

(1967) 03 CAL CK 0007
In the Calcutta High Court
Case No : Matter No. 17 of 1967

Netai Chandra Koley

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 20-03-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 3
Commissions of Inquiry Act, 1952 — Section 2, 3
Constitution of India, 1950 — Article 14, 162, 246, 73(1)

Citation : (1967) 1 ILR (Cal) 555

Hon'ble Judges : B.C. Mitra, J

Bench : Single Bench

Advocate : Gouri Mitter and Ajoy Kumar Ghosh, for the Appellant; S. Banerji, General, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Mitra, J.—In this application a question of some importance has been raised viz., the authority and the power of the State Government to appoint a commission of enquiry under the Commission of Enquiry Act, 1952.

2. At the International Cricket Conference held in London on or about July 14, 1966, it was decided that three cricket Test matches would be played in India between India and West Indies. Of these three matches, one was scheduled to be played in Calcutta between December 31, 1966 and January 5, 1967. The venue of the match at Calcutta was fixed at Eden Gardens and the Test cricket match commenced there on December 31, 1966. Before the game could commence on January 1, 1967, there was serious disturbance at Eden Gardens including lathi charge and use of tear gas against a section of the visitors who were inside the ground, beating of Policemen and Home Guards by visitors. In consequence of the disturbances the match was abandoned on that day but was resumed after a couple of days and thereafter duly played.

3. By a notification issued by the State of West Bengal (Respondent No. 1) and

published in the Calcutta Gazette on January 5, 1967, a commission-of enquiry was set up under the Commissions of Enquiry Act, 1952 (hereinafter referred to as the Act). Mr. Kamalesh Chandra Sen, a retired Judge of this Court was the sole member of this Commission. The Commission is to enquire into the disturbances which broke out at Eden Gardens on January 1, 1967, being the second day of the Test match, with particular reference to:

(a) the nature, circumstances and causes of the disturbances; (b) the arrangements, organisation and management of the Test cricket match by the authorities concerned, including the sale of tickets for admission to the cricket ground; (c) the action taken by the police in handling the situation. The Commission was directed to submit to the State Government a report embodying its findings and recommendations within one month from the date of the said notification.

4. On January 6, 1967, the Secretary of the Commission issued a notice to the Cricket Association of Bengal, directing this association to keep all books of accounts relating to issue and sale of tickets for the second Test match ready for inspection by the Commission. The association was also directed not to dismantle the structures and other arrangements made by it at the Eden Gardens in connection with the Test match and to submit a written statement on behalf of the association relating to the subject-matter of the enquiry. This was followed by another notice dated January 12, 1967, whereby the said association was directed by the secretary of the Commission to furnish information on various points. The association, however, did not file any written statement although the time to file the same expired on January 30, 1967.

5. On January 27, 1967, the Commission of Enquiry held its first sitting at the Assembly House and explained and decided on various procedural matters and fixed the first hearing on February 4, 1967. It is the said notification dated January 5, 1967 and the said notice issued by the Commission dated January 6, 1967 and January 12, 1967, which are the subject-matter of attack in this application.

6. Mr. Gouri Mitter, learned Counsel for the Petitioner, submitted that the appointment of the said Commission was entirely illegal and that the State Government had no jurisdiction to appoint the Commission under the said Act. He argued that the Test cricket match was held at the Eden Gardens in implementation of a decision taken at an international conference, viz. the International Cricket Conference held in London. The decisions to hold Test cricket matches at different centres were taken at the International Cricket Conference held in London from time to time. The Test matches, Mr. Mitter argued, were held in different countries pursuant to and for the purposes of giving effect to, the decisions taken at the International Conference. Mr. Mitter referred to entry 13 of list I of Schedule VII to the Constitution and submitted that the matters referred to in entry 13 were exclusively within the jurisdiction of the Central Government, who alone had the jurisdiction and the power to deal

