
(2003) 01 KL CK 0109
In the High Court Of Kerala
Case No : O.P. No. 37885 of 2002 (I)

M. Sathyanesan

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 28-01-2003

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 3, 8B

Citation : AIR 2003 Ker 356 : (2003) 2 KLJ 460

Hon'ble Judges : Jawahar Lal Gupta, C.J.;M. Ramachandran, J

Bench : Division Bench

Advocate : G. Janardhana Kurup and P.K. Varghese, for the Appellant;

Final Decision : Dismissed

Judgement

1. The petitioner is a former District Committee Secretary of the Communist Party of India (Marxist), He has filed this petition under Article 226 of the Constitution with the prayer that the report dated September 28, 2002, a copy of which has been produced as Ext. P5 with the writ petition, submitted by the Hon'ble Mr. Justice V. P. Mohankumar Commission of Inquiry, be quashed, A few facts as relevant for the decision of this case may be briefly noticed.

2. In October 2000, a liquor tragedy had taken place in the State of Kerala. The State Government had constituted a Single Man Inquiry Commission to enquire into the liquor tragedy, The Commission was also asked to enquire and report about the possible involvement of Government Officers and public men in abetting or aiding the smuggling of illicit liquor.

2A. On August 17, 2002, the petitioner was given a notice by the Commission. In this notice, it was inter alia pointed out that an amount of Rs. 3,37,000/- had been paid to the petitioner. After taking notice of the facts, the Commission informed the petitioner that his reputation could be affected by the result of the enquiry. Thus, he was "given an opportunity to show cause why an inquiry be not conducted into the allegation." The petitioner was given 14 days" time to

respond to the notice. A copy of this notice has been produced as Ext. P1 with the writ petition.

3. The petitioner submitted his reply on September 3, 2002. A copy has been produced as Ext. P2. Thereafter, the matter was looked into by the Commission. Finally, a report, copy of which has been produced as Ext. P5, was submitted by the Commission on November 28, 2002. The petitioner prays that this report be quashed.

4. We have heard Mr. Janardhana Kurup, learned counsel for the petitioner. He contends that there is no evidence in support of the allegation levelled against the petitioner. The Deputy Superintendent of Police, on whose statement a notice had been given to the petitioner, had admitted during cross-examination that there was no material indicating that the petitioner had received any money illegally. On this basis, the counsel contends that the finding recorded by the Commission cannot be sustained. It is further contended that the report submitted by Mr. Vijay was never put to the petitioner. Thus, no finding could have been based thereon. On these premises, the claim for quashing the impugned report has been made by the learned counsel."

5. Admittedly, the Commission had been appointed by the State Government under the Commissions of Inquiry Act, 1952. u/s 88, the Commission is required to give an opportunity of hearing to the persons who are likely to be affected by its report. Evidently, the notice in terms of the provision was duly given to the petitioner. Even permission to be represented by counsel was also given. The witnesses were cross-examined by the petitioner's counsel. Thus, it is clear that the Commission had proceeded in conformity with the provisions of the Statute.

6. Mr. Kurup submits that there was no evidence. Is it so?

7. Admittedly, the Deputy Superintendent of Police had submitted a report in writing. This report categorically indicated that different amounts of money had been paid to the Officers as well as public men. A perusal of the notice issued to the petitioner shows that the Deputy Superintendent of Police, during the course of the inquiry, had found that approximately 50 lakhs of rupees had been paid by the liquor dealer to certain people during a short span of time. Details of the payments made to different persons including the petitioner were also given. It was categorically mentioned that besides Government Officers, "a number of individuals belonging to various political parties have also been paid various amounts and some of them were paid regularly." So far as the petitioner is concerned, it was observed that "Sri. Sathyanesan, District Committee Secretary. CPM, Thiruvananthapuram, Sri, Peroorkeda Sadasivan..... were also paid." with regard to the petitioner, the particular observation was that he was "paid an amount of Rs. 3,37,000/-." The Commission also noticed the fact that "total purchase of toddy is for a sum of Rs. 4,66,244.00. The sale proceeds is Rs. 4,79,96,413.00". Still further, it was also noticed that the evidence on record indicated "an expenditure for donation to the tune of Rs. 13,44,056.00. There is

yet another head called miscellaneous expenditure, which is Rs. 29,45,540.00. The witness had no explanation to offer as to what this represent." In the background of this factual position, the Commission noticed that the Deputy Superintendent of Police had backed out of the report that he had submitted. It expressed its distress on the conduct of the Police Officer.

