

(1995) 01 DEL CK 0051

In the Delhi High Court

Case No : Civil Miscellaneous Appeal No. 2827 of 1994 and Civil Writ Appeal No. 1544 of 1994

Mustaq Ahmed

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-01-1995

Acts Referred:

Citation : (1995) ILR Delhi 655

Hon'ble Judges : M. Jagannadha Rao, J;D.K. Jain, J

Bench : Division Bench

Advocate : C.S. Vaidhyanathan, K.V. Mohan, B. Datta, P.N. Nag, K.L. Arora, A.P. Ahluwalia, Harish Gulati, P.R. Seetharaman, R.N. Mittal, U.L. Watwani and B.L. Wadhera, for the Appellant;

Judgement

M.J. Rao, J.

(1) Terms of Reference to Jain Commission : The Jain Commission of fuquary was appointed by the Government of India on 23-8-1991 in connection with the assassination of Shri Rajiv Gandhi, former Prime Minister of India Justice J. S. Verma Commission submitted its Report-on 23-3-1992 while the Special Investigation Team (SIT) of the Cbi submitted a charge sheet on 20-5-1992 before the Designated Court at Madras against 41 accused persons out of whom three were found absconding and twelve were dead. The case has starred before the Designated Court and the trial is on.

(2) The reference to the Jain Commission concerned two issues (and the first issue consists of two parts). The inquiry is to be into :

(A)(i) the sequence of events leading to the assassination of Shri Rajiv Gandhi.
(ii) all the facts and circumstances relating to the assassination of Shri Rbjiv Gandhi. (other than the- matters covered by the Justice J. S. Verma Commission); and

(B) whether any person or agencies were responsible for conceiving, preparing

and planning the assassination and whether there- was any conspiracy in this behalf and, if so, all its ramifications. II. Order of Commission dated 2-7-93 imposing self-restraint on itself:

(3) In this C.M. we are first concerned with the .order of the Jain Commission dated 2-7-1993 (which contained the reasons for a brief order dated 1-6-1993). It was contended before the Commission by the then Attorney General that the Commission had no jurisdiction to conduct any inquiry into the areas covered by the. charge sheet submitted by the Sit before the Designated Court. The Government had confidence in the Sit and its investigation into cognizable offences was, under Chapter Xii of the Code of Criminal Procedure, statutory. The submissions were reiterated by the counsel for the Central Government. The counsel for the State of Tamil Nadu contended that the Commission's jurisdiction was vide enough to cover the areas covered by the charge sheet of the Sit, but the Commission might refrain from going into those areas. The Commission held that it had jurisdiction to cover the entire area covered by the charge sheet but observed:

".. .In my humble opinion, the object of the Tada Act would be not defeated and the Commission of Inquiry would be competent to make an inquiry keeping in view the provisions contained u/s 16 of the Tada Act. The inquiry should be conducted in such a fashion so that the provisions of the Tada Act, particularly Section 16, are not violated, rather they are observed and followed. The Commission of Inquiry is required to hold the proceedings in camera without disclosing the identity and addresses of the witnesses and, further without publishing its proceedings."

The Commission held that Section 173(2) Criminal Procedure Code . did net apply to the Commission and it has powers to call for case diaries and other documents relating to the investigation.

(4) But having said so, the Commission imposed what is described now as a "self-restraint" in the concluding part of its order dated 2-7-1993 which is in four paragraphs which read as under : Conclusion:

First the Commission for the present would not go into the areas covered by the charge-sheet and will probe into areas which are outside the charge-sheet and will proceed to hold an inquiry in respect of persons and agencies, other than those against whom charge-sheet has been filed in he Designated Court, who are responsible for conceiving, preparing and planning the assassination of Shri Rajiv Gandhi ,former Prime Minister of India

Second "the Sit will make the case diary, documents, records and materials concerning investigation avail- able to the Commission keeping in view the requirements of the trial of the case before the Designated Court, simultaneously also seeing that the progress in the inquiry" by the Commission is not hampered or delayed;

Third the matters covered by the terms of reference of Justice Verma Commission would be outside the purview of this Commission; and

Fourth the Commission shall take into account the sequence of events beginning from 1981 till 21-5-91, the day of assassination."