with any matter referred to in entry 13. International conference, it was argued, was not necessarily a political conference, or a diplomatic conference, but it might be a conference for any purposes. Besides, Mr. Mitter further argued, that the matters referred to in entry 13 were not only concerned with international conference but also of associations and other bodies and therefore, the International Cricket Conference, even though not a political or diplomatic conference, must in any event, Mr. Mitter argued, be regarded as an association or body which arrived at certain decisions and the cricket match at Eden Gardens was held for giving effect to these decisions of the association or body which met in London. That being so, Mr. Mitter argued, it was exclusively within the jurisdiction of the Central Government to appoint a commission of enquiry relating to the disturbances that took place at Eden Gardens on January 1, 1967. The disturbances, to enquire into which the Commission had been appointed, Mr. Mitter argued, occurred in course of implementation of the decision of the International Cricket Conference. Therefore, it was argued, the State Government had no competence, power or authority to appoint the Commission to enquire into the matters mentioned into the said notification.

7. The next contention of Mr. Mitter was that the said notification directed the Commission to enquire into three matters specified therein. One of the said three matters was: "the action taken by the police in handling the situation". Mr. Mitter argued, that this question might come under entry 1 of list II of the Seventh Schedule which is "public order" and also under entry 2 of list II of the Seventh Schedule, which is "police including railway and village police". It was argued that it was within the competence of the State Government to appoint a commission to enquire into the action taken by the Police at the Eden Gardens on January 1, 1967. So far as the other two matters mentioned in the said notification were concerned, it was argued, that it was entirely beyond the competence of the State Government to appoint a commission of enquiry to enquire into those matters, as they were exclusively and entirely within the jurisdiction and competence of the Central Government.

8. The next contention of Mr. Mitter was that in para. 6 of the petition it was alleged that the Test cricket match at Calcutta between India and West Indies was staged between December 31, 1966 and January 5, 1967, for implementing the decision to play-such Test matches, the decision having been arrived at the International Cricket Conference held in London. It was further alleged that the visit of the West Indies cricket team to India was the implementation of the decision made at the aforesaid International Cricket Conference. In para. 7 of the petition it was alleged that the venue of the second official Test match was fixed at Calcutta "Eden Gardens" by the Board of Control for Cricket in India, in implementation of the said decision arrived at the aforesaid International Cricket Conference. These allegations in the petition have been dealt with in para. 5 of the affidavit-in-opposition affirmed by Dr. Bhabatosh Dutta on February 25, 1967. In para. 5 of this affidavit the deponent stated that he had no personal knowledge of the allegations in paras. 6, 7 and 8 of the petition except that a

cricket match was arranged to be played in the Eden Gardens between December 31, 1966 and January 5, 1967. In para. 6 of the said affidavit it had been alleged, Mr. Mitter argued, that the deponent did not admit that the match was in implementation of any decision as alleged. There was no denial, Mr. Mitter contended, of the allegation that the match was held at Eden Gardens in implementation of the decision made at the International Cricket Conference. There is a denial, however, in para. 6 of the said affidavit that the International Cricket Conference was an "international conference" within the meaning of entry 13 of list I of the Seventh Schedule to the Constitution. There is a further denial, however, that the match was in implementation of the decision of any conference of the kind mentioned in entry 13 of list I of the Seventh Schedule. But there was no denial, Mr. Mitter argued, of the allegation made in the petition that the Test match was held in implementation of the decision taken at the International Cricket Conference held in London. Therefore, Mr. Mitter submitted that the allegations in the petition that the Test match held at the Eden Gardens in Calcutta was held for the purpose of implementing the decision taken at the International Cricket Conference, remained uncontradicted and must be taken to be admitted by the State Government. In support of this contention Mr. Mitter firstly relied upon the decision of the Supreme Court in *Jahuri Sah and Others Vs. Dwarka Prasad Jhunjhunwala and Others*, . In that case it was held that if an assertion of fact made in a plaint was not specifically denied, a mere statement that such assertion was not admitted and the Defendant had no knowledge of a fact pleaded by the Plaintiff did not amount to a denial of the existence of that fact, not even an implied denial. Mr. Mitter also relied upon another decision of the Supreme Court in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, . In that case it was held that where a Petitioner had no personal knowledge in regard to an averment of mala fides and such averments were based on information, he must disclose his source of information so that the other side get a fair chance to verify it and make an effective answer. It was further held that slipshod verification of affidavit might lead to their rejection and that such verification should be made on the lines of Order XIX, Rule 3 of the Code of Civil Procedure. Relying upon these decisions, Mr. Mitter argued, that the allegations in the petition that the Test match at the Eden Gardens, Calcutta, was held for the purpose of implementing the decisions of the International Cricket Conference must be taken to be admitted by the State Government and therefore, the latter had no competence to appoint a commission with regard to two of the matters mentioned in the said notification, as those matters were exclusively within the jurisdiction of the Central Government.

