

(1998) 06 AP CK 0025

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14282 of 1998

Peela Pothi Naidu

APPELLANT

Vs

State of Pradesh and others

RESPONDENT

Date of Decision : 23-06-1998

Acts Referred:

Andhra Pradesh Commission of Inquiry Rules, 1968 — Rule 4
Commissions of Inquiry Act, 1952 — Section 3(1)
Constitution of India, 1950 — Article 14, 19, 21, 226, 235
Criminal Law Amendment (Amending) Ordinance, 1943 — Section 3(1)
Criminal Procedure Code, 1973 (CrPC) — Section 340
Land Acquisition Act, 1894 — Section 18
Penal Code, 1860 (IPC) — Section 109, 120

Citation : (1999) 4 ALD 170 : (1999) 4 ALT 161 : (1999) 2 APLJ 142

Hon'ble Judges : Vaman Rao, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : M/s. Subhodh Markandeya and M.V. Raja Ram, for the Appellant;
A.G. and Ms. M. Bhaskara Lakshim, for the Respondent

Judgement

B. Subhashan Reddy, J.—In what is called as Yeleru Scam, the Government of Andhra Pradesh had appointed the Commission first headed by Justice S.R. Nayak, a sitting Judge of this Court by G.O. Ms. No.83, Revenue Department, dated 5-2-1997. As Justice S.R. Nayak had resigned, the Government had reconstituted the Commission with Justice B.K. Somasekhara vide G.O. Ms. No.468, Revenue (LA) Department, dated 2-6-1997.

2. The petitioner is a practising advocate at Visakhapatnam and had appeared in land acquisition cases pertaining to which the above Commission was constituted. He has questioned the said Constitution of the Commission. Firstly, he had moved the Supreme Court by filing WP(Crl.) 99 of 1998, but it is stated that the Supreme Court had opined that the petitioner had to first approach this Court and as such, the petitioner had withdrawn the writ petition and by order dated 15-5-1998, the Supreme Court had dismissed the writ petition as withdrawn observing "leaving it open to the petitioner to rake-up the matter in

the High Court under Article 226 of the Constitution of India." Hence, this writ petition.

3. (a) Facts relevant for adjudication of this writ petition need to be stated. For construction of Yeleru Left Canal, land in Visakhapatnam District was acquired, on the requisition of the Irrigation Department. Awards were passed by the Land Acquisition Officers after completing the formalities under the Land Acquisition Act, 1894. Not satisfied with the quantum of compensation fixed by the Land Acquisition Officers, the Awardees sought reference u/s 18 and the Subordinate Courts of Anakapally and Chodavaram had answered the references. Compensation was enhanced. The process of acquisition had started in the year 1980 and after 15 years, the same had culminated into awards passed by the civil Courts mentioned above. In the meanwhile, another set of acquisition proposals for house sites for poor was initiated by the Social Welfare Department and there also, the compensation was determined. The compensation which was determined by the civil Courts was found to be too exorbitant, as compared to compensation determined by the Land Acquisition Officers and when this came to the notice of the public functionaries leading to comments and ultimately enquiries, lot of irregularities said to have surfaced and the cognizance of the same was taken by the Government during the month of November, 1996. On judicial side, the High Court was also apprised by the District Judge, Visakhapatnam. Firstly, Criminal Prosecution was launched in Crime No.327 of 1996 of Anakapalle Town Police Station for the offences under Sections 466, 467, 468, 409, 406, 471, 474, 419, 420 read with Sections 120-B and 109 of IPC. The above prosecution relates to the cases at Anakapalle. After some more enquiries, the CID officials found that there are also offences committed regarding payment of compensation for the lands acquired at other places and Crime Nos.6 and 7 of 1997 were registered. With regard to the lands acquired by Social Welfare Department for house sites for poor of Pisinikada village, Crime No. 10 of 1997 was registered. Before the action was initiated, some part of the compensation amount was already withdrawn and when an amount of Rs.6.55 crores was deposited, the Subordinate Judge, Chodavaram entertained a doubt as to whether the compensation has to be paid or not and then asked for clarification from the District Judge, Visakhapatnam, who, by his letter dated 9-12-1996 sought guidance from this Court, The said letter reads thus :

"In respect of the Execution Petitions relating to the recovery of land compensation amount for the lands acquired for Yeleru Left Main Canal, an amount of Rs.6.55 crores has been deposited in the Court of Subordinate Judge, Chodavaram on 8-11-1996 by the Executive Engineer, Peddapuram Irrigation Division. The decree holders filed cheque petitions on 11-11-1996 for withdrawal of the said amount.