III. Order of Commission dated 17-11-1993 proposing to inquire into events from 1981 and not from 29-7-1987 etc.

(5) Next comes the order dated 17-11-1993 passed by the Commission on an application filed by the State of Tamil Nadu, to fix a out-off date for determining the "sequence of events" leading to the assassination. This is covered by the 1st part of the issue (a) set out above. The application stated that the Indo-Sri Lanka Accord was signed on 29-7-1987 and that it was only thereafter that the relevant events which Were intimately connected with the assassination might have occurred. But the Commission, in its order took the view that the events from 1981 when ethnic riots broke out in Sri Lanka were relevant under the first part of issue (a). The Commission concluded in its order dated 17-11-1993 :

"I, Therefore, find no valid ground to revise the out-off date from the year 1981 to 29th July, 1987. To my mind, the application submitted by the Government of Tamil Nadu has no substance. It is hereby rejected".

The above order contains an Annexure which sets out "Criminal activities indicating gun and bomb culture from 1982 to 1986". (The Government of India reserved its right to file a fresh application similar to the one filed on 14-8-1993).

(6) On 17-2-1994, the Commission passed an order recording that the State of Tamil Nadu had no objection for the use of the unpublished records of the Tamil Nadu Government and of the affidavits filed before the Commission. The Commission, however, made it clear that :--

"IN case, any party calls for any document relating to the affairs of the State, it will be open to the Government of Tamil Nadu to claim privilege."

The Commission also gave dates for deciding certain questions relating to privilege raised by the counsel for the Central Government. On 28-4-1994 the Commission granted time to the Central Government to examine the entire records of all the agencies, Departments and Ministries and then to examine the question of privilege. IV. Interim order dated 2-5-1994 of the High Court :

(7) This Writ Petition was filed by Mr. Mustaq Ahmed on 6-4-1994 for quashing the order dated 2-7-1993 and 1-11-1993 among other reliefs. It was admitted on 2-5-1994.

(8) In C.M. 2827194, this Court passed an interim order on two aspects (1) allowing the Commission to go into events which occurred on or after 29-7-98 7 for purposes of the first part of issue (a) referred to the Commission and (2) allowing the Commission to go ahead with its inquiry "but subject to the further condition that it shall go into the areas not covered by the charge- sheet in the

Designated Court at Chinglepet. It can proceed to hold an inquiry in respect of persons and agencies, other than those against whom charge-sheet has been filed in the Designated Court, Chinglepet, who are allegedly responsible for conceiving, preparing, conspiring and planning the assassination of Shri Rajiv Gandhi, former Prime Minister of India". This Court specifically stated :

"THIS order will be in force until further orders".

V. Subsequent proceedings taken up by the Commission on various dates:

(9) Thereafter, no party came up with any application for vacation or modification of the above order dated 2-5-1994. The Commission went ahead with its inquiry after 2-5-1994 as the same was not prohibited by this Court. What is more, the Commission itself stated in its orders dated 30-6-1994 as follows :

"IT may be stated that the Hon'ble High Court in its order dated 2-5-1994 has not stayed the entire proceedings of the Commission..... It would appear from the above order that the operation of both the orders dated 2-7-1993 and 17-1-1993, as such has not been stayed. Its scope of inquiry has been restricted."

The Commission stated that there was no need to stay the inquiry, but the Government of India wanted adjournment, to examine the documents etc. as stated in its order dated 28-4-1994, it could seek time. The Commission also Observed it would decide the question of privilege, if any, claimed by tile practices.

