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**(1980) 08 MAD CK 0025**

**In the Madras High Court**

**Case No : W.A. No. 14 of 1980 and W.P. No. 4248 of 1979**

N. Manoharan

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

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**Date of Decision : 07-08-1980**

**Acts Referred:**

Commissions of Inquiry (Tamil Nadu) Rules, 1972 — Rule 10, 7  
Commissions of Inquiry Act, 1952 — Section 8  
Constitution of India, 1950 — Article 226, 311

**Citation : AIR 1981 Mad 147 : (1981) 94 LW 51**

**Hon'ble Judges : Swamikkannu, J;Ramanujam, J**

**Bench : Division Bench**

**Advocate : P. Chidambaram, for the Appellant; Govt. Pleader, for the Respondent**

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## **Judgement**

Ramanujam, J.—The appellant in the writ appeal and the petitioner in the writ petition who is the same person was a Warder, Grade II in

the Central Prison, Madras, during the period from 15-9-1971 till 10-3-1978. The State Government by G. O. Ms. No. 1202 Public (Law and

Order-A) dated 21-5-1977 appointed a commission of enquiry under Sec. 3 of the Commissions of Inquiry Act 1952 to enquire into the incidents

of beating and ill-treatment that is alleged to have taken place in the Central Prison, Madras, during February 1976. The said Commission of

Enquiry submitted its report to the first respondent on 26-9-1977. Paras 4.56 and 7.26 of the said report deal with the appellant's conduct as

Warder and the Commission of Enquiry gives the following findings therein as regards the appellant's conduct :

Consequently, J have no hesitation in coming to the conclusion that Thiru Manoharan took part in the beating of the detenus on the night of 2nd

February. 1976 in the ninth block. Under these circumstances. I am definitely of the opinion that the jail officials had a regular policy. of beating

every political detainee at the earliest possible opportunity on their admission and that such beating had been severe and merciless"".

Based on the said finding disciplinary proceedings have been initiated by the first respondent against the appellant and the second respondent has

been appointed as the Enquiry Officer. The Enquiry Officer has served on the appellant a charge memo alleging that the-appellant has beaten the

detenus and had followed a regular policy of beating political detenues at every available opportunity after their admission and that such beating has

always been severe and ruthless causing injuries. This charge was purely based on the findings given by the Commission of Enquiry in paragraphs

4.56 and 7.26 of its report. On service of the memo of charges. the appellant filed two writ petitions, W. P. Nos. 4248 of 1979 and 4249 of

1979. W. P. No. 4248 of 1979 was admitted but the W. P. 4249 of 1979 was dismissed.

2. Since the issues involved in the writ appeal as well As in the writ petition are practically the same they are dealt with together.

3. W. A. No. 14 of 1980 is directed against the order of V. Ramaswami. J, in W. P. No. 4249 of 1979 . rejecting the appellant's writ petition for

the issue of a writ of certiorari to quash paragraphs. 4.56 and 7.26 of the report dated 26-9-1977 of the Commission of Enquiry appointed to

enquire into the alleged incidents of harassment and ill-treatment of the detenues alleged to have taken place in the Central Prison Madras during

February. 1976 to February, 1977.The said writ petition has been dismissed by the learned Judge on the ground that the report itself has no legal

force proprio vigore, and therefore, it cannot be the, subject matter of quash proceedings under Article 226 of the Constitution of India and that

the nature of the Commission's report being an informative one and the findings thereon not being enforceable by or against any of the parties, it

cannot be quashed at the instance of the appellant. Aggrieved against the dismissal of the writ petition the petitioner has come up in appeal.

4. In this appeal, the main contention urged by the learned counsel for the appellant is that even though the report of the Commission of Enquiry

dated 26-9-1977, has no legal and binding force. so long as it contains a finding that the appellant is guilty of taking part in the beating of the

detenus on the night of 2nd February, 1976 in the 9th block of the Central Prison,, Madras the appellant is entitled to question that finding which has been rendered without giving any opportunity to, him to put forward his case in defence. According to the learned counsel for the appellant, though the report is not legally enforceable *proprio vigore*, the State of Tamil Nadu has taken advantage of the said finding contained in that report and has initiated the departmental proceedings only on the basis of the said finding and in those circumstances, the appellant is entitled to seek the quashing of that portion of the report which affects him. The learned counsel also, points out that Whatever be the nature of the report of the Commission of Enquiry, since it has not complied with the mandatory provision contained in Section 6-B of the Commissions of Inquiry Act, 1952, under which the Commission is under a duty to give, a reasonable opportunity of being heard in the enquiry. the relevant portion of the report which finds the appellant to be guilty of beating the political prisoners on the night of 2nd February, 1976, in the Central Prison, Madras. without giving an opportunity of being heard has to be set aside.

5. In the counter-affidavit filed on behalf of the respondents they do not dispute the allegation of the appellant that he was not given any opportunity before the Commission rendered its findings in paragraphs 4.56 and 7.26. Even apart from this, the records of the Commission of Inquiry show that no summons was issued to the appellant asking him to put forward his defence with reference to the allegation of his beating the detenus in the central jail on 2nd February, 1976. Therefore, the allegation of the petitioner appellant that the mandatory provision. Section 8-B of the Commissions of Inquiry Act as also Rr. 7 and 10 of the Commissions of Inquiry Tamil Nadu Rules. 1972, have not been complied with appears to be true.