In the statement made by the Chief Minister published in the news papers dated 8-12-1996, it is stated that the disbursement of the said amount was stayed. After seeing that statement, the Subordinate Judge, Chodavaram informed me

over phone that no evidence has been produced before him on behalf of the Government to show that any appeal has been filed against the Awards and stay was obtained and that he was put in an embarrassment situation as the Counsel for D.Hrs. is pressing for issue of cheques stating that no appeals are filed and no stay is obtained by the Government. The learned Subordinate Judge, Chodavaram sought instructions from the District Court.

Hence, I request the Hon"ble High Court to issue necessary instructions in this regard.

Yours faithfully, Sd/- District Judge Visakhapatnam."

(b) This letter of the District Judge dated 9-12-1996 was taken as a suo motu writ petition by this Court on 10-12-1996 and was numbered as WP No.26456 of 1996. The Full Bench comprising of the then Chief Justice, Justice Somasekhara and another learned Judge directed notices to be issued to the respondents added therein and pending further orders, staying the payment of amounts under the decrees granted relating to Yeleru Reservoir land acquisition cases. The matter was then directed to be listed before a Division Bench. On Governmental side, having directed the investigation by CBCID in the month of November, 1996, enquiry was also ordered into the alleged irregularities in the matter of payment of compensation for acquisition of lands for Yeleru Project. Mr. Samarjit Ray, Principal Secretary, Social Welfare Department, was appointed as Enquiry Officer to conduct an enquiry and submit a report. It was routed through the Principal Secretary, Revenue Department, for taking consequential action and G.O. Ms. No. 1027, Revenue (LA) Department, dated 10-12-1996 was issued. The same reads as follows:

"The Collector, Visakhapatnam, in the report read above has reported that there was abnormal enhancement of compensation to be paid to the land owners in the matter relating to the Land Acquisition for Yeleru Canal. It has also come to the notice of Government through several press reports that there have been several irregularities in the payment of compensation to the land owners from whom the lands have been acquired for Yeleru Canal.

(2) The Government, therefore, appoint Sri Samarjit Ray, IAS, Principal Secretary to Government, Social Welfare Department, to conduct a detailed enquiry into the issue and submit a comprehensive report at an early date.

(3) The Collectors, Visakhapatnam and East Godavari are requested to get the connected records handed over to the above Officer from the concerned officers and extend all necessary assistance in conducting the enquiry."

On 11-12-1996 Mr. S. Ray, the Principal Secretary to Government, Social Welfare Department, has addressed a letter to the Principal Secretary to Government, Revenue Department, seeking specific terms of reference for the enquiry, which would help to focus on issues, which are considered important by the Government. It is apt to extract the same:

"Please refer G.O. Ms. No.1027, Revenue (LA) Department, dated 10-12-1996 in which I have been asked to enquire into the irregularities and abnormal enhancement of compensation relating to the lands acquired for Yeleru Canal. The Government Order also refers to newspaper reports. These reports have made several wide ranging allegations, including the involvement of the Chief Secretary. I am not clear as to whether I should enquire into the allegations made in the newspapers as also by Sri D. Veerabhadra Rao, MLA because in the Government Order mentioned above, the terms of reference have not been specified. Without specific terms of reference, the enquiry may fail to cover some issues which may cause embarrassment at a later date. I would, therefore, strongly urge that the Government may kindly give me specific terms of reference for the enquiry, which would help me to focus on issues which are considered important by the Government."