(10) The Commission took other steps on 9-8-1994 directing evidence to be produced relating to the period from 29-7-1987 to 21-5-1991. On 9-8-1994 another order was passed stating that one of the political parties, if it was aggrieved by the interim order of the High Court, it could agitate the question before the "appropriate forum". The contention of a political party that the Commission should have moved the Apex Court was not accepted. It was stated that the Commission has filed its affidavit before this Court. On 25-8-1994, orders were passed by The Commission on various matins including the question of privilege. Various steps were taken on 23-9-1994. On 21-30-1994, directions were issued to the Ministry. Agencies and Departments to themselves go into the question of privilege; in regard to segregation of documents and and affidavits of Central Government and Tamil Nadu Government and certain further orders were passed on 17-11-1994 and 18-11-1994 in relation to various documents.

(11) On 29-11-1994, the Commission stated that for the present the Commission was inquiring into first part of first issue (a) referred to the Commission. It is not now inquiring, into 2nd part of first-issue (a) and second issue (b) and that "at this stage the Commission would act according to the High Court's order and its own order". VI. Order of the Commission dated 19-12-1994 :

(12) Then we come to the last of the recent orders of the Commission dated 19-12-1994. Theie, it has stated under Item No.3 relating to the question :

"THE question as to whether Ltte is an agency and no activity of Ltte can be inquired into by the Commission in "view of the interim order dated 2-5-1994 of the High Court of Delhi".

and held that, in its order, "for the present" it confined itself to areas outside the charge-sheet in relation to first part of first issue (a) but the question arose in that context whether Ltte was an agency and whether Do activity of Ltte can be enquired into by the Commission :

"IN view of the interim order of the High Court".

After stating that the Central Government is in possession of documents and evidence that the "Central Government should Therefore identify the areas covered by the charge-sheet so that the Commission may continue to hold the inquiry into areas other than those: which are covered by the charge-sheet". As time was asked for the said purpose by the Government, the Commission said :

"IN view of the interim orders of the High Court, I consider it necessary to allow to the Central Government three weeks time so that the Commission may proceed to continue with the inquiry into areas not covered by the charge-sheet".

Having .said so, the Commission proceeded to refer to the High Court's order dated 2-5-1994 and .observed that :

".. .when more than three years have already passed since the consultation of the Commission ,that this Commission may hold an inquiry into the rest of the terms of reference of this Commission i.e. second part of the first term of reference and the second term of reference. This was deferred. earlier so that trial may proceed expeditiously. But this has to be done subject "a the interim order of the High Court".

The Commission then stated :

"THE-Commission "all now proceed to hold an inquiry into all the terms of reference of the Commission including the second part of the first term of reference and the second term of reference subject to the order of the Hon"ble High Court. The matter will now be taken up on 3-2-1995 after identification of the areas covered by the charge-.sheet by the Central Government".

VII. High Court's order: dated 2-5-1994 is nothing but an "adoption of the self-restraint order of the Commission dated 2-7-1993 (exempt as to clause four).

(13) Much has been said after this Court's order dated 2-5-94 that this Court had restricted the scope of the inquiry by the Commission to the extent not covered by the Sit charge-sheet in the Designated .Court. It "is not necessary to advert to the criticism or comments made against the interim order of this Court dated 2-5-1994. Firstly, this Court did not (barring the issue. relating to the period from 29-7-1987), as is clear from the above facts, do anything than adopt word for word the self- restraint order dated 2-7-199"? passed by the Commission that it did not propose to go into areas covered by the charge-sheet

in the Designated Court. Secondly, the Commission had itself thought of not going into second part of the first issue and the second issue as well. Here too. this Court had not imposed any restriction. On the other hand this Court specifically stated that (emission could go ahead with the inquiry.

(14) We are rather sorry to say that the self restraint imposed make process, that should be attributed to this Court.

