
(1993) 03 KL CK 0018

In the High Court Of Kerala

Case No : O.P. No. 1523 of 1992 L, O.P. No. 14660 of 1992 and O.P. No. 15776 of 1992 B

Muraleedharan and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 05-03-1993

Acts Referred:

Agricultural Marketing Act, 1958 — Section 19, 19(3)
Commissions of Inquiry Act, 1952 — Section 3, 3(1)
Companies Act, 1956 — Section 209(4), 235, 236, 237
Constitution of India, 1950 — Article 226
Fair Trading Act, 1973 — Section 64(4)
Parliamentary Commissioner Act, 1967 — Section 5(1)

Citation : (1993) 03 KL CK 0018

Hon'ble Judges : M. Jagannadha Rao, C.J.;K. Sreedharan, J

Bench : Division Bench

Advocate : K. Ramkumar, for the Appellant; M.B. Kurup, General for Respondents No. 1 and T.P. Kelu Nambiar, for Respondents No. 3, for the Respondent

Final Decision : Dismissed

Judgement

M. Jagannadha Rao, C.J.—These three writ petitions can be disposed of together. In O.P. 14660 of 1992, the Petitioner initially prayed for the issue of a Writ of Mandamus directing the Chief Minister of Kerala (third Respondent) to order a C.B.I. investigation into the alleged spirit smuggling into Kerala recently through unauthorised channels and to find out the circumstances which led to the alleged failure of the State Government to procure or import 25 lakh litres of rectified spirit as per the contract entered and also to direct the Director, C.B.I., New Delhi (fourth Respondent) to take up investigation; A further relief is sought to direct the C.B.I. to investigate the alleged role played by the Minister for Excise, State of Kerala (first Respondent) and the former Chief Secretary to the State Government (second Respondent) to scuttle the contract to import 25 lakh litres of rectified spirit during the last Onam Festival and also to direct the Chief

Minister (third Respondent) to divest off Excise Portfolio from the first Respondent till the completion of the investigation for a proper and fair investigation into the allegations. An amendment was made subsequently seeking appointment of a Commission of Inquiry under the Commissions of Inquiry Act, 1952 (hereinafter referred to as "the Act").

2. In O.P. No. 15231 of 1992 and O.P. No. 15766 of 1992, respective Petitioners have sought similar directions for an inquiry by the C.B.I.

3. Respondents have filed counter affidavits stating that the Petitioners have no locus standi and, in any event, this Court cannot issue a Writ of mandamus compelling the Central or State Government to direct an inquiry by the C.B.I. or to appoint a Commission of Inquiry into the allegations against the Excise Minister and Ors. .

4. The following points arise for consideration in these Writ Petitions:

(1) Whether in a public interest litigation the High Court can issue a writ of mandamus under Article 226 of the Constitution of India, to the Government to appoint a Commission of Inquiry under the Commissions of Inquiry Act, 1952?

(2) Whether in a public interest litigation the High Court can issue a writ of mandamus to the Government to appoint the Central Bureau of Investigation to conduct an investigation under the Delhi Special Police Establishment Act, 1946?

5. Point No. 1.-We shall first consider the point as it arises under the Commissions of Inquiry Act, 1952. The Act was amended in 1971, 1986, 1988 and 1990. Section 3 of the Act, (as amended) reads as follows:

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 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 * * *

(emphasis supplied)

6. The provisions of Section 3(1) of the Act have come up for consideration before the Supreme Court in several cases. It has been held that the first part of Section 3(1) which uses the word "may" confers a discretion on the Government to appoint a Commission or not. Government has various methods of getting at facts and it is for the Government to consider whether it will employ one or the other methods to get at the said facts. On getting at the facts, the Government can use the same for taking appropriate legislative or executive measures. The findings and recommendations arrived at by the Commission are of great