9. The next contention of Mr. Mitter was that it might be argued that the impugned notification dealt with matters under entry 33 of list II of Schedule VII. Item 33 is as follows: "theatres and dramatic performances; cinemas subject to the provisions of entry 60 of list I; sports entertainments of amusements". He argued that there would be no force in such contention as the enquiry was not directed into sports generally or into conditions of sporting activities in the State

or means for improvement of sports. Mr. Mitter argued that the enquiry had nothing to do with sports at all, but was directed into events that had taken place in consequence of implementation of the decision of the International Cricket Conference.

10. The next contention of Mr. Mitter was that list I, list II and list III of Schedule VII of the Constitution did not deal with administrative jurisdiction of the Central or State Government. The entries in list II did not confer administrative or executive jurisdiction on the State Government to deal with the matters mentioned in the various entries in list II. But, it was argued the said three lists in the Seventh Schedule dealt with and defined the legislative competence of Parliament and the State Legislature. Article 246 of the Constitution, it was argued, dealt with and defined the legislative limits of the Parliament and the State Legislature and these limits were indicated and laid down in three lists of the 7th Schedule to the Constitution. Therefore, Mr. Mitter submitted that inclusion of sports and entertainment in entry 33 of Schedule VII did not confer administrative jurisdiction on the State Government to enable it to appoint a commission of enquiry by the impugned notification.

11. It was next argued that the said Commission was incompetent to enquire into the matters mentioned in the notification because of the bias which was clearly expressed in the affidavit of Amal Kumar Dutta affirmed on February 25, 1967. Reference was made to para. 12 of the affidavit in which it was denied that the holding of the Test cricket matches was a domestic affair of the Cricket Association of Bengal. It was further alleged that it was the duty of the State Government to maintain peace and tranquillity and to ensure that no lawlessness and disorder occurred during the matches where large number of public gathered to witness the matches by payment of entrance fees and gate money. It was contended by Mr. Mitter that the Commission was guilty of a partisan view, as allegations had been made in the said affidavit supporting the action of the State Government and also the appointment of the Commission of Enquiry.

12. It was next argued that the holding of the Test cricket match was a domestic affair of the Petitioner, the grounds and the stands and galleries belonged to the Petitioner and in exercise of proprietary rights, the Petitioner who was a registered society, was entitled to hold cricket matches and the State Government could not interfere with the exercise of such proprietary rights by appointing the said Commission to enquire into events and matters which took place in consequence of the exercise of domestic proprietary rights by the Petitioner. In other words the contention of the Petitioner was that the disturbances had taken place in course of exercise of the proprietary rights by the Petitioner and although the members of the public were involved in such disturbances, the State Government had no right to appoint a commission to enquire into the matters mentioned in the impugned notification. In support of this contention reliance was placed by the learned Counsel for the Petitioner on the decision of the Supreme Court in *Ram Krishna Dalmia Vs. Shri Justice S.R.*

Tendolkar and Others, . In that case it was held that the discretion given to the appropriate government to set up a commission of enquiry must be guided by the policy laid down, namely, that the executive action of setting up a commission of enquiry must conform to the conditions in the section, that is to say, there must exist a definite matter of public importance into which an enquiry was necessary. Relying on this decision it was argued that the matters sought to be enquired into were not matters of public importance but were matters connected with the exercise of the domestic proprietary rights by the Petitioner. In that case, however, the notification issued by the Central Government in exercise of the powers u/s 3 of the Act was upheld and it was held that it did not violate Article 14 of the Constitution. The issues involved in that case, however, were entirely different, namely, that the notification violated Article 14 of the Constitution and that the notification was bad on the ground of delegation of essential legislative functions. This decision to my mind does not support the Petitioner's contention mentioned above. The Petitioner's contention is that the sale of tickets for the Test cricket match is a domestic matter of the Petitioner and it is not, therefore, a matter of definite public importance, which alone would entitle the State Government to appoint a commission of enquiry under the Act. This question was not discussed by the Supreme Court in the decision mentioned above and therefore, this decision is of no assistance to the Petitioner.