(c) On 13-12-1996, the issue with regard to the scam came-up for discussion before the Legislative Assembly. In that connection, it was stated by the Chief Minister that he has no objection, if a sitting Judge is specially posted for dealing this matter for conducting enquiry and rendering punishment under the supervision of the High Court, as suggested by Mr. Vidyasagar Rao and some others.

(d) But, fact remains that there was no resolution passed by the Legislative Assembly for constituting a Commission under the Act There was also no decision taken by the Government for constituting such a Commission. On the other hand, the enquiry of Mr. S. Ray was continued and responding to his letter dated 11-12-1996, G.O. Ms. No.1042, dated 14-12-1996 was issued specifying the terms of reference for the enquiry by the above officer. The same reads as hereunder ;

"In the G.O. first read above, orders were issued appointing Sri S. Ray, IAS, Principal Secretary to Government, Social Welfare Department, to conduct a detailed enquiry into the irregularities in the payment of compensation to the land owners from whom the lands have been acquired for Yeleru Canal.

(2) The Enquiry Officer vide reference 2nd cited above has requested the Government to give specific terms of reference for the above enquiry.

(3) The Government hereby order that Sri S. Ray, Principal Secretary to Government, Social Welfare Department, shall enquire and submit his report on the following :

(i) Compliance with the legal and administrative procedures and norms by various officials involved in the Land Acquisition and payment of compensation.

(ii) Abnormal delays, if any, in dealing with Land Acquisition and subsequent litigation.

(iii) The property and promptitude of decisions taken and if the officers entrusted with the acquisition at all levels have bestowed proper attention to the cases at

various stages.

(iv)The role of Law Officers who represented the Government in the Courts.

(v) The efficacy of the existing reporting and monitoring system.

(vi)Suggestions for improving the procedures, norms and guidelines to prevent recurrence of the lapses noticed in the present case.

(vii)Any other matters incidental including the need to bring about Legislative changes, if need be."

Enquiry was conducted by the said Officer between 20-1-1997 and 27-1-1997 and interim report dated 3-2-1997 was submitted. The report is comprehensive with so many details clearly pointing out the fallacies in the process of conducting the cases before the Civil Court by the Officers including the Law Officers, indifference and even collusion, and inaction in filing appeals in the High Court and even in the one filed, to pursue the same with such promptitude as the matter of this magnitude requires and suggested several remedial measures. Meanwhile, some other irregularities surfaced regarding the acquisition of lands by the Social Welfare Department and Note (C No.77601/LA2/96) was put up by the Principal Secretary, Revenue to the Chief Secretary on 8-1-1997. It reads as hereunder:

"Sri S. Ray, IAS, has been directed to enquire into the various issues relating to the land acquisition cases of Yeleru Canal vide G.O. Ms. No. 1027, dated 10-12-1996. The abnormal enhancement of compensation in respect of Yeleru Canal land acquisition cases came to light, after the Collector reported about similar enhancement of compensation awarded in Social Welfare Land Acquisition cases in Visakhapatnam District. It is, therefore, advisable to direct Sri S. Ray, IAS, to look into the Social Welfare Land Acquisition cases in Visakhapatnam District as well, wherever abnormal increase in compensation has been awarded by the Courts."

The said note was approved by the Chief Secretary on 10-1-1997 and was sent to the Office of the Chief Minister on 18-1-1997 for final approval. The Chief Minister had approved the same on 19-1-1997 and consequently, orders were issued by the Principal Secretary, Revenue on 20-1-1997 and pursuant to the same, a draft G.O. Rt. was submitted for approval on 21-1-1997 and steps were being taken to issue the same. That was the situation as on 29-1-1997. The said draft G.O. Rt. is extracted below :

"Land Acquisition - Visakhapatnam District - Acquisition of Lands - in Social Welfare Lands - certain irregularities -Ordered.

