

(1968) 05 MP CK 0009
In the Madhya Pradesh High Court
Case No : M.P. No. 156 of 1968

Puhupram and others

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 04-05-1968

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 3
Penal Code, 1860 (IPC) — Section 120B, 148, 149, 302

Citation : (1968) J LJ 912 : (1968) MPLJ 629

Hon'ble Judges : P.V. Dixit, C.J.; G.P. Singh, J

Bench : Division Bench

Advocate : R.S. Dabir, for the Appellant; K.A. Chitale, Advocate-General and K.K. Dubey, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.

The Petitioners in this case seek a direction restraining Shri R.J. Bhawe, one of the Judges of the Court, appointed as a Commission u/s 3 of the Commissions of Inquiry Act, 1952 (hereinafter called the Act), for the purpose to be stated presently, for commencing the enquiry till the conclusion of criminal cases instituted against them in respect of offences under Sections 148, 149, 120-B and 302, I.P. C.

It appears from annexure-1 to the petition that for some time past feelings between the Hindus and Satnamis of villages Guruaindabri and Baigakapa were strained. On account of these feelings there was a clash between the two communities on 19th January 1968 at village Guruaindabri and on 20th January 1968 at the other village Baigakapa. It is alleged that in these disturbances there was looting, arson and violence to several persons. After these incidents, a notification was issued by the Government u/s 3 of the Act appointing Shri Bhawe as a one-man Commission for the following purposes, namely,

(i) to enquire into and report on the circumstances leading to the happenings at village Guruaindabri on 19th January 1968 and Baigakapa on 20th January 1968 with special reference to the past history of the area and similar incidents within the last 15 years;

(ii) to enquire into and report the causes of the strained relations between the different sections of society in that area;

(iii) to examine and report whether the district administration and the police officials discharged their duties in relation to the incidents properly and effectively; and

(iv) to suggest remedial measures.

On 19th March 1968, a notice was issued by the Commission inviting "all individuals and associations interested in the enquiry" to file statements relevant to the terms of the reference by 25th April 1968. The notice also stated that a preliminary sitting of the Commission would be held at Bilaspur on 29th April 1968.

The Petitioners say that they and some other hundred persons have been arrested in connection with offences under Sections 148, 149, 120-B and 302, I.P. C. alleged to have been committed during the course of disturbances that took place at the aforesaid two villages on 19th and 20th January 1968 and a challan for their prosecution in respect of the said offences was to be filed on 24th April 1968 in the Court of the First Class Magistrate, Bilaspur. Their main grievance is that if the Commission commences the enquiry entrusted to it, it will seriously prejudice their trial for the offences charged against them, create public opinion against them, influence the witnesses who may give evidence at the trial, and they may also be compelled to make statements before the Commission which may be used against them in the criminal cases. It is for these reasons that the Petitioners pray that the Commission be restrained from commencing the enquiry.

In our judgment, the apprehension felt by the Petitioners is unfounded and based on a total misconception of the purpose and scope of the enquiry entrusted to the Commission. Section 3 of the Act empowers the appropriate Government in certain eventualities to appoint a Commission of Inquiry for the purpose of making an enquiry into any definite matter of public importance. As to what is a "definite matter of public importance" has been elucidated by the Supreme Court in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, at p. 514. The Supreme Court said-

Widespread floods, famine and pestilence may quite easily be a definite matter of public importance urgently calling for an inquiry so as to enable the Government to take appropriate steps to prevent their recurrence in future. The conduct of villagers in cutting the bunds for taking water to their fields during the dry season may cause floods during the rainy season and we can see no reason why

such unsocial conduct of villagers of certain villages thus causing floods should not be regarded as a definite matter of public importance. The failure of a big bank resulting in the loss of the life savings of a multitude of men of moderate means is certainly a definite matter of public importance but the conduct of the persons in charge and management of such a bank which brought about its collapse is equally a definite matter of public importance. Widespread dacoities in particular parts of the country is no doubt a definite matter of public importance but we see no reason why the conduct, activities and modus operandi of particular dacoits and thugs notorious for their cruel depredations should not be regarded as definite matters of public importance urgently requiring a sifting inquiry. It is needless to multiply instances.

It is evident from the notification dated the 17th February 1968, issued u/s 3 of the Act appointing the Commission of Inquiry, that the "definite matter of public importance" for which the enquiry has been set up is not the conduct or activity or acts of omission or commission of any individual in the course of the happenings at the two villages on 19th and 20th January 1968; but it is the unsocial conduct of the villagers of the two villages and the strained relations between different sections of the villagers resulting in the unfortunate events of the 19th and 20 January 1968. It is this matter which the Government regarded as of public importance urgently requiring a sifting enquiry by a Commission of Inquiry.

It is manifest from the terms of reference of the Commission that it is not going to hold a parallel enquiry into the matter which is sub judice in the criminal cases started against the Petitioners. Under the terms of its appointment, the Commission has to enquire into the circumstances leading to the happenings of 19th and 20th January 1968 with special reference to the past history of the area and similar incidents within the last fifteen years. The enquiry by the Commission is thus not with regard to the actual happenings at the two villages on 19th and 20th January 1968. The Commission has not to ascertain the facts of the incidents of 19th and 20th January 1968. The enquiry is into the circumstances and conditions which prevailed in the two villages for some years and which led to the happenings of 19th and 20th January 1968. This is clear from the fact that the Commission has to enquire into the circumstances with special reference to the past history of the area and similar incidents within the last fifteen years. Such an enquiry can have no bearing whatsoever on any of the issues or questions that may arise for determination in the trial of the Petitioners for offences under Sections 148, 149, 120-B and 302, I.P. C.