8. Not only this. The Commission also noticed that Mr. Vijaya Kumar, who is the present District Committee Secretary of the Communist Party of India (Marxist), at Thiruvananthapuram was given a notice u/s 5(2). On receipt of notice, he had filed an affidavit before the Commission. In this affidavit, he had made the following statement :

"It is resolved by the State Committee of the Communist Party of India (Marxist) to expel its State Committee Member and former Trivandrum District Secretary Sri. M. Sathyaneshan. On enquiry it was found that he was in the habit of receiving regularly money from the Abkarl Contractors for his persngal purposes. The conduct of Sathyanesan is highly unbecoming of a party member. Hence, it was decided to impose the maximum punishment for the grievous misconduct committed by him."

9. A perusal of the above shows that the Deputy Superintendent of Police had reported against the petitioner. Thereafter, an inquiry had been conducted against him by the party. It was found that he was in the habit of regularly receiving money from the Abkari Contractors "for his personal purposes."

10. In view of the above, it cannot be said that there was no evidence before the Commission on the basis of which it could have come to a finding against the petitioner.

11. Mr. Kurup submits that the Deputy Superintendent of Police had resiled from his statement. It undoubtedly appears to be so. However, that does not mean that the Commission could not have taken into consideration the totality of the evidence which was available on the record. Equally, it cannot also imply that because of the mere fact that the Deputy Superintendent of Police had chosen to support the petitioner, the Commission could not have drawn an adverse inference even against the Officer.

12. Mr. Kurup submits that the affidavit submitted by Mr. Vijaya Kumar was not put to the petitioner.

13. A perusal of the report shows that a similar contention had been raised by the learned counsel before the Commission. It was considered by the Commission in the following words :

"Sri Janardana Kurup, Learned Advocate appearing for Sri Sathyanesan strenuously argued that the abovesaid statement made by Sri Vijaya Kumar should not be used against him. Sri Sathyanesan entered appearance on 12-9-2002. Shri Vijaya Kumar filed the statement on 28-9-2002. (Section 5(2) Notice was issued on 18-9-2002). If the veracity of the statement is disputed by

Sri Sathyanesan, then he could have taken steps to cross-examine him with reference to the statement at any of the subsequent dates of hearing i.e. on 21-10-2002, 8-11-2002 or 9-11-2002. His failure only indicates that he does not dispute the statement."

In view of the above, the contention as raised by the learned counsel cannot be sustained.

14. Similarly, we cannot also find any fault with the finding of the Commission that the petitioner was holding "a responsible office in the Communist Party (Marxist) at the District level hierarchy. The Excise portfolio was held by a Minister belonging to that party. Parting of money to him by an acknowledged Abkari Contractor can be obviously with the hope of receipt of due favour." It appears to us that the finding of the Commission, in the circumstances of the case, cannot be said to be without any basis.

15. Another factor which may be noticed here is that the claim as made on behalf of the petitioner before the Commission is contained in the observations at page 76 of the Paper Book. It is recorded in the following words :

"Sri. Janardhana Kurup, learned counsel for Sri, Sathyanesan urged inter alia that a political worker accepting such money, is within his right guaranteed to a citizen under Article 19(1) of the Constitution. This is an extreme contention which is being stated here only to be rejected. If public men, holding responsible office in political life start claiming protection under Article 19 of the Constitution of India to protect them after receipt of money from all and sundry, then it would be ringing the death knell to the very concept of fundamental right."

The above observations, clearly militate against the contentions as raised before the Court in the present proceedings.

16. A word more before we part with this petition.

17. It is true that corruption is as old as the man. It is a "crime as old as time". But it is like cancer. It disables the able. Takes away the initiative of the individual, wisdom from the wise. Shuts out the objectivity of the authority. It is a curse on the community. It is eating into the vitals of the nation. It is sapping the energy of the young, Retarding our progress. It must be eradicated. This is a national necessity. The fact that we are beginning to talk about it is a good sign.

18. To combat corruption, it is imperative to identify the causes and to find the cure. What are the causes of corruption?

19. The main amongst the many are -- the perennial shortages. The bureaucratic bottlenecks. An ineffective complaint redressal mechanism. A total lack of transparency. The evil effects of the permit raj. The rampant consumerism. An extravagantly expensive system of elections. Above all, a devaluation of old values. The love for money and not morals.

20. Eradication of the evil of corruption and the corrupt is essential for the

progress of this country. The present proceedings appear to be step in the right direction.

21. In view of the above, we find no merit in any of the contentions as raised by the learned counsel.

22. No other point has been raised. Resultantly, the writ petition is dismissed.