
(1972) 04 BOM CK 0005

In the Bombay High Court

Case No : Special Civil Application No. 282 of 1972

Sarjerao Kondiba Sagar

APPELLANT

Vs

P.G. Karnik and Others

RESPONDENT

Date of Decision : 11-04-1972

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 3, 8

Citation : AIR 1973 Bom 171 : (1973) 75 BOMLR 76 : (1973) ILR (Bom) 736

Hon'ble Judges : K.K. Desai, J;Deshpande, J

Bench : Division Bench

Advocate : B.N. Deshmukh, for the Appellant; R.J. Joshi, instructed by Little and Co. Attorneys, for the Respondent

Judgement

K.K. Desai, J.—The petitioner's case is that in pursuance of a call given therefore by the Peasant's and Workers' Party a Morcha of a few thousand persons, including women, was organised on September 6, 1971 near the Government Godown at Vairga village. On that occasion incidents of violence and firing by police took place. By a notification dated 18th November, 1971 Shri P. G. Karnik, District Judge, Aurangabad, was under the Commissioners of Inquiry Act appointed a Commission on Inquiry to inquire into and report on :

- (1) the incidents of violence leading to the firing by the police; and
- (2) to determine whether firing was justified or not and whether excessive or otherwise.

2. The Commission appears to have held its first sitting on 24th January, 1972. On behalf of the Peasants' Party their advocate then submitted that having regard to the nature of the terms of reference the Commission should first record the evidence of witnesses for the police in connection with the incidents of firing undertaken by the police. The submission was that after the evidence of these witnesses was recorded, the evidence of the witnesses for the public represented by the above parties should be recorded. In connection with that application

made on behalf of the above parties, the learned Commissioner referred to the terms of reference and observed that the Police Officers would "practically be in the dock of the accused. They are being accused by some of the political parties of having unnecessarily resorted to firing and having resorted to excessive firing." He held that the officers who were responsible for the firing should be entitled to lead their evidence after recording the evidence of those parties who claim that the firing was unnecessary. He further observed :

"If the party or parties who claim that the firing was unnecessary fail to establish this aspect of the case, the officers who have resorted to the firing may not like to examine any witness at all." He, therefore, directed that the parties who claimed that the firing was unnecessary or that it was excessive should lead their evidence first and that the officers who resorted to the firing will lead their evidence later on.

3. The above directions are challenged in the present Special Civil Application as being contrary to all established principles of natural justice and contrary to the intent and purpose of the inquiry directed to be held under the above Notification.

4. When this morning this Special Civil Application reached hearing. Mr. Joshi has produced a letter dated 3rd April, 1972 from the learned Commissioner addressed to the Under Secretary to the Government of Maharashtra, Home Department. The learned Commissioner has pointed out in the letter that more than 200 affidavits had been received by the Commission from different parties in support of their claims. The parties have agreed that the contents of the affidavits should be treated as evidence in examination-in-chief. Further examination-in-chief should be permitted only if any points needed clarification "in the opinion of the concerned party and the Commission." Examination-in-chief was practically over and the Commission was now to proceed with cross-examination of the witnesses of the other parties. The Commission has stated that it is prepared to abide by any directions which may be given by this Court.

5. Now, in connection with the questions raised in the present Special Civil Application it is sufficient to state that the Commission of Inquiry has been ordered to be held for the main purpose of determination by the Commissioner about the question of the firing being justified or not and whether excessive or otherwise. The background of the inquiry is the fact of the incidents of violence having taken place and the incidents of firing having taken place. In ordinary circumstances, in an inquiry of the above nature having regard to the Governmental and public interest, the first principal which may be noticed by any Commission of Inquiry would be that unless there was proper justification for the purpose firing cannot be undertaken by the police. Even when it is undertaken, it should be limited to the requirements of protection of public interest and it should not be excessive. Prima facie, all relevant facts justifying the resort to firing would be and should be within the knowledge of the officers involved in the incident and/or commencement of the firing. Ordinary public would be divided on this question. Some would support the case of the police and some would

support the case of the other political parties. The main facts proving that the firing was justified and was not excessive are liable to be put forward on behalf and/or by the officers of the police involved in the incident of firing and those others who support the case of the officers in that connection. The case that the firing was justified and was not excessive, that would be made in chief, would have to be destroyed largely by cross-examination of such evidence, and to some extent by positive counter-evidence, which may be led on behalf of the interested political parties and/or public. Apparently in the directions, which he gave the learned Commissioner has failed to appreciate the above position. His directions are accordingly inconsistent with the above normal principles which should guide any Commission of Inquiry. These directions are accordingly liable to be set aside.

6. We do not think, we can give him better guidance in this matter. As pointed out by his letter dated 3rd April, 1972, he has received more than 200 affidavits from different parties and the statements in these affidavits are agreed to be statements in examination-in-chief. We are not aware if in the affidavits, which are received by him, there are affidavits of the officers of the police involved in the incident of firing. We do not think that in that connection we can give any directions as at present advised. It is sufficient to state that the claims of all the parties concerned must have been clarified by the statements contained in the 200 affidavits which are stated to have been filed in the Commission of Inquiry. By examining the relevant facts now disclosed to him, the learned Commissioner should proceed further, after applying the guiding principles which we have recorded above.

7. Rule is made absolute. Directions given by the Commissioner on 24th January, 1972 are set aside. The Commissioner is directed to proceed further with the inquiry in accordance with the principle enunciated above. The petitioners are entitled to