importance to the Government in order to make up its mind, as to what legislative or administrative measures should be adopted to eradicate the evil found or implement the beneficial objects it has in view *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, . "The object of the inquiry to be made by the Commission appointed u/s 3 of the Act was", said the Supreme Court in *P.V. Jagannath Rao and Others Vs. State of Orissa and Others*, , "to take appropriate legislative or administrative measures to maintain the purity and integrity of political administration in the State." The "Commission has no power of adjudication in the sense of passing an order which can be enforced proprio vigore. A clear distinction must, on the authorities, be drawn between a decision which, by itself, has no force and no penal effect and decision which becomes enforceable immediately or which may become enforceable by some action being taken." As the Commission is "merely to investigate and record its findings and recommendations without having any power to enforce them, the inquiry report cannot be looked upon as a judicial inquiry in the sense of its being an exercise of judicial function properly so called..." [*Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*,]. "The Commission governed by the Commissions of Inquiry Act, 1952 is appointed by the...Government "for the information of its own mind" in order that appropriate further action could be taken *Brajnandan Sinha Vs. Jyoti Narain*, . The words "inquiries...for the purpose of any of the matter specified in List II or List III" in Entry 45 of List III of the VII Schedule, do not contain any inherent limitation that inquiry is to be ordered only for purposes of future legislation. Inquiry could be ordered also for purposes of any administrative action. In fact, the word, "for the purposes of" in Entry 45 of List III indicate that the purposes may extend even to inquiries into "collateral matters which may be necessary for the purpose of legislative or otherwise" of the particular matters specified in the Entry: *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, .

7. Where Section 3(1) of the Act provides that the Government "shall" appoint a Commission of Inquiry because of the resolutions of the concerned Legislatures, the provisions in Section 3(1) being mandatory, the question of issue of a writ of mandamus cannot present any difficulty.

8. But, in other cases, where the power vested in the Government is discretionary and where the Government "may" appoint a Commission, if it is of opinion that it is necessary to do so, several questions arise for consideration. Here there are again two types of cases: (1) where the Government is of opinion that it is necessary to appoint a Commission of Inquiry; (2) where the Government does not decide to appoint a Commission of Inquiry.

9. In the first category of cases, the aggrieved party may challenge the action appointing a Commission on the ground that the exercise of discretion is invalid for various reasons. A writ lies for this purpose. The discretion to appoint a Commission must be guided by the policy laid down, namely, that the executive action must conform to the conditions stated in the section, that is to say, there

must exist a definite matter of public importance into which the Government may consider it necessary to have an inquiry conducted. The appropriate Government is the best Judge of the reliability of its source of information and if it acts in good faith on the materials brought to its notice and holds that the conditions necessary for appointment of a Commission exist, the Court will be slow to adjudge the executive action to be bad or illegal. The burden of proof that the conditions do not exist, is on the person who raises such a contention. The action of the authority is capable of being looked upon in two ways.

Where power is misused but there is good faith, the act is only ultra vires. But where the misuse of power is in bad faith there is added to the ultra vires character of the act, Anr. vitiating circumstance. No doubt, Very wide discretionary power has been conferred on the Government. But the bare possibility that the power may be misused or abused cannot per se induce the Court to deny the existence of the powers. The discretion has been confided not to any petty official but to the appropriate Government itself and it is not to be easily assumed that it will be abused: *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, . The Court could decide, however, whether the matters to be inquired into were definite matters of public importance: *State of Jammu and Kashmir Vs. Bakshi Ghulam Mohammad*, .

10. Coming to the second category of cases, if the Government opines not to appoint a Commission of Inquiry, can the High Court issue a writ of mandamus under Article 226 of the Constitution of India?

11. In our opinion, the question has to be answered in the negative and this appears to be the view of several other High Courts. As stated earlier, Government has various sources to get at the relevant facts or information. It may get it from its Own departments or other agencies. It may also exercise its discretion, in a given case, to appoint a Commission of Inquiry to get at the factual position, provided there are definite matters of public importance in existence. But where the Government thinks that it can get the information from other sources, it will not, in our opinion, be permissible for the High Court to compel the Government to ascertain the said facts by one particular statutory body, namely, a Commission constituted under the Commissions of Inquiry Act, 1952. Mandamus cannot be issued to direct Government to exercise discretion in a particular manner. (De Smith's Judicial Review of Administrative Action 4th Ed. P. 543).