13. The learned Advocate-General who appeared for the Respondents Nos. 1 and 2 submitted that the matters which were the subject-matter of enquiry by the Commission of Enquiry appointed by the impugned notification, had nothing whatsoever to do with participation in any international conference or association or body as contemplated by entry 13 of list I of Schedule VII to the Constitution. He further argued that the Commission of Enquiry had not been directed either to enquire into the decisions of the International Cricket Conference or the implementation of the decision of such conference. The decision of the International Cricket Conference was to hold one of the series of Test cricket matches between India and West Indies at Eden Gardens, Calcutta; the Commission of Enquiry, it was argued, was not directed to enquire into the legality, propriety or validity of the decision of the International Cricket Conference. The Commission on the other hand, it was argued, was directed to enquire into the causes of the disturbance which took place on January 1, 1967 and the adequacy of the Police arrangements made and also the sufficiency and justification of the Police action taken in handling the situation. It seems to me that there is a good deal of force in this contention of the learned Advocate-General.

14. The question in this case is whether the holding of the Test cricket match at Eden Gardens was an act of implementing the decision of an international conference or association or other body, namely, in this case, the International Cricket Conference, so as to place the holding of the Test matches within the limits of entry 13 of list I of Schedule VII to the Constitution. If the holding of the Test matches can be regarded as implementing the decision of the International

Cricket Conference and if the disturbances that took place at the Eden Gardens can also be regarded as part of implementation of the decision of an international conference or association, the power of the State Government to appoint a commission of enquiry, to enquire into the matter, can certainly be challenged on the ground that the Central Government alone had the powers and the competence to appoint such commission. But can it be said that the disturbance at the Eden Gardens was implementation of the decision of an international conference as contemplated by entry 13 of list I of Schedule VII? Can it again be said that the alleged assault by Policemen on the members of the public, who were inside the Eden Gardens for seeing the Test match, the alleged use of tear gas on a section of visitors, the alleged beating of one Sitiesh Roy by Policemen, the alleged beating of Policemen and Home Guards by the visitors and thereafter the incidents alleged to have happened in consequence of mob fury were implementation of the decision of an international conference? The holding of the Test cricket match at the Eden Gardens may be said to be the implementation of an international conference, but the disorder and lawlessness alleged to have occurred had nothing whatsoever to do with an international conference or implementation of the decision of such a conference. The decision of the Conference was to hold Test cricket match at Eden Gardens, Calcutta, but it is not the cricket match which is the subject-matter of enquiry by the Commission, but the events and incidents which prevented the holding of the match and were the causes of lawlessness and disorder. It is clear that the Commission has been directed to enquire, not into the implementation of the decision of the International Cricket Conference as such, but into matters connected with the disturbances which produced lawlessness and disorder and the subject-matter of the enquiry cannot be said to be the implementation of the decision of an international cricket conference.

15. On the other hand it is to be seen if the State Government has the jurisdiction and the competence to appoint a commission of enquiry to enquire into the matters set out in the impugned notification for this purpose. Reference should be made to the entries in list II of Schedule VII to the Constitution. Mr. Mitter drew my attention to entry 1 and entry 2 of list II and submitted that Public Order which was entry 1 and Police which was entry 2 had nothing to do with the matters to be enquired into by the Commission. My attention was also drawn to entry 33 of list II, which include amongst other matters, sports, entertainments and amusements. It was firstly argued that neither maintenance of Public Order generally nor the Police Administration in the State were the subject-matter of enquiry by the Commission. It was further argued that questions like the advancement of sport which is included in entry 33, or improvement of sporting activities in the State were not the subject-matter of enquiry by the Commission of Enquiry either. Sport as such or matters connected with sports, Mr. Mitter submitted, had nothing to do with the matters to be enquired into by the Commission.