The Commission is further required to enquire into and report on the causes of strained relations between different sections of the villagers in the two villages. This, again, is a matter which does not in any way cover any of the allegations against the Petitioners in the criminal trial. The Commission has also been asked to examine whether the district officials discharged their duties properly and effectively in the incidents of 19th and 20th January 1968 and to suggest

remedial measures. It cannot even be suggested that these are matters which are sub judice in the criminal trial. It is thus obvious that the evidence which the Commission may record and the findings it may give has no bearing on or any relation to the actual events that took place on 19th and 20th January 1968. The fear of the Petitioners that the commencement of the enquiry and the recording of evidence by the Commission will prejudice their trial is, therefore, baseless.

The contention that the statements made by persons before the Commission may be used against the Petitioners in the criminal trial is altogether untenable in view of the clear provision of Section 6 of the Act. That provision is as follows-

6. Statements made by persons to the Commission. No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement-

(a) is made in reply to a question which is required by the Commission to answer, or

(b) is relevant to the subject-matter of the inquiry.

The language of Section 6 is plain enough to show that no statement made by a person before a Commission of Inquiry can subject him to, or be used against him in, any civil or criminal proceeding except in a prosecution for giving false evidence before the Commission. In the case of *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, at p. 544 the Supreme Court has observed that "the statement made by any person before the Commission of Inquiry is, u/s 6 of the Act, wholly inadmissible in evidence in any future proceedings, civil or criminal" (underlining is ours). We are aware of a decision of a learned single Judge of the Bombay High Court in *Sohanlal Pahladrai Vaid Vs. State*, holding that where incidents in respect of which the accused are being prosecuted in a criminal trial have been the subject-matter of an inquiry by a Commission of Inquiry appointed under the Act, the statements made by the prosecution witnesses before the Commission can be used by the defense for the purpose mentioned in Section 145 of the Evidence Act, 1872. The learned single Judge took the view that such a use of the statements for the purposes of Section 145, Evidence Act does not constitute use of the statements against the person making the statement. With all due deference to the learned single Judge, we do not find ourselves in agreement with this view especially in view of the observations of the Supreme Court in *Ram Krishna Dalmia's* case (*supra*) that statements u/s 6 of the Act are wholly inadmissible in evidence in any future proceeding, civil or criminal. It is not necessary for the Petitioners to participate in the inquiry held by the Commission if they think that their participation will prejudice the criminal trial. No doubt, the Commission has the power of summoning and enforcing the attendance of any person. But it is reasonable to think that the Commission, constituted as it is by one of the Judges of this Court,

will not compel the Petitioners or any of the persons standing trial to give evidence and thus will not give a chance to them to complain that they have been prejudiced in the criminal trial by being forced to give evidence before the Commission.

It is not necessary to stress that the inquiry, which the Commission is going to hold, is not an inquiry by a civil or a criminal Court and the proceedings thereof are not judicial proceedings of a Court of law [see, : Chimansingh v. State AIR 1951 M B 44; M.V. Rajwade v. Dr. S.M. Hassan 1954 NLJ 245 : A I R 1954 Nag. 71 : I L R 1954 Nag. 1; and Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, at p. 514.] The decisions just cited point out what is "Court" and what are judicial proceedings of a Court of law. Judged by the tests laid down in those decisions, there can be no doubt that the inquiry, which the Commission is going to hold, is not a judicial proceeding of a Court of law. The Commission has not been asked to give a decision as to the respective rights and liabilities of any person or to punish any wrong. In an inquiry of this nature, there is no issue between parties for the Commission to decide and no Defendant or an accused person to be tried. There is no "lis". As Lord Shawcross has said in the case of the analogous Tribunal in England, "the procedure of the Tribunal is inquisitorial rather than accusatorial" [see: Cases and Materials on Administrative Law in India (Vol. 1) published by the Indian Law Institute, New, Delhi]. The Commission has been appointed to find the facts relating to the matters it has to enquire into. In ascertaining those facts, and having ascertained them in making a report on the basis of those facts, the Commission is no doubt obliged to proceed judicially and not arbitrarily and to bring to bear judicial mind, that is, a mind to determine what is fair and just in accordance with law in respect of the matters under consideration. It is in this sense of a standard of conduct and freedom from bias or interest that the inquiry is judicial. The inquiry is not judicial in the sense of an inquiry done by a person in the exercise of his duties as a Judge of a Court.

Shri Dabir, Learned Counsel for the Petitioners, relied on The King Vs. Parmanand and Others, and D.J. Shield v. Ramesam AIR 1956 AP 156 to support his contention that the commencement of the inquiry by the Commission would prejudice the trial of the Petitioners. Those cases do not in any way support the contention that in a case of the type before us the Commission of Inquiry should be prevented from commencing the inquiry and recording any evidence. The proposition that has been laid down in the two cases is that any parallel inquiry conducted by an officer with regard to a matter which is sub judice is bound to interfere with the even and ordinary course of justice. There can be no quarrel with regard to this proposition. But in the present case the Commission is not conducting any parallel inquiry into a matter which has become or may become sub judice by the trial of the Petitioners.

For the foregoing reasons, our conclusion is that there is no ground whatsoever for issuing a direction to the Commission of Inquiry restraining it from holding

the inquiry entrusted to it. The result is that this petition fails and is dismissed. In the circumstances of the case, we leave the parties to bear their own costs of this petition. The outstanding amount of security deposit shall be refunded to the Petitioners.