to probe the misdeeds and irregularities committed while passing the orders for allotment of land and conversion of land use during the period from the year 2004 to the year 2008. The Government, if was not having any evidence prima facie to form an opinion for investigation of the charges, the Government was not within its right to appoint the Commission. There should have been prima facie evidence of allegations against the officers/officials which need to be probed. If the Government was not having any evidence and the State wants to collect information and thereupon to appoint a statutory commission, it is not advisable as it will be a burden on the State ex-chequer and unfair exercise of power. Since the Government has appointed such

a Commission, therefore, needle of suspicion will be in the mind of the public that the Commission is constituted because of political vendetta which need to be obliterated and removed. People must feel that the action of the Government is not either mala fide or perpetuated by political vendetta but is in accordance with law and that the Government wants to do justice to the people and bring the culprits to book who have passed the orders for extraneous considerations and not in the public interest.

22. Considering the aforesaid submissions, we feel that instead of having a fact finding body the Government should have appointed a Commission possessed of mandatory character so that the report submitted by the Commission could be tabled before the House and follow up action taken. In the past, we find that the Government instead of taking action against the erring officer devised certain other procedures to find out truth and the culprits got free. The Commission has not been appointed in terms of Section 3(1) of the Act of 1952 for the reasons best known to the Government. Had it been so, the guilty could have been prosecuted and such a decision could have been taken by the Assembly at the floor of the House.

23. Alternatively we feel that if the inquiry or investigation is permitted to be conducted by the Anti Corruption Department, Police Department, Departmental Inquiry or the like other agency, justice will not be done as the people will still have a room to raise a finger that such agency is bound to toe the line of the Government for framing the officers/individuals for prosecution. Therefore these cases should be probed by the one and the same agency which can be said to be free from the influence and control of the Government.

24. It was also urged that if such a system of inquiries is permitted to continue, in that event every political party coming in power will resort to such approach in future and God forbid, if it is so, there shall be political uncertainty in the State and the administrative health and efficiency of the Government shall be in jeopardy which will directly affect the health of the State. The State can head towards progress only if there is good governance and political stability in the State.

25. Under these circumstances, we have perused the provisions of the Rajasthan Lokayukta and Up- Lokayuktas Act, 1973(hereinafter referred to as the "the Act of 1973"), and find that the Lokayukta is an independent and statutory body, created by the Legislature, having wide powers to catch the Ministers and other executives heading the public corporations, local bodies and autonomous bodies. The Act of 1973 takes within its sweep not only the public servants but the Ministers and other executives also for prosecution and taking the investigation to logical end whereas the present Commission is only a fact finding body. The Statements of Objects and Reasons of the Act of 1973, relevant para whereof, reads as under:

The Administration Reforms Commission(1966-70) of the Government of India,

in its interim report on the PROBLEMS OF REDRESS OF CITIZENS GRIEVANCES also took note of the all expressed public outcry against the prevalence of corruption, the existence of widespread inefficiency and the unresponsiveness of administration to popular needs and recommended statutory institutions of the Lokpal and Lokayukta for redressal of the public grievances and enquiring into complaints alleging corruption of injustice arising out of maladministration.

Although a separate machinery, called the Department of Removal of Public Grievances, already exists in the State for attending to the grievances of the public, the existing machinery of the Government does not provide for a system in which the Ministers and the Executive drawn from public life to head the Public Corporations, Local Bodies and other Autonomous Institutions can be asked to explain their administrative acts and omissions of questionable validity and character.

It was, therefore, felt immediately necessary to create an independent and impartial agency to look into and investigate complaints of abuse of position and corruption, etc. against Ministers, Secretaries and certain other public servant in order to promote a sense of confidence and satisfaction in the public mind and to provide a clean, honest and competent administration.

26. u/s 7 of the Act of 1973, the Lokayukta can investigate any action, taken by or with the general or specific approval of a Minister or a Secretary. Proviso to Sub-section 2 of Section 7 of the Act of 1973 provides that no investigation made under the Act of 1973 and no action taken or thing done by a Lokayukta in respect of such investigation shall be open to question that such investigation relates to a matter which is not assigned to him by such order. This provision of law indicates that the Lokayukta can investigate the occurrence even beyond the scope of the reference or the case/complaint and can look into as to whether any officer has been pressurized by the higher Authority of the State or by any Minister or by any high official during the process of passing an order, sought to be investigated.

27. Section 10 of the Act of 1973 relates to the procedure in respect of investigation. Sub-section 2 of Section 10 of the Act of 1973 reads as under:

10. Procedure in respect of investigations.-(2) Every such investigation shall be conducted in private and in particular, the identity of the complainant and of the public servant affected by the investigation shall not be disclosed to the public or the press whether before, during or after the investigation.