Read :

(1) G.O. Ms. No.1027, Rev. dated 10-12-1996

(2) G.O.Ms.No.1042, Rev. dated 14-12-1996

Order :

In the G.O. 1st read above, orders were issued appointing Sri S. Ray, IAS, Prl. Secretary to Govt. S.W. Dept. to conduct a detailed enquiry into the irregularities in the payment of compensation to the land owners from whom the lands have been acquired for Yeleru Canal.

In the G.O. 2nd read above orders have been issued indicating the terms of reference for the said enquiry.

The Collector, Visakhapatnam reported about similar enhancement of compensation awarded in Social Welfare Land Acquisition cases in Visakhapatnam District.

The Govt. therefore order that Sri S. Ray, IAS, Prl. Secy, to Govt. S.W. Dept. shall also look into the S.W. Land Acquisition cases in Visakhapatnam Dist. Wherever abnormal increase in compensation has been awarded by the Courts. The E.O. shall follow the terms and conditions issued in the G.O. 2nd read above.

The Collector, Visakhapatnam and East Godavari are requested to get the connected records handed over to the above officer from the concerned officers and extend all necessary assistance in conducting the enquiry."

From the above, it is clear that the Government had decided to go ahead with the enquiry by Mr. S. Ray. Further, there was no whisper regarding the appointment of the Commission under the Act and there is no trace of any other discussion or consideration relating to appointment of such Commission under the Act. The only action which the Government had contemplated was the enquiry by Mr. S. Ray, Principal Secretary to Government, relating to both Yeleru and Social Welfare Land Acquisition cases.

(e) On 29-1-1997, WP No.1235/1997 was taken up for hearing and the suo motu WP No.26456 of 1996 was also clubbed with it and a Division Bench of this Court presided by the Chief Justice has passed the following order:

"When the instant case was taken up, it was felt desirable to take up WP No.26456 of 1996 along with it. Accordingly, the two matters are taken up together. In course of the hearing, it has transpired that the Government has been ready and willing for the appointment of a sitting Judge of the High Court as a Commission of Inquiry u/s 3 of the Commissions of Inquiry Act, 1952. Proceeding in WP No.26456 of 1996 has been taken up on the basis of a report of the District Judge, Visakhapatnam and by order of this Court, issuance of cheques in Land Acquisition cases, pending at various stages in the Sub-Courts at Anakapalle and Chodavaram, Visakhapatnam District has been stayed. It is agreed at the Bar that until the completion of the enquiry and consequential actions, if any, the stay, as ordered by this Court on 10th of December, 1996 shall continue and the cases already registered and investigations taken up by CBCID shall continue on condition that materials collected in course of investigation and/or statements recorded in course of the investigation of the

cases shall be made available to the commission appointed for the purpose of enquiry into the matter.

Since a sitting Judge of this Court is proposed to be appointed as the Commission of Inquiry, it is felt that except notifying the appointment of the Secretary and other staff of the Commission of Inquiry, from amongst members of the Registry of the High Court and/or the Courts in the State including subordinate staff, no independent selection is required and no extra financial burden is involved. It is felt, however, that the Commission may need assistance of investigating agencies in matters, which in course of enquiry, may require special attention. A notification in this behalf, empowering the Commission to requisition the services of the officers in the police service of the State, including members of the Indian Police Service (IPS) allotted to the State, shall be necessary. All concerned, wherever they are, who have control and custody of the records pertaining to the matter, shall be directed accordingly to make all such records available and all persons, who are in the know of/or informed about anything concerning the subject of enquiry shall be directed to appear and make themselves available for evidence, as and when required and/or for consultations as and when required by the Commission.

Learned Additional Advocate-General has informed the Court that necessary notifications in this behalf shall issue without delay.

The Registrar (General) is, however, required to make immediate communication of the name and consent of the learned Judge nominated for the said purpose by the Chief Justice.

The learned Additional Advocate-General has also stated that terms of the reference shall be finalised in consultation with the Chief Justice of the Court within a couple of days.

The two petitions are ordered accordingly and disposed of."