16. It was next contended by Mr. Mitter that even if it was held that Public Order,

Police and Sports were directly or indirectly connected with the matters to be enquired into by the Commission, the matters set out in list II of Schedule VII deal with the limits of legislative competence of the State Legislature. In other words it was argued that Clause (2) of Article 246 of the Constitution empowered the State Legislature to make laws with regard to the matters set out in list II of Schedule VII of the Constitution and therefore, the State Government had no power to appoint by an executive order, a commission of enquiry with regard to any matters set out in list II of Schedule VII.

17. This contention of the learned Counsel for the Petitioner, though attractive, has no force behind it. It is true that sports as such is not the subject-matter of enquiry, nor question regarding advancement of sport or improvement of sporting activities in the State. But maintenance of Public Order and the Police Administration are certainly directly connected with the matters which are to be enquired into by the Commission. The Test cricket match was stopped on January 1, 1967, directly as a result of the disturbances which took place on the cricket ground and such disturbances, in my view, must be held to be covered by Public Order which is entry 1 in list II of Schedule VII. Furthermore, the action taken by the Police in handling the situation which is one of the matters to be enquired into by the Commission, is fully covered by "police" which is item 2 in Schedule VII. In connection with the maintenance of Public Order, the State Government has the power and the competence to appoint a commission of enquiry to enquire into the nature, circumstances and causes of the disturbances which produced alleged acts of lawlessness and disorder. The organisation and management of the Test cricket match and the sale of tickets for admission into the cricket ground, are directly connected with the alleged lawlessness and disorder which occurred and must therefore be held to be covered by "Public Order", which is entry 1 in list II of Schedule VII to the Constitution.

18. Turning now to the next contention of Mr. Mitter that the matters set out in list II of Schedule VII, define and lay down the limits of legislative competence of the State Legislature, it is to be seen if there is any force in this contention. This argument appears to have been advanced without reference to the provision in Article 162 of the Constitution. In that Article it is provided that the executive power of a State shall extend to matters with respect to which the Legislature of the State has power to make laws. Public Order and Police being matters with regard to which a State Legislature has power to make laws, the executive power of the State extends to both of them and therefore, the State Government is entitled to make administrative or executive orders, both with regard to Public Order and Police. The Commission of Enquiry has been appointed by the State Government in exercise of its executive or administrative power and the State Government, therefore, has undoubtedly the power to make executive or administrative orders relating to Public Order and Police Administration. Indeed the Central Government has no power to make executive or administrative orders beyond limits specified in Article 73(1)(a) of the Constitution. In that view of the matter, in my opinion, the State Government is competent to appoint a

commission of enquiry to enquire into the matters set out in the impugned notification.

19. In this connection I should notice another contention advanced by the learned Counsel for the Petitioner. This contention was that the cricket ground at the Eden Gardens was a private property of the Petitioner and tickets were sold to the members of the public to see the cricket match, in exercise and enjoyment of the rights and privileges attached to ownership of property. It was argued that the sale of the tickets and the holding of the cricket match was a domestic matter of the Petitioner, who had the fundamental right to own, possess and enjoy property. It was next contended that the appointment of the Commission to enquire into the said domestic matters, namely, the sale of tickets and the events that happened in connection with the cricket match, were interference with the Petitioner's right to own, possess, enjoy and exploit private property and therefore, the appointment of the Commission of Enquiry was bad.

20. In my view this contention on behalf of the Petitioner is not tenable. Even assuming that the Petitioner is the owner of the cricket ground, of which there is scarcely any evidence in the petition, it cannot be overlooked or ignored that the Petitioner by sale of tickets to members of the public invited them to see the cricket match, which must be held to be a sport and also an entertainment as contemplated by entry 33 of list II of Schedule VII to the Constitution. The State Government has the power to make orders relating to sport and entertainment which was the occasion for the invitation by the Petitioner to the members of the public to visit the cricket ground by purchasing tickets offered for sale. Then again disturbances to Public Order took place by reason of the Petitioner's conduct in inviting the members of the public, who had purchased tickets to visit the cricket ground for seeing the Test match: on that ground also and in so far as Public Order was broken, the State Government has the competence to appoint a commission of enquiry. Furthermore, the State Government is also entitled to enquire and find out if Police arrangement made was adequate for the occasion. The Petitioner's case as laid in the petition is that the Police on duty committed excess, as one Sitesh Roy, who was an elderly man, was overpowered by the Policemen, who also started beating him. This allegation generally involves the conduct of Policemen on duty at Eden Gardens and the State Government undoubtedly is entitled to enquire into such conduct. There are also allegations in the petition that in purporting to maintain order and discipline the Policemen resorted to lathi charge and use of tear gas. The State Government undoubtedly is entitled to find out the truth of the allegations made against the Policemen of improper use of force and tear gas. Before concluding with this aspect of the case I should notice, however, that the learned Counsel for the Petitioner conceded that the State Government had the power to appoint a commission of enquiry with regard to the matter mentioned in Clause (c) of the impugned notification, namely, "the action taken by the police in handling the situation". The Petitioner's challenge was confined to enquiry into the matters set out in Clauses (a) and (b) of the impugned notification. Clause (a) directs an enquiry