6. Section 8-B of the Commissions of Inquiry Act 1952. is as follows--

8-B. If. at any stage of the inquiry, the Commission

(a) considers it necessary to inquire into conduct of any person; or

(b) is of opinion that the reputation of any person is likely to be prejudicially affected by the inquiry, the Commission shall give to that person a

reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

Rr. 7 and 10 are as follows-

T The manner of holding enquiry and the procedure to be followed:-

1. The Commission shall, as soon as may be after its appointment.

Notice: (a) issue a notice to every person, who, in its opinion. should be given an opportunity of being heard in the inquiry, to furnish to the

Commission a statement relating to such matters as may be specified in the notice;

(b) issue a notification to be published in such manner as it may deem fit, inviting all persons acquainted with the subject matter of the inquiry, to

furnish to the Commission a statement relating to such matters as may be specified in such notification.

2. Every statement furnished under sub-rule (1) shall be accompanied by an affidavit in support of the facts set out in the statement sworn or

solemnly affirmed by the person furnishing the statement.

3. Every person furnishing a statement, under sub-rule (1) shall also furnish to the Commission, along with such statement, wherever , possible, the

originals or true copies of such of the documents as may be in his possession or power and shall state the name and address of the person with

whom the remaining documents are available .... ..

10. Persons likely to be Prejudicially affected to be heard:-

If, at any stage of the inquiry, the Commission

(a) considers it necessary to inquire into the conduct of any person; or

(b) is of the opinion that the reputation of any Person is likely to be Prejudicially affected by the, inquiry, the Commission shall give to that person a

reasonable opportunity of being heard in the inquiry and to produce evidence in his defense.

Under the above said section of the Commissions of Inquiry Act and the rules framed there under the Commission of Enquiry appointed under the

provisions of the said Act is bound to give a reasonable opportunity to the Person whose conduct is sought to be inquired into and Whose

reputation is likely to be prejudicially affected by the inquiry-Admittedly the report in paras 4 (56) and 7 (26) specifically deals with the conduct of

the appellant and the finding given therein has affected the reputation of the appellant. Therefore, that portion of the report which deals with the conduct and reputation of the appellant, without giving the appellant an opportunity of being heard in the inquiry should be taken to be vitiated for violation of S. 87-B of the Act. It is true that the report of the Commission of Inquiry has no legal force propriety vigor. But however, it is seen in this case that the findings rendered by the Commission of Inquiry in paras 4 (56) and 7 (26) have been taken as the sole basis for initiating the disciplinary proceedings against the appellant. In these circumstances, the appellant is entitled to put forward his grievance that the Commission of Inquiry has given findings regarding his conduct without giving him an opportunity to put forward his defense and behind his back and, therefore, that portion of the report which deals with his conduct and affects his reputation cannot be relied on by the State Government. Though the appellant had originally prayed for, a writ of certiorari to quash that portion of the report which affects him, he has subsequently alleged a petition C. M. P. 6645 of 1979 for substituting the prayer to Mandamus forbearing the respondents from taking any action against him based upon paras 4.56 and 7.26 of the report which, according to him, are vitiated by the violation of the statutory provision in Section 8-B of the Act. Though the learned Judge felt that as the report of the Commission of Inquiry has no legal force propriety vigor. there is no scope for quashing such a report, which is only of informative nature, has no binding force on any of the parties, he has not considered the appellant's request for the issue of an alternative relief by way of Mandamus. Thus findings rendered in paras 4 (50) and 7 (26) of the report of the Commission of Inquiry are in violation of Section 8-B of the Act and Rr. 7 and 10 of the Commissions of Inquiry (Tamil Nadu) Rules in that the appellant was not given an opportunity of being heard at the enquiry, even though the findings rendered deals with his official conduct and affects his reputation. We have to, therefore, hold that no action could be taken Purely on the basis of those findings. In this case, the findings have been taken as the sole basis for initiating disciplinary Proceedings as against the appellant and the second respondent in the writ petition has been appointed as the Enquiry Officer for conducting the disciplinary Proceedings.

7. In view of the fact that the findings in paras 4 (56) and 7 (26) have been rendered by the Commission behind the back of the appellant, these

findings cannot exclusively form the subject matter of any disciplinary enquiry. In those circumstances this court has no other alternative except to

issue a writ of mandamus forbearing the respondents from taking any action against the appellant solely based on Paras4 (56) and 7 (26) of the

report dated 26-9-1977 of the Commission of Inquiry.

8. The writ appeal is, therefore, allowed and a writ of mandamus is issued in W. P. No. 4249 of 1979 as indicated above.

9. In W. P. No. 4248 of 1979, the petitioner seeks the issuance of a writ of certiorari to quash the memorandum of charge dated 29-8-1978

issued to the petitioner by the Enquiry Officer. That relief has been sought for by the petitioner on the ground that the charge is solely based on the

findings rendered by the Commission of Inquiry in Paras4 (56) and 7 (26) of its report. According to the petitioner, since the findings in paras 4

(56) and 7 (26) of the report are vitiated by violation of Section 8-B of the Act and Rules 7 and 10 of the Rules, those findings cannot form the

sole basis for the disciplinary enquiry. A perusal of the said memorandum of charge clearly indicates that there is no other basis for the charge

except the findings in paras 4 (56) and 7 (26). We have already held in the above writ appeal the findings rendered in the said Paragraphs cannot

be relied on by the respondents for taking any action against the petitioner. Therefore, we have to naturally quash the memorandum of charge. This

is however without prejudice to the right of the respondents to initiate fresh proceedings, if the charge leveled against the appellant could be

established by other materials independent of the findings rendered in paras 4 (56) and 7 (26) of the report.

10. In this view, the writ petition is also allowed, there will be no order as to costs either in the writ appeal and in the writ petition.

11. Petition allowed.