(f) As already stated above, Justice S.R. Nayak was appointed by G.O. Ms. No.83, dated 5-2-1997 and after his resignation, the Commission was reconstituted with Justice B.K. Somasekhara by G.O. Ms.No.468, dated 2-6-1997. Justice B.K. Somasekhara's Commission is 2nd respondent herein and the tenure was mentioned as six months i.e., upto 2-12-1997.

4. The petitioner assails the setting up of the Commission on several grounds; namely,

(1) that the power to constitute a Commission u/s 3(1) of the Commissions Act is discretionary power vested in the State Government and that the State Government has to independently apply its mind to form an opinion necessitating the Constitution of such Commission and that the said exercise has not been made by the State Government, but the Commission was constituted at the behest of the Andhra Pradesh High Court and as such, the setting up of the Commission is in infraction of the Commissions Act as also the fundamental

rights guaranteed under Articles 14, 19 and 21 of the Constitution of India and has to be set aside;

(2) that even the terms of reference of the Commission have been set by the Andhra Pradesh High Court and imposed upon the Government and that such an action is arbitrary and illegal;

(3) that nomination of 3rd respondent as the Commission is bad and more so, in view of the fact that he ought to be discontinued consequent on the retirement on 27-1-1998, as what was expressly intended was to nominate a sitting Judge of the Andhra Pradesh High Court to head the Commission and that retired Judge cannot continue the same;

(4) that there is infraction of principles of natural justice; and

(5) that the 3rd respondent is biased against the petitioner and as such, the interests of justice warrant that he be prohibited from proceeding any further as the Commission.

5. Counter affidavits have been filed on behalf of the Government-1st respondent - and also the Commission - 2nd respondent - stating that in view of irregularities committed in the payment of compensation relating to both Yeleru Canal and acquisition of house sites, Commission was set-up to make enquiry and that there is no legal infirmity in the same. Insofar as the High Court's role is concerned, it is stated in the course of hearing of the writ petitions, the High Court has taken cognizance of the readiness and willingness of the Government to constitute a Commission and orders were passed constituting a Commission. Coming to the bias, it is stated that merely because Justice Somasekhara - 3rd respondent herein - was a party to the Full Bench, it cannot be construed that he is biased and that the word_ "culprits" used in the order of the Full Bench was used in general sense. On the aspect of principles of natural justice in not providing an opportunity to the petitioner for cross-examination, it is stated that the petitioner will be provided with such an opportunity after order u/s 8-B is passed.

6. Mr. Subodh Markandeya, the learned senior Counsel appearing for the petitioner, submits that the State Government did not apply its mind at all in appointing the Commission and that Commission was appointed pursuant only to the directions issued by judgment dated 29-1-1997 passed by a Division Bench in WP Nos.1235 of 1997 and 26456 of 1996. It is his contention that the High Court is not empowered to issue any directions to the Government to appoint a Commission under the Commissions Act and that the State Government without being guided by anybody and more so, by the High Court, has to independently apply its mind as to whether material available and the circumstances warrant the appointment of a Commission to enquire into a matter having specific public interest and as that exercise has not been done by the Government independently and as it was done only pursuant to the directions of this Court and that as this Court is not entitled to issue such directions, the order setting up