into the nature, circumstances and causes of the disturbance. This branch of the enquiry is plainly directed against a breach of Public Order which is entry 1 in list II. The second branch of the enquiry mentioned in Clause (b) of the impugned notification is directed against the arrangements, organisation and management of the cricket match, including the sale of tickets for admission. The object of this branch of the enquiry also is directed against the breach of Public Order, the enquiry into the sale of tickets is plainly to see if tickets were sold in excess of the available accommodation. The enquiry into the arrangements, organisation and management is also quite plainly aimed at finding out the causes of the breach of Public Order. For these reasons the matters directed to be enquired into by the Commission must be held to be within the competence of the State Government.

21. Turning now to the Petitioner's contention that the Commission is biased against the Petitioner by reason of the views expressed in the affidavit of Amal Kumar Dutta affirmed on February 25, 1967, I do not think that there is any force in this contention of the learned Counsel for the Petitioner. The said Amal Kumar Dutta has been made a party in this application and it is as such party that the affidavit has been affirmed by him. But it cannot be overlooked that no affidavit has been affirmed by the Respondent No. 3, who is the sole member of the Commission nor has this Respondent expressed any views in the matter which are to be enquired into by him as a member of the Commission. There is nothing in the petition to suggest that the views expressed by the Secretary to the Commission are the views of the Commission itself. There is no suggestion of bias, much less any specific allegation to that effect, against the Respondent No. 3. For these reasons, the above contention on behalf of the Petitioner must be rejected.

22. There remains only one other contention of the learned Counsel for the Petitioner to be dealt with, namely, that u/s 2(a)(i) of the Act, the Central Government has the power to make an enquiry into any matter relatable to the entries in list I or list II or list III of the Seventh Schedule and the State Government has the power to make an enquiry into any matter relatable to the entries in list II or III in the Seventh Schedule to the Constitution. It was argued that the Test cricket match was held for the purpose of implementing the decision taken at the International Cricket Conference and therefore, this matter came within the ambit of entry 13 of list I of Schedule VII and for that reason, the State Government had no competence to appoint the Commission of Enquiry. I have already dealt with this aspect of the contention earlier in this judgment and have held that the matters directed to be enquired into by the impugned notification are covered by entries 1 and 2 of list II of Schedule VII to the Constitution. The power and the competence of the State Government to appoint a commission of enquiry under the Act cannot be questioned or challenged merely because the Act has conferred upon the Central Government the power and the competence to appoint a commission of enquiry into matters enumerated in list II of Schedule VII of the Constitution. The Central Government

undoubtedly has the power to appoint a commission of enquiry into the matters set out in the impugned notification, but the State Government has also the power to appoint a commission of enquiry into the matters set out in the impugned notification. In that view of the matter this contention of the learned Counsel for the Petitioner must also fail.

23. For the reasons mentioned above this application fails and is accordingly dismissed. The rule is discharged. Interim orders are dissolved. Each party to pay its own cost.

24. Mr. A.K. Ghosh, appearing for the Petitioner, prays for the stay of the operation of the order. I do not see how a stay order will ensure to the benefit of the Petitioner in this matter. But, in any event, since his client wants to prefer an appeal, I will grant a stay of operation of the order till April 3, 1967, but I wish to make it clear, however, that this order will not prevent the Commission to proceed with the enquiries which it has been directed to hold by the impugned notification.