
(2003) 03 KL CK 0009
In the High Court Of Kerala
Case No : O.P. No. 162 of 2003

Robinson

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 31-03-2003

Acts Referred:

Constitution of India, 1950 — Article 220

Citation : (2003) 3 ILR (Ker) 176 : (2003) 3 KLT 1052

Hon'ble Judges : Jawahar Lal Gupta, C.J.;Kurian Joseph, J

Bench : Division Bench

Advocate : Vellayani Sundararaju, for the Appellant; Roy Chacko, Sr. Govt. Pleader, B. Radhakrishnan and P.S. Sreedharan Pillai, S.C.G.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, C.J.—The petitioner, an advocate, has approached this Court with the prayer that the Order, dated August 24, 2002 by which the 2nd respondent was appointed to enquire into the boat accident at Kumarakom be quashed. A few facts as relevant for the decision of this case may be briefly noticed.

2. On July 27, 2002, a boat accident had occurred. A number of precious human lives were lost. Various kinds of allegations were made. It was inter alia alleged that the personnel posted at the site were not careful. The boat was not being properly maintained. The legal heirs of the deceased were entitled to compensation. Taking into consideration the people's demand the Government had decided to order a judicial inquiry. It had, thus, issued the impugned order to appoint the second respondent as a Commission of Inquiry into the matter. Specific terms of reference was also notified vide notification, dated August 29, 2002. A copy is at Ext. P3.

3. The petitioner alleges that the second respondent, while functioning as a

Judge of this Court, had expressed an opinion vide Judgment dated September 8, 1998 in O.P. No, 3227/1998 that a retired Judge should not accept any appointment after demitting the office. On the basis of this Judgment, the petitioner maintains that the second respondent was not entitled to accept the appointment. It has also been alleged that the Government had appointed several Commissions of Inquiry periodically. Their opinion is not binding. No action is taken in pursuance to the reports. Thus, the petitioner prays that the impugned notification be quashed.

4. A counter-affidavit has been filed on behalf of the State Government. It has been inter alia averred that it was after consideration of the relevant facts that a decision for a judicial inquiry was taken. It is the desire of the Government to know "the circumstances that led to the boat accident near Kumarakom on 27th July 2002". It has also been pointed out that the Commissioner was unable to submit its report expeditiously as delay had occurred in providing the requisite facilities to it. On these premises, the respondent maintains that the impugned notification is legal and valid.

5. Learned Counsel for the parties have been heard. On behalf of the petitioner, Mr. Vellayani Sundararaju has contended that the impugned notification violates Article 220 of the Constitution. It is contrary to the judicial opinion expressed by the second respondent. The appointment of the Commission shall serve no public interest. The opinion is not binding. Thus, the impugned notification should be quashed.

6. On behalf of the respondents, Mr. Roy Chacko, the Senior Government Pleader, has contended that the Government is interested in ascertaining the cause of the accident. Thus, it had considered it appropriate to appoint a retired Judge to hold an enquiry. Appropriate action shall be taken on the receipt of the report. On behalf of the second respondent, Mr. Thottathil Radhakrishnan has submitted that the impugned notification does not violate Article 220 of the Constitution in any form. The personal opinion expressed by the second respondent in the course of a judgment cannot form the basis for the judicial review of a purely administrative order. In any event, the opinion as expressed by the learned Judge had been overruled by a Division Bench vide its Judgment, dated October 24, 1998 in W.A. No. 2114/1998. Thus, the very basis on which the notification is sought to be challenged does not exist.

7. It is undoubtedly true that every Judge, sitting or retired, has to be like Caesar's wife. The conduct must remain above suspicion. It is also true that acceptance of office soon after the retirement can raise public suspicion and erode the credibility of the judicial system. Yet, there are situations where public interest demands that there should be a judicial enquiry. If, in such a situation, a retired Judge responds to the request made by an appropriate authority, it cannot be said that he has acted in violation of Article 220 of the Constitution. A perusal of the provision shows that a person who has been a permanent Judge of a High Court cannot act or appear before any Court or authority other than the

Honourable Supreme Court and other High Courts. However, acceptance of the Government's request to hold an enquiry does not amount to parctising or acting before an authority subordinate to the High Court. Thus, we find that there is no violation of Article 220 of the Constitution in the present case.

8. Mr. Raju submits that the second respondent could not have acted in a manner which may be contrary to his own Judgment. It is undoubtedly true that while dealing with a matter relating to the right of a retired Judge to contest an election, the second respondent had made certain observations. The thrust of these observations was that a Judge should not accept any office, elected or otherwise, after retirement. However, on appeal, the vital observations were expunged from the Judgment. Irrespective of that, we find merit in the contention raised on behalf of the second respondent that the opinion expressed by him in a particular context cannot furnish a good ground for judicial review of an order appointing a "Commission of Inquiry". Thus even the second contention cannot be accepted.

9. Lastly, it has been contended by the learned Counsel for the petitioner that a report submitted by a retired Judge is not binding on the Government. Thus, no Judge should agree to hold any inquiry under the 1952 Act. Learned Counsel has placed reliance on the decision of Their Lordships of the Supreme Court in *T. Fenn Walter and Others Vs. Union of India (UOI) and Others*, .

10. The Government orders an enquiry under the 1952 Act primarily to ascertain the factual position and to take suitable remedial measures. It is true that the provisions of the Act do not make the report of the Commission binding on the State Government. However, it deserves notice that the petitioner's prayer is not that the Government should be compelled to introduce an amendment in the Act and to make the report binding. His complaint is that the Judge should not have accepted the request of the Government to hold an enquiry. We find no warrant for such a suggestion. Even a recommendation is entitled to all respect. In the present case, it has been stated by the counsel for the State Government that further action in accordance with the report shall be taken. We have no reason to suspect that the Government shall not stand by its undertaking.

11. Mr. Sundararaju has referred to the decision of Their Lordships of the Supreme Court in *T. Fenn's* case. This was a case where the issue related to the acceptance of a Commission by a Sitting Judge. Their Lordships have laid down the necessary guidelines in paragraph 16 of the Judgment. These guidelines are law laid down by the Apex Court. These are binding. However, it has not been shown in the present case that the guidelines have been in any way deviated from.

12. Before parting with the case, we consider it appropriate to observe that whenever the Government requests a retired Judge of a High Court to enquire into a matter, its basic purpose is to inspire public confidence and to reach at the truth most expeditiously. The delay in submission of the report can defeat the

purpose. Thus, we consider it appropriate to observe that the 2nd respondent should complete the enquiry as expeditiously as possible. In any case, the matter should be concluded before the date already fixed, viz., May 23, 2003. The purpose of the appointment is not served by publicity, by execution of the job assigned. A quick and expeditious disposal shall promote the purpose for which the Commission was constituted. We have no doubt that the Government shall provide all help to enable the 2nd respondent to do the job within the time already fixed.

13. No other point has been raised.

In view of the above, we find no ground to interfere with the impugned notification. Consequently, the Writ Petition is dismissed. The parties are left to bear their own costs.