Commission is invalid for non-application of mind by the Government and is, thus bad. He submits that it is not for the High Court to settle the terms of reference, but the same have to be settled by the Government. His further submission is that since the sitting High Court Judge was contemplated, 3rd respondent cannot act as the Commission, as he is ceased to be the sitting Judge and that too placing additional financial burden on the Government contrary to what is stated in the Order of the High Court dated 29-1-1997. In support of his argument, he has cited the judgments, mainly relying upon a Full Bench judgment of this Court comprising of 5 Judges in Dhronamraju Satyanarayana Vs. N.T. Rama Rao and Others, . Relying upon earlier judgments in Vijay Mehta Vs. State of Rajasthan, , Jagram v. Gwalior Town and Country Development Authority, Gwalior AIR 1987 MP 2, Peoples Union for Democraticrights and Another Vs. Ministry of Home Affairs, , Rajendran Vs. Home Secretary, and Bhagwat Dayal Sharma Vs. The Union of India and Others, , it was held "in our considered view, this Court would not be justified in issuing a writ of mandamus directing the Central Government to appoint a Commission to go into the charges levelled against the first and second respondents." Judicial precedents need not be multiplied on this point, as we accept the contention of the learned senior Counsel that there cannot be any direction to appoint a Commission under the Commissions Act, but should the High Court feel that a fact finding is necessary, then it can itself appoint a Committee or Commission. The learned Advocate-General appearing for the State and Ms. Bhaskara Lakshmi, the learned Counsel appearing for respondents 2 and 3 submit that the Commission was validly constituted and the High Court did not impose the Commission on the Government and on the other hand, the Government had been ready and willing to appoint the Commission and the Commission was consequently constituted, there is no illegality in the Constitution of the Committee and merely because terms of reference were settled by the then Chief Justice in consultation with the Additional Advocate-General, the Constitution of Commission cannot be assailed and that there is no prohibition for sitting Judge appointed as Commission continuing the same even after his retirement, if the Commission"s work is not over.

7. A reading of the order dated 29-1-1997 passed by this Court in \\VP Nos.1235 of 1997 and 26465 of 1996 does not lead to a conclusion that there was any imposition by this Court on the Government to constitute a Commission. This Court cannot make any such imposition, either. Even in the counter-affidavit filed by the Government, it is stated that this Court had taken cognizance of the readiness and willingness of the Government to constitute a Commission. But the question which falls for consideration is whether the words "readiness and willingness" connote the formation of opinion by the Government to appoint a Commission. It is pertinent to mention that the Government is entitled to constitute a Committee or any other kind of Commission or appoint an Enquiry Officer de hors the Act and in fact, it did so appointing Mr. S. Ray as the enquiry officer. But, if the Government wanted to exercise the statutory power under the Act constituting the Commission it could do so only in the manner indicated in

the said statute and not otherwise. No extraneous consideration can influence the Government to exercise the statutory functions de hors what is stated in the statute. It is apt to extract Section 3 of the Act, which confers the power in appointing Commission :

"3. Appoint 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 an 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....."

A reading of the above provision makes it abundantly clear that formation of opinion is a condition precedent for appointing a Commission and as such, we will first consider as to whether the essential ingredient is present or not and only depending upon the answer on the said main ground, necessity to address on the alternative grounds can arise. Where the statutory power is given to the Government to form an opinion, the Government must form its opinion and cannot abdicate its powers. In a leading case, on the words "in the opinion of in The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, , the Supreme Court dealing with the said words in pari materia, held :

" It is only after the formation of certain opinion by the Board that the stage for exercising the discretion conferred by the provision is reached. The discretion conferred to order an investigation is administrative and not judicial since its exercise one way or the other does not affect the rights of a Company nor does it lead to any serious consequences as, for instance, hampering the business of the Company. As has been pointed out by this Court in Raja Narayanlal Bansilal Vs. Maneck Phiroz Mistry and Another, , the investigation undertaken under this provision is for ascertaining facts and is, thus, merely exploratory. The scope for judicial review of the action of the Board must, therefore, be strictly limited. Now, if it can be shown that the Board has in fact not formed an opinion its order could be successfully challenged. This is what was said by the Federal Court in AIR 1943 75 (Federal Court) , and approved by the Privy Council. Quite obviously, there is a difference between not forming an opinion at all and forming an opinion upon grounds, which, if a Court could go into that question at all, could be regarded as inapt or insufficient or irrelevant."

It is pertinent to mention that if each House of Parliament or the State Legislature passes a resolution to appoint a Commission, the State Government is bound to appoint a Commission. But, excepting the said circumstance, the Government is not bound to appoint a Commission. The statute leaves it to the discretion of the Government to exercise its power as to whether in a given case, a Commission under the Act has to be appointed or not. But, there cannot be compulsion or imposition by any person/s or authority, liven judicial authority is

no exception. Ours is a democratic polity and any person/s may ask the Government for appointment of a Commission under the Act. But, it is Government's absolute discretion either to appoint a Commission or not. It has to exercise such discretion by applying its mind independently and then form an opinion that it is necessary to appoint a Commission under the Act.