12. Mandamus enforces duties and not powers, but in some cases a power may be coupled with a duty so that the donee of the power would be obliged to exercise it. (Foulkes Administrative Law, 7th Ed. 1990, P. 368, P. 171). In *Julius v. Lord Bishop of Oxford* (1880) 5 A.C. 214 the statute provided that where a priest was charged with an office, "it shall be lawful for the Bishop of the Dioceses on the application of any party complaining thereof...to cause the matter to be inquired into". The House of Lords stated that the Bishop was not required and could not be required to set up an inquiry into the complaint

against the priest. The effect of the statute was merely to authorise and empower. It was, however, further held that the position was different if the power was coupled with a duty, Lord Cairns said:

There may be something in the nature of the thing empowered to be done, something in the object for which it is done, something in the conditions under which it is done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so. Where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out and with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the Court will require it to be exercised.

(emphasis supplied)

Lord Blackburn said:

If the object for which the power is conferred is for the purpose of enforcing a right, there may be a duty cast on the donee of the power, to exercise it for the benefit of those who have that right.

(emphasis supplied)

Thus, in *Julius v. Lord Bishop of Oxford* (1880) 5 A.C. 214, (supra), while the Court on facts refused to direct the Bishop to exercise his discretion to conduct an inquiry into charges against a priest on the ground that it was a case of mere conferment of power under the statute, the Court also laid down that if the power was coupled with a duty to exercise the power for the benefit of those who have the right, the Court could direct an enquiry to be conducted.

13. A similar question arose in *Re Fletcher's Application* (1670) 2 All E.R. 527 (HL). Note. u/s 5(1) of the Parliamentary Commissioner Act, 1967, it was provided that subject, to the provisions of this section, the Commissioner may investigate any action taken by or on behalf of a Government department or other authority to which this Act applies, being action taken in the exercise of administrative functions of that department or authority, in any case where (a) written complaint is duly made to a member of the House of Commons by a member of the Public who claims to have sustained injustice in consequence of maladministration in connection with the action so taken; and, (b) the complaint is referred to the Commissioner, with the consent of the person who made it, by a member of that House with a request to conduct an investigation. In that case, S.W.P.W. Fletcher, who claimed that the Commissioner had wrongly refused to make investigation of neglect of duty against the official receiver, sought leave to apply for an order of mandamus requiring the Commissioner to hear and determine the complaint. This was rejected by the Queen's Bench Division of the Court, the Lord Chief Justice Lord Parker observing that it appeared from the law

that the Commissioner had a complete discretion whether to initiate the inquiry, and adding that Fletcher's application was "hopeless": (see *The Times* and the *Guardian*, 28th January 1970, as quoted in the *Parliamentary Ombudsman*, 1975 by Roy Gregory and Peter Hutchinson). Subsequently, the Court of Appeal consisting of Winn and Karminski, LJJ and Sir Gordon Willmer, also refused leave. In the House of Lords, Lord Reid, Viscount Dilorne and Lord Diplock, refused leave to take the application to the House of Lords on the ground that there was no jurisdiction to order the Commissioner to investigate a complaint u/s 5(1). The word "may" in Section 5(1) was held to confer a "discretion to investigate or not".

14. In our view, the decisions in *Julius v. Bishop of Oxford* (1880) 5 A.C. 214 and *Re Fletcher's Application* (1670) 2 All E.R. 527 (HL), (supra) decided by the House of Lords are similar to the case on hand, and no mandamus can be issued as the provision in Section 3(1) of the Commissions of Inquiry Act, 1952 gives a mere power to the Government and does not at the same time confer any benefit on any person or group of persons having a corresponding right to call upon the Government to have an inquiry conducted—Here the power u/s 3(1) is conferred on the Government "to inform its mind" or to find out if certain facts exist and it is for the Government to consider whether it will ascertain the facts through its own sources, or its own departments or by appointing a Commission of Inquiry. No corresponding right is thereby conferred on any person to compel the Government to appoint a Commission of Inquiry. No doubt, if the Government appoints a Commission, the Court could examine that too within very limited grounds specified in *Ram Krishna Dalmia's case* (ibid), and *State of Jammu and Kashmir Vs. Bakshi Ghulam Mohammad*, whether the appointment of the Commission should be interfered with.

