

(1982) 06 KL CK 0019
In the High Court Of Kerala
Case No : W.A. No. 244 of 1982

Rajendran

APPELLANT

Vs

Home Secretary

RESPONDENT

Date of Decision : 04-06-1982

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 3(1)
Constitution of India, 1950 — Article 226

Citation : AIR 1983 Ker 59

Hon'ble Judges : Bhaskaran, J; Balakrishna Menon, J

Bench : Division Bench

Advocate : A.X. Varghese, for the Appellant; Bhaskaran Nambiyar and A.G., for the Respondent

Final Decision : Dismissed

Judgement

Bhaskaran, J.—The appellant. Sri T. A. Rajendran, stated to be the editor of "Navab", a weekly published from Trichur, filed O. P. No. 3555 of 1982 under Article 226 of the Constitution of India "to call for the entire records in connection with the inquiry into the allegation of bribery of the 4th respondent (Sri Karunakaran, Chief Minister of Kerala) which is the subject matter of the "Navab" photostat case and the records in connection with the allegations against the 5th and 6th respondents (Sri V.N. Rajan, Director. Institute of Criminology and Forensic Science, Ministry of Home Affairs, New Delhi and Sri Jayaram Padikkai, Dy. Director, Vigilance Investigation, Kerala, Trivandrum respectively) in Rajan murder case and to issue a writ in the nature of mandamus or any appropriate writ to direct the 1st, and 2nd respondents (The Home Secretary, Government of India, New Delhi, and the Chief Secretary, Government of Kerala, Trivandrum) for appointing a commission of inquiry as contemplated under Ss. 3 and 11 of the Commissions of Inquiry Act, 1952 (Central) into the allegations levelled against respondents Nos. 4, 5 and 6 and to issue a writ of mandamus directing the 3rd respondent (The Director of Vigilance Investigation, Kerala, Trivandrum) to submit the entire inquiry proceedings made by him go far and that writ petition

having been dismissed by the learned single Judge this writ appeal has been filed by the appellant-petitioner.

2. For the reasons stated in para 3 of the judgment under appeal the learned single Judge took it that "the only matter in respect of which the petitioner seeks the relief is what is connected with the allegation contained in the "Navab" dated 1-4-1972". In the averments made in the writ petition there is hardly anything to show that the petitioner had any cause of action with respect to Rajan case. In fact, we fail to see what bearing the publication of the news item in the petitioner's weekly "Navab" dated 1-4-1972 has on the Rajan case. Agreeing with the reasoning of the learned single Judge, we also take it that the relief that the, petitioner seeks in the writ petition is confined to the one relating to the allegations contained in the issue of "Navab" dated 1-4-1972.

3. The learned single Judge found inter alia that there was total failure on the part of the appellant-petitioner to call upon respondents 1 and 2 to order an enquiry under the Act and that the petitioner could not at such distance of time, justifiably invoke the extraordinary jurisdiction of this Court to issue a writ of mandamus to compel the Government to appoint a Commission to inquire into the allegation u/s 3 or Section 11 of the Act.

4. Sri A.X. Varghese, the counsel for the appellant, submitted that the reasons stated by the learned single Judge declining to issue a writ of mandamus as prayed for are not sustainable. In support of his contentions he cited the decisions of the Supreme Court in State of Jammu and Kashmir Vs. Bakshi Ghulam Mohammad, and Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, ; and the Division Bench rulings of this Court in T.V. Eachara Varier Vs. Secretary to the Ministry of Home Affairs and Others, and Eachara Varier v. Home Secretary 1977 Ker LT 526.

5. Sri V. Bhaskaran Nambiar, Advocate General, submitted that if at all the appellant-petitioner was entitled to anything, that was to approach the Government in terms of G. O. Ms. No. 386/Home dated 20-12-1969. He also argued that the appellant-petitioner approached this Court without bearing in mind the limitations on the writ jurisdiction of this Court. He also pointed out that, after, the receipt of Ext. P-1 representation dated 27-6-1978 addressed to the Governor, the 3rd respondent had on 9-10-1978 written to the appellant-petitioner to produce before him evidence relied upon by him in support of his allegations; and in response to that communication the appellant-petitioner had actually met the 3rd respondent on 3-11-1978 and submitted his evidence. According to him, the Government on a careful consideration of the entire matter, including the material collected and the conclusions reached by the 3rd respondent, found that there was no basis in the allegations made by the petitioner and that there was no case made out for any action with respect to the allegations contained in Ext. P-1, which facts could be seen from the proceedings dated 29-3-1979. As contended by the Advocate General and found by the learned single Judge, the appellant-petitioner, after he met the 3rd respondent

and produced evidence relied on by him on 3-11-1978, appears to have gone into a long slumber, until Ext. P-3 representation dated 9-12-1981, addressed to the Governor was submitted. Even thereafter, he took over five months to invoke the writ jurisdiction of this Court.

6. Section 3(1) of the Act reads as follows :--

"Appointment 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 the House of the People or, as the case may be, the Legislative Assembly 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." (Proviso omitted)

On a careful analysis of the terms in the above sub-section, it appears to us that the question of appointment of a Commission would arise only if, in the opinion, of the Government, it is found necessary to appoint one or when the Government is compelled to do so as a result of the resolution passed in that behalf, either by the Lok Sabha or by the Legislative Assembly of the State concerned. The expression "if it is of opinion" used in the sub-section makes it abundantly clear that, unless, compelled by the Lok Sabha or the Legislative Assembly of the State concerned, the Government has the discretion to appoint or not to appoint a Commission in terms of Section 3 of the Act, depending upon its opinion. The averments in the writ petition do not show how the provisions of the Act, in terms of Section 11 of the Act, would apply to the facts of the case. In our opinion Section 11 has no relevance to the context.

7. It is a well established principle that the Court normally would be slow to issue writ of mandamus to compel any person or authority, charged with the duty to perform any act, to do such act unless it is satisfied on the pleading and the evidence in support thereof that the party seeking that relief had earlier made a specific request in that behalf to such person or authority, and that person or authority had declined or refused to comply with that request. The absence of pleadings, much less evidence, that there was such an earlier demand to and refusal by respondents 1 and 2 to order an inquiry into the allegations made by the appellant-petitioner is an additional reason why this Court could not have granted the relief sought by the appellant-petitioner besides the long and unjustifiable delay in invoking the writ jurisdiction of this Court.

8. We have gone through the decisions cited by Shri Varghese; and we find little in them to advance the case of the appellant-petitioner. The Supreme Court decisions referred to were concerned with the appointment of Commission under the Act by the Government, as the Government in its opinion thought that the appointment of such a Commission was necessary. They are not cases where the Court compelled the Government to order inquiry in terms of the Act into the

allegations made. The Division Bench cases of this Court relied on by Sri Varghese do not relate either to the issue of writ of mandamus or anything relating to the provisions of the Act; those decisions also are, therefore, of no help to the appellant-petitioner.

9. For the foregoing reasons, in respectful agreement with the decision of the learned single Judge, we dismiss this writ appeal.

Dismissed.

10. Immediately after the judgment was pronounced, the counsel for the appellant submitted that leave may be granted under Article 133(1)(a) and (b) of the Constitution. Inasmuch as no substantial question of law of general importance deserving to be decided by the Supreme Court is involved in this case, we do not consider that leave to appeal should be granted; accordingly the request is declined.

11. Leave refused.

12. Carbon copy of the judgment may be granted to the Advocate General free of charge and to the counsel for the appellant on usual terms if applied for in that behalf.