8. The prime question for consideration is whether there was proper compliance with Section 3(1) of the Act. We have perused the records carefully and did not find any material "forming any opinion" by the Government to constitute a Commission under the Act. In fact, the records only disclose that the Government was willing to go ahead with the enquiry by Mr. S. Ray. The entries, endorsements and orders by hierarchy of officials and then ultimately of the Chief Minister, right from 8-12-1996 to 29-1-1997 bear testimony to this fact. We had again posted the matter on 11-6-1999 and asked the learned Advocate-General whether there was any other material apart from one submitted to the Court to prove that there was formation of opinion by the Government to appoint a Commission under the Act. The learned Advocate-General sought time and then filed an additional affidavit. But the said affidavit also does not help the Government, as, there is nothing touching upon the formation of opinion by the Government to appoint a Commission under the Act. When we asked a specific question as to the basis of the statement of the Additional Advocate-General before the Court on 29-1-1997, the learned Advocate-General had stated that the said statement "the Government had been ready and willing to appoint a Commission" was made, taking cue from the statement of the Chief Minister made on the floor of the Assembly on 13-12-1996 that he had no objection, if a sitting Judge is specially posted for dealing with the matter for conducting enquiry and rendering punishment, under the supervision of the High Court, as suggested by Mr. Vidyasagar Rao and others. The book containing the Assembly proceedings dated 13-12-1996 has also been furnished to the Court and when he had put a question as to whether there were any oral deliberations with the Government or among the Government functionaries, as on 29-1-1997, the learned Advocate-General had stated that there were no such deliberations. When we asked about the expenditure spent on the Commission, the details and stages of appeals and criminal cases, they were furnished.

9. In view of the above, it is thus clear that the Government had never intended to appoint a Commission under the Act and on the other hand it had decided to go ahead with the enquiry by Mr. S. Ray as noted from the Note file, which has been detailed above. The statement made by the Chief Minister on the floor of the Assembly on 13-12-1996, which has been mentioned above, that he has no objection to appointing a sitting Judge under the supervision of the High Court, cannot be termed as formation of any opinion. The Legislature did not pass any resolution to appoint a Commission under the Act and the Government had not exercised its discretion to appoint a Commission and on the other hand, the action of the Government, the very next day i.e., 14-12-1996 in issuing G.O. Ms. No. 1042, dated 14-12-1996 in continuation of G.O. Ms. No.1026, Revenue

Department, dated 10-12-1996 ordering to continue Mr. S. Roy as Enquiry Officer and also giving specific terms of reference for the above enquiry, makes the intention of the Government amply clear that it did not want to appoint a Commission under the Act, but to continue the enquiry by its Principal Secretary - Mr. S. Roy. That was the situation as obtained on 29-1-1997. When the order was passed by this Court on 29-1-1997 in WP Nos.1235 of 1997 and 26465 of 1996, the Government had understood that the High Court had issued directions to it to appoint a Commission. That is so manifest from the Note of the Government dated 30-1-1997, which reads :

"In the light of the orders of the HC directing appointment of a Commission of Inquiry, the need for the present order may be decided."

The words "the need for the present order may be decided" were in the context of continuing or otherwise of Mr. S. Roy, Enquiry Officer, in view of the Government construing this Court's order dated 29-1-1997 in the nature of directions to appoint a Commission under the Act. Consequently, Mr. S. Roy was discontinued as Enquiry Officer. It is pertinent to mention that before issuing the Notification dated 5-2-1997 appointing the Commission, the Government had got the terms of reference settled by the then Chief Justice, feeling obliged to do so, under the impression that it was appointing the Commission under the Act, only pursuant to the orders dated 29-1-1997 of this Court. That apart, in the noting at several places in the files produced before us, the said fact is mentioned, apart from the clear admission in the counter filed by the Government, Even the 2nd respondent-Commission, in the Notification issued under Rule 4 of the Andhra Pradesh Commission of Inquiry Rules, 1968, refers to the fact of appointment of the Commission under the directions of this Court, which is extracted below :

"Whereas the Government of Andhra Pradesh while appointing the Commission in pursuance of the directions of the High Court in WP Nos. 1235 of 1997 and 26465 of 1996 dated 29-1-1997 has, thus, proposed inquiry into the said allegations....."