Provided that the Lokayukta or an Up-Lokayukta may conduct any investigation relating to a matter of definite public importance in public, if he, for reasons to be recorded in writing, thinks fit to do so.

28. Section 12 of the Act of 1973 deals with the submission of the reports by the Lokayukta and Up Lokayuktas which reads as under:

12. Reports of Lokayukta and Up- Lokayuktas.-(1) if, after investigation of any

action in respect of which a complaint involving an allegation has been or can be or could have been made, the Lokayukta and an Up- Lokayukta is satisfied that such allegation can be substantiated either wholly or partly, he shall by report in writing communicate his findings and recommendations alongwith the relevant documents, materials and other evidence to the competent authority.

(2) The competent authority shall examine the report forwarded to it under Sub-section (1) and intimate within three months of the date of receipt of the report, the Lokayukta or, as the case may be, the Up-Lokayukta, the action taken or proposed to be taken on the basis of the report.

(3) If the Lokayukta or the Up- Lokayukta is satisfied with the action taken or proposed to be taken on his recommendations or findings referred to in Sub-section (1), he shall close the case under information to the complainant, the public servant and the competent authority concerned, but where he is not so satisfied and if he considers that the case so deserves, he may make a special report upon the case to the Governor and also inform the complainant concerned.

(4) The Lokayukta and the Up- Lokayukta shall present annually a consolidated report on the performance of their functions under this Act to the Governor.

(5) On receipt of a special report under Sub-section (3) or the annual report under Sub-section (4), the Governor shall cause a copy thereof together with an explanatory memorandum to be laid before the House of the State Legislature.

(6) Subject to the provisions of Sub-section (2) of Section 10, the Lokayukta may at his discretion make available, from time to time, the substance of cases closed or otherwise, disposed of by him or by an Up-Lokayukta, which may appear to him to be of general public, academic or professional interest, in such manner and to such persons as he may deem appropriate.

29. Section 12(3) of the Act of 1973 provides little teeth to the Lokayukta in the form that on submission of the report to the concerned authority for follow up action, if Lokayukta is satisfied with the action taken or proposed to be taken on its recommendations or findings, the concerned authority shall close the case but where the Lokayukta is not so satisfied and if considers that the case so deserves, he can make a special report upon the case u/s 12(3) and 12(4) of the Act of 1973 to the Governor, whereupon is is mandatory for the Governor u/s 12(5) of the Act of 1973 on receipt of such report to cause a copy thereof together with an explanatory memorandum to be laid before the House of State Legislature.

30. Another argument of the learned Counsel for the parties at the bar is that the Lokayukta is not having any power to investigate the charges, if any, against the former Chief Minister, Ministers and the retired Government servants. We do not accept this plea as these issues are not before the Court and no findings can be recorded on presumptions. However, if during the course of investigation the Lokayukta arrives to the conclusion forming opinion that the former Chief

Minister/Minister, retired Government Servant or any private person is not covered in his jurisdiction, the Lokayukta is at liberty to refer such matter to the Government for seeking permission either to investigate himself or ask the Government to get it investigated through its agencies.

31. On appreciation of the pleas and counter pleas of the learned Counsel for the parties in totality, the present Commission has been appointed by the Government having its own compelling and attending circumstances, as noticed in the earlier paragraphs and the existing Commission, under such circumstances, will not generate the desired confidence in the mind of the general public. To inspire confidence in the administration of Justice, the Governance by the Executive and to obliterate the impression of the general public that the constitution of the Commission is with a view to wreak vengeance against the earlier Government, we feel that it will be in the fitness of the things if a fair agency is directed to investigate the cases, capable of brining the culprit to book and to do justice to the public at large. We are of the view that the Lokayukta has the wider sphere of investigation and powers of enforceability of their action and investigation by such Agency will be in the interest of justice and also in the interest of Government, as in such a situation, nobody shall be in a position to raise finger against the Government castigating it to have set up the Commission to malign the previous Government or as a political vendetta.

32. We, under these circumstances, are of the view that the Lokayukta being a statutory, independent and impartial body, can effectively investigate the charges of corruption and abuse of power and position etc. against the Ministers, Secretaries and other public servants to promote a sense of confidence and satisfaction in the public mind and to prove a clean, honest and competent administration, should be assigned the task of investigating all the cases. Such a situation as indicated above will not only achieve the purpose of investigation of the charges/misuse of power by the guilty but also legitimate the intention of the respondent to get desirable results.

33. For the aforesaid reasons, we dispose of the Writ Petition(PIL) directing that all the cases referred by the Government and pending investigation before the Commission and also other such cases likely to be referred by the Government, shall be referred to the Lokayukta for its investigation afresh and the Lokayukta shall draw his findings, recommendations and follow up action based on his own investigation.

34. No order as to costs.