15. Before parting with this aspect of the matter, so far as the English cases are concerned, reference has to be made necessarily to *Padfield v. Minister of Agriculture, Fisheries and Food* (1968) A.C. 997, where refusal to order an inquiry was quashed. It has become necessary because the Orissa High Court in its recent judgments (to which we shall presently refer), while issuing a writ of mandamus for a Commission of inquiry to be appointed, relied upon *Padfield's case* (1968) A.C. 997).

15(a). The decision in *Padfield's case* (1968) A.C. 997 turned upon Section 19 of the Agricultural Marketing Act, 1958. u/s 19(3), "a committee of investigation shall...(b) be charged with the duty, if the Minister in any case so directs, of considering and reporting to the Minister on...any...complaint made to the Minister as to the operation of any scheme which, in the opinion of the Minister, could not be considered by a Consumer's Committee. The South-East Regional Producers of Milk asked the Minister to refer the matter to a Committee of Investigation and when the Minister refused to do so, applied to the Court for a mandamus. The Minister gave among his reasons for refusing to appoint a committee of investigation, stating that the complaint was unsuitable for

investigation because it raised "wide issues" and that the Minister owed no duty to producers in any particular region. This defence was rejected by the House of Lords, holding that these were bad reasons for refusing to appoint a Committee and showed that the Minister had misunderstood the policy and intention of the Act which was that genuine and substantial complaints of this nature should be investigated by a Committee of investigation. The inquiry was for the benefit of the complainant-milk producers. It was also held that the Minister could not refuse to act on a complaint without giving reasons. Lord Pearce said:

If all the *prima facie* reasons seem to point in favour of his taking a certain course to carry out the intentions of Parliament in respect of a power which it has given to him in that regard and he gives no reason whatever for taking a contrary course, the Court may infer that he had no good reason and that he is not using the power given by Parliament to carry out its intentions. In the present case, however the Minister has given reasons which show that he was not exercising his discretion in accordance with the intentions of the Act.

(emphasis supplied)

A mandamus was issued, but only requiring the Minister to consider according to law whether to refer the complaint or not.

No mandamus was issued to the Minister to make a reference.

16. But, in our view, *Padfields case* (1968) A.C. 997 is clearly distinguishable. That was a case conferring a power on the Minister with a corresponding duty to "persons affected by the scheme" as specified in Section 19(3) and it was not a case of conferment of power on the Minister exclusively "for informing his own mind". But where power is coupled with a duty, the position must obviously be different and mandamus can be issued as pointed out above in *Julius v. Bishop of Oxford* (1880) 5 A.C. 214, (*supra*) though in that case, on facts, inquiry was not directed as it was not a case of power coupled with duty.

17. Even in cases where the power is coupled with a duty to refer and there is a refusal to refer, but no reasons are given, the question is now the subject of considerable debate. The Court will not issue a writ of mandamus for reconsideration, if no reasons, for refusal to refer, are given unless there is a duty to refer and the refusal to refer is irrational or illegal. This further aspect has been considered recently in *Lonrho Plc v. Secretary of State for Trade and Industry* (1989) 2 All E.R. 609 (HL). There the point arose u/s 64(4)(b) of the Fair Trading Act, 1973, the secretary of state should have referred a question relating to merger of two companies of the Monopolies and Mergers Commission. That section empowered the Secretary of State to make such a reference "if it appeared to him", that there were new material facts about the merger. The Queens' Bench Division granted mandamus holding that the decision "not to refer" the merger was *ultra vires*. The Court of Appeal reversed the same. The House of Lords dismissed a further appeal, holding that there was "no duty" imposed upon the Secretary of State by the Fair Trading Act, 1973 to make a

reference to the Commission in any given case and that in the circumstances, the applicant had failed to show that no reasonable Secretary of State could have failed to make a reference. It was argued that if no reasons were given, the Court must presume that there were no good reasons to give and that the refusal to refer must be treated as bad in law. Reliance for the Appellant was placed on Padfield's case (1968) A.C. 997 and on the observations of Lord Pearce (pages 1053-54) therein that if the Minister did not give reason."; for ordering an inquiry and if prima facie there was other material available before the Court as to why he ought to have ordered an inquiry, then "the Court may infer that he had no good reason" for not ordering inquiry. Distinguishing Padfield's case (1968) A.C. 997 the House of Lords held in Lonrho's that:

The absence of reasons for a decision where there is no duty to give them cannot of itself provide any support for the suggested irrationality of the decision. The only significance of the absence of reasons is that if all other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision-maker who has given no reasons, cannot complain if the Court draws the inference that he had no rational reason for his decision.

(emphasis supplied)

Thus, the refusal of the Secretary of State to refer the matter to the Commission was held valid.

18. The difference between Padfield's case (7) and Lonrho's case (1989) 2 All E.R. 609 (HL) has been considered by leading writers.

19. In "Judicial Remedies in Public Law" by Clive Lewis, (1992) (p. 167), the point of distinction between these two cases is stated as follows:

There are rare occasions where if all the circumstances point to a discretionary power being exercised in a particular way the Courts may regard the body as being under a duty to exercise the discretion. The highwater mark of this reasoning was reached in Padfield, where the Courts indicated in clear terms that a power to refer a complaint to a committee of investigations should be exercised. Even here, mandamus only issued requiring the Minister to consider according to law whether to refer the complaint and did not order the Minister actually to make a reference. More recently in R. v. Secretary of State for Trade and Industry, Ex. P. Lonrho, the Divisional Court specifically required a Minister to refer a merger to the Monopolies and Mergers Commission even though the Minister had a discretion (as opposed to a duty) to refer. This decision was reversed on appeal: the House of Lords refused to accept a form of reasoning which, as they pointed out, would convert a discretion into a duty. Lonrho, marks a return to the position whereby the Courts will not normally grant mandamus to compel a public body to exercise a discretion in a particular way, although they will of course quash an unlawful exercise of the discretion and require the public body to reconsider the decision. There are good practical and constitutional reasons for this; it is the public body in whom the power is vested and which will

have access to the full range of material relevant to the decision.

(emphasis supplied)

20. In FouIke's Administrative Law (7th Edn., 1990, P. 312), it is pointed out:

It is of course clear that if reasons are given the decision can be attacked for inadequacy of reasons or as disclosing an error of law, even though there was no duty to give them. But it is not the case that if there is no duty to give them, and they are not given, that the decision is beyond challenge.... In *Padfield v. Minister of Agriculture, Fisheries and Food*, the Minister was under no duty to give reasons for refusing to refer a complaint to a committee... If the Act appeared to favour his taking a certain course, and he took a contrary course without giving reasons, the Court might infer that he had no good reasons for doing so and was thus not using his power for the purpose intended by the Act; his action would be unlawful on that ground, not for not giving reasons... This was relied on by the Plaintiff" in *Lonrho Pic v. Secretary, of State for Trade and Industry*. The Minister's decision not to refer a take-over bid was attacked for irrationality... The House said: "The absence of reasons for a decision where there is no duty to give them cannot itself provide any support for the suggested irrationality of the decision. The only significance of the absence of reasons is that if all the other known facts and circumstances point overwhelmingly in favour of a different conclusion, the decision-maker who has given no reasons cannot complain if the Court draws the inference that he had no rational reasons for his decision".