10. Thus, the inevitable conclusion is that the Government did not exercise its power as contemplated u/s 3(1) of the Act and did not form any opinion to appoint a Commission under the Act and as such, following the dicta laid down in Barium Chemicals case (supra) the orders appointing the Commission in G.O. Ms. No.83, Revenue Department, dated 5-2-1997 and 468, Revenue Department, dated 2-6-1997 are liable to be set aside and accordingly, they are set aside.

11. One other factor needs a mention. The enquiry by the Commission under the Act has no evidentiary value in Courts. Four criminal cases with serious charges were entrusted to CBCID. The criminal Courts will decide the same. Pursuant to Governmental Orders u/s 3(1) of the Criminal Law (Amendment) Ordinance, 1944, cash in Banks and lands standing in the name of the petitioner and others have been attached and they are questioned before this Court. The act in seeking to prosecute the petitioner and others by invoking Section 340 of the

Criminal Procedure Code is also under attack before this Court. This Court will decide the said writ petitions. Appeals against enhancement of compensation have been preferred by the Government and they have been taken up by this Court. Out of them (405), 102 appeals have been disposed of and other appeals are still pending.

12. Disciplinary action has been initiated against the Officers, who were said to be involved in the illegal acts. Article 235 of the Constitution of India confers exclusive jurisdiction over the High Court to take disciplinary action against the Subordinate Judicial Officers as also the Judicial Ministerial staff. This Court, on administrative side, had already initiated proceedings and enquiry report has been submitted by the Enquiry Officer (Mr. Thyagaraju Naidu, District Judge) and further action is being taken. Personnel covered by Article 235 cannot be subjected to enquiry under the Commission Act. It is, thus, evident that appropriate legal action/s has been taken against the alleged violators of law and appropriate authorities mentioned supra will deal with the said matters and that is the ultimate action to be taken. No useful purpose is served by any other mode of enquiry. That apart, commission with sitting Judge was appointed for 6 months, which was to expire on 2-12-1997 with specific understanding that there is no additional financial burden. But, the learned Advocate-General, to a query of this Court, stated that Rs.80,00,000/- has been spent (Rs.65,90,000/- for the commission and the rest for other expenditure like Travelling Allowance and Dearness Allowance). No useful purpose is served in continuing the commission any further.

13. In view of what is stated supra, we hold :

(1) That the 2nd respondent-Commission has not been validly constituted in consonance with Section 3 of the Act and, thus, cannot function any further;

(2) That the cases relating to Crime Nos.327/96, 6/97 and Crime Nos.7/97 and 10/97 shall be investigated and tried and disposed of within a period of one year from the date of the receipt of a copy of this order;

(3) The disciplinary proceedings initiated, both against the Judicial Officer, Judicial Ministerial staff and others and also others, shall be disposed of by the respective authorities, within a period of six months from the date of the receipt of a copy of this order;

(4) The remaining appeal suits arising out of the OPs. enhancing the compensation amounts and pending before this Court shall be disposed of by constituting a Special Bench within a period of two months from the date of the receipt of a copy of this order; and

(5) In the cases where the decrees passed enhancing the compensation amount had become final, the respective claimants shall be entitled to file execution petitions and the cheque petitions have to be duly verified by the concerned executing Courts and the amounts have to be paid to the decree-holders by

crossed-demand drafts and depositing the same in the Banks by opening the accounts by the Presiding Officers of the Executing Courts. Thorough and proper enquiry has to be conducted by the Presiding Officers of the Executing Courts with regard to identity of the decree-holders.

14. WP is allowed accordingly. No costs.