(15) We make it emphatically clear that this Court was and is always interested to expeditious conclusion of the inquiry the Commission and its arriving at the truth in regard to the assassination shri Rajiv Gandhi. We are unable to perceive where this Court had come in the way of the progress of the inquiry in the wake of the wake of the self-restraint order passed on 2-7-1993 by the Commission itself.

(16) What is more is that even before us now, the learned counsel for the Commission, Shri K.L.Arora, stated on behalf of the Commission that it not the intention or desire of the commission to do anything which would jeopardise and prejudicially affect the trial before the Designated Court at Chingepet inquiring into the charges framed against 41 person.. Counsel splitted that the Commission does not wish, even now to do anything which impinges on the charge-sheet before the Designated Court. That would mean. that to that extent the Commission is still keeping its self-restart order dated 2-7-1993 effective. The only relaxation it has made in its latest order dated 19-12-94 is that instead of confining itself to the first part of first issue (a), it would like to investigate the second part of first issue (a) and also the second part. "This Court never imposed any restraint in that behalf at any time. VIII. Result of order of 10-12-1994 of the Commission and the High Court"s, order dated 2-5-1994;

(17) The result then is that this Court did not ever restrain the Commission in its order dated 2-5-1994 from dealing only with second part of first issue (a) or with the second issue (b). If the Commission wants to investigate into both parts of issue (a) and issue (b) it was always and is now also Free to proceed. This Court is not to be blamed in this behalf at all.

(18) Then if the Commission had decided in its self-restraint order dated 2-5-1994 not to cover areas covered by the charge sheet, in. the designated .Court and if as clearly stated by it counsel. Mr. K I. Arora. that even now it is not-the- intention of the Commission to embark on any inquiry which jeopardizes or prejudicially affects the inquiry into the charges in the charge-sheet before the Designated Court at Chinglepet, that statement is surely sufficient assurance and is in conformity with this Court"s order dated 2-5-1994. In that view of the matter, we consider it not necessary to continue our order dated 2-5-1994 (except in relation to the aspect that the inquiry will cover the period from 29-7-1987). We say so not because there was anything wrong in our order dated 2-5-1994, but because we deem it unnecessary to continue our order dated 2-5-1994 to that extent. We do so accordingly.

(19) It was always open and it is always open and we have never imposed any restraint on the Commission to go ahead with both parts of first issue (a) and second issue (b) and in terms of the statement made by its counsel Mr. K. L. Arota, referred to above, so as not to jeopardise or prejudicially effect the inquiry in the Designated Court at Chinglepet.

(20) As to the question whether the inquiry could be for the period from 1981 to 29-7-1987, the matter will be heard separately and to that limited extent, our interim order dated 2-5-1994 will continue, until further orders.

(21) We have chosen to pass this detailed order mainly to dispel the misinformation and disinformation being circulated that this Court had restricted the scope of the inquiry into matters outside the charge-sheet in the Designated Court at Chinglepet. There is no truth in the said criticism. Further, if the Commission has to decide, in the course: of its inquiry, into any claim for privilege, that was not because of any order passed by this Court, but flowed from the self-restraint order dated 2-7-1993 of the Commission itself. Nobody cm; attribute those difficulties to any order passed by this Court. we are told the matter is coming up before the Commission on 2-2-1995 and we wanted to put the record straight before this date.

(22) Counsel for the central Government and the State of Tamil "Nadu mentioned to us that documents required or summoned have been placed before the Commission and that they have been and will fully co-operate with the Commission. There are no opposing parties before a Commission. All are Interested in a single endeavor to ascertain the truth. All are agreed -including the Commission that nothing should be done in the Commission which will jeopardise or prejudicially affect the case in the Designated Court at Chinglepet. It will be for the Commission to combine the delicate task of completing, the inquiry and in the light of- its- own intent and desire not to jeopardise or prejudicially affect the case in the Designated Court.

(23) The C.M. is disposed of to this extent for the present as indicated above. dusty. List the matter for directions on 28-3-1995.