(emphasis supplied)

In our view, both *Padfield* (1968) A.C. 997 and *Lonrho* (8) were cases of the power coupled with a duty to refer. In *Padfield's* case (1968) A.C. 997 there was, on facts, a duty to give reasons and the refusal to give reasons was found to be irrational and illegal because of other material before court which showed that *prima facie* reference could have been made. In *Lonrho's* case (8) it was found that there was no duty to give reasons-obviously because there was no such material to the contrary. In our view, these two cases are distinguishable inasmuch as there the power was coupled with a duty. However, if a power alone is conferred on the body for its own purposes, namely, to gather facts for considering what further legislative or administrative measures are necessary, there being only a power conferred with no duties towards anyone, the court will not grant mandamus. In cases where a "power" alone is conferred without a duty, the silence on the part of Respondent or a refusal to refer, cannot, in our view, be treated as illegal or irrational, and no mandamus can be issued. For the aforesaid reasons, we respectfully dissent from the view of the Orissa High Court in *Janamohan Das v. State of Orissa OJC 3676 of 1992*, dated 5th November 1992 and *State of Orissa v. Janamohan Das OJC 3676 of 1992*), dated 8th January 1993 wherein while issuing a writ of mandamus directing a Commission of Inquiry to be appointed, the learned Judges heavily relied upon *Padfield's* case

(1968) A.C. 997.

21. Before we refer to the decisions of other High Courts under the Commissions of Inquiry Act, 1952, we shall refer to certain cases where the Courts refused to issue a mandamus in respect of exercise of power simpliciter. In *Moolchand Gupta Vs. Jagannath Gupta and Co. (P) Ltd.*, , while dealing with Section 235 of the Indian Companies Act, 1956, the Supreme Court observed that having regard to the use of the word "may", it was not obligatory for the Central Government to direct an investigation by company inspectors into the affairs of a company. The Government, it was held, has "a discretion to appoint or not to appoint" inspectors for investigating the affairs of the company. No doubt, if the Government decides to appoint inspectors and passes orders to that effect, the affected parties could seek certiorari on the ground that the pre-conditions mentioned u/s 236 did not exist. The Madras High Court has said, in *Indian Express Madurai Private Ltd. v. Chief Presidency Magistrate* (1974) 44 Comp. Caa. 106 (Mad.) that u/s 237(b) it is not mandatory on the part of the Central Government to order an investigation and to call for a report even if the conditions stated in Section 237(b) exist, because of the use of the word "may". The Government could lay the information it has, before the police if a cognisable offence is disclosed on an inspection u/s 209(4) or otherwise.

22. Similarly, if a person is selected by a selection authority, he cannot seek a mandamus directing the employer to appoint him: *Shankarsan Dash Vs. Union of India*, , unless the rules cast such a duty to appoint. No writ of mandamus lies against the Government to bring into force a constitutional amendment passed by Parliament: *A.K. Roy v. Union of India* AIR. 1932 S.C. 710. Examples can obviously be multiplied. The position, in our view, is the same with respect to the power u/s 3 of the Commissions of Inquiry Act, 1952, where a mere power is vested in the Government without any duty.

23. We shall now refer to the decisions of other High Courts under the Commissions of Inquiry Act, 1952. In *Bhagwai Dayal Sharma v. Union of India* AIR 1991 S.C. 1612, a Division Bench of the Delhi High Court consisting of S.N. Andleg, C.J. and Shankar, J. held that a writ of mandamus for directing the Central Government to appoint a Commission of Inquiry does not lie. Reliance was placed by the learned Judges on *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, and other cases so far as general principles are concerned. It was held that the writ Petitioner had no locus standi. *Padfield's case* (1968) A.C. 997 was distinguished on the ground that there the complainants were interested in the price-structure of milk and had locus standi and in particular because Section 19(3)(b) of the relevant English Act contemplated the making of a complaint to the Minister. Reference was also made to *Julius v. Bishop of Oxford* (1880) 5 A.C. 214, on the other point that if the power was coupled with a duty, mandamus could issue. It was then stated:

We do not find any persons having been specifically pointed out in the said Act who are entitled to call for the exercise of the power.

