
(1980) 08 MAD CK 0028
In the Madras High Court

N. Manoharan

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 07-08-1980

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1981) ILR (Mad) 376 : (1981) 1 MLJ 368

Hon'ble Judges : G. Ramanujam, J

Bench : Single Bench

Judgement

G. 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 15th September, 1971, till 10th March, 1978. The State Government by G O. Ms. No. 202,

Public (Law and Order-A), dated 21st May, 1977, appointed a Commission of Enquiry u/s 3 of the Commission of Enquiry 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 26th September, 1977 Paragraphs 4(56) and 7(26) of the said report deal

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

Consequently, I 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 detenu at the earliest

possible opportunity, on their admission and that such beating had been severe and merciless.

Based on the said findings, 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 beat detenues

and had followed a regular policy of beating political detainees 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(26)

and 7(56) 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. 4948 of 1979 was admitted but the W. P. No. 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 26th September, 1977, of the Commission of Enquiry

appointed to enquire into the alleged incidents of harassment and ill-treatment of the detainees 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 26th September, 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 Commission of Enquiry 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 prisoner 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 Enquiry 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 in Section 8-B of the Commission of Enquiry Act, as also Rules 7 and 10 of the Commission of Enquiry Tamil Nadu Rules, 1972, have not been complied with, appears to be true.

6. Section 8-B of the Commission of Enquiry Act, 1925, is as follows:

8-B. 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 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.

Rules 7 and 10 are as follows:

7. 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 defence.

Under the abovesaid section of the Commission of Enquiry Act and the Rules framed thereunder 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 paragraphs 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 Section 8-B of the Act. It is true that the report of the Commission of Inquiry has no legal force *proprio vigore*. But, however, it is seen in this case that the findings rendered by the Commission of Inquiry in paragraphs 4(56) and 7(26) have been taken as the sole basis for initiating the disciplinary proceedings against the appellant. In those 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 defence 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 filed a petition, C. M. P. No. 6645 of 1979 for substituting the prayer to mandamus forbearing the respondents from taking any action against him based upon paragraphs 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 *proprio vigore*, there is no scope for quashing such a report, which is only of informative nature, and 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 paragraphs 4(56) and 7(26) of the report of the Commission of Inquiry are in violation of Section 8-B of the Act and Rules 7 and 10 of the Commission 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 deal with his official conduct and affect 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 finding in paragraphs 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 paragraphs 4(56) and 7(26) of the report, dated 26th September, 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 29th August,

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 paragraphs 4(56) and 7(26) of its report. According to the petitioner, since the findings in

paragraphs 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 paragraphs 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 levelled against

the appellant could be established by other materials independent of the findings rendered in paragraphs 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 or in the writ petition.