Mandamus was refused on the ground mainly of locus standi. We have given additional reasons culled out from the same English cases as to why mandamus could not be refused. In *Peoples Union for Democratic Rights v. Ministry of Home affairs*. AIR 1985 Del. 268, Yogeshwar Dayal, J. (as he then was), and Kirpal, J. refused to issue mandamus on the ground of want of any statutory right in the Petitioners in a public interest litigation. It was also held that the discretion was with the Government and that Government was not under a legal or statutory obligation to appoint a Commission of Inquiry even on a definite matter of public importance except in the case of resolutions passed by the concerned legislatures. The Rajasthan High Court held in *Vijay Mehta Vs. State of Rajasthan*, that Petitioner therein had no locus standi and that u/s 3, the Government is not under a legal or statutory obligation to appoint a Commission of Inquiry even on a definite matter of public importance, except as stated earlier. *Padfield's Case* (1968) A.C. 997 was held not to apply to the situation though the principle therein was accepted by the Supreme Court in *Hochtief Gammon Vs. State of Orissa and Others*, . The Madras High Court in *B. Jegnathan Vs. State of Tamil Nadu and another*, , held that-the High Court had no "jurisdiction" to direct appointment of a Commission, following the decision in *Dhronamraju Satyanarayana Vs. N.T. Rama Rao and Others*, . The Allahabad High Court too in *Maharshi Avadhesh Vs. State of U.P.*, , held that mandamus to appoint Commission of Inquiry cannot be issued. In *Rajendran v. Home Secretary, Government of India* 1982 K.L.J. 326, a Division Bench of this Court refused to direct the Government to appoint a Commission of Inquiry.

24. For the aforesaid reasons, we are of the view that in a public interest litigation a writ of mandamus cannot be issued for directing the Government to appoint a Commission of Inquiry. Point No. 1 is held against the Petitioners.

25. Point No. 2.-The question is whether in a public interest litigation the Respondents can be directed to have an inquiry conducted by the Central Bureau of Investigation. The relevant statute is the Delhi Special Police Establishment Act, 1946. u/s 2(1) of that Act, the Central Government may constitute" a special police force for an investigation into offences notified u/s 3, in any Union Territory. Section 2(2) states that subject to any orders which the Central Government "may" make in this behalf, the said police establishment shall have powers of investigation and arrest. as specified therein. Section 3 enumerates the offences to be investigated. Section 5 states that the Central Government "may" by order extend the Act to any area in a State, etc., as stated therein.

26. Therefore, the Act confers powers on the Central Government to have various investigations made, for the purposes permitted by the Act. The Act confers powers and these powers are not coupled with any duties towards any persons. Hence no mandamus can be issued directing the Government to exercise its powers or discretions in a particular manner. A Division Bench of the Delhi High Court in *People's Union for Democratic Right v. Ministry of Home affairs* AIR 1985 Del. 268 held so. We are in entire agreement with the said

decision for the reasons given therein and for the reasons given by us under point. No. 1, which are equally applicable to point No. 2 under discussion. We hold that it is not open to the High Court to direct the Government to appoint the C.B.I. in respect of any inquiry.

27. The decision of a learned Single Judge of this Court in *T. Sarojini Ammal v. Union of India* ILR 1992 Ker. 391 states" that this Court can give directions to the police if they failed in their statutory duties but that this is not a matter of right for the party. That was a case where a mandamus was sought for directing the C.B.I. to investigate a case. None of the rulings quoted therein directly relates to the issue of a mandamus to the Government to direct the C.B.I. to inquire into a case. If the learned judge meant that this Court can issue a writ of mandamus in a public interest litigation directing the C.B.I. to inquire into any matter, we respectfully disagree with such a view. In our opinion, this Court cannot issue any such mandamus in a public interest litigation to the Government to exercise statutory powers as the powers of the. Government are not coupled with any duty towards any person. We are not referring to some other rulings cited for the Petitioners as none of them deals directly with the point. Point 2 is decided accordingly.

28. What we have said is clearly restricted to cases arising in the context of public interest litigation Wherein mandamus is sought for the exercise of powers under the Commissions of Inquiry Act, 1952 and the Delhi Special Police Establishment Act, 1946. Further, we make it clear that we are not concerned here with the jurisdiction of this Court under other statutes or in regard to other types of cases or other situations.

The O.Ps. are dismissed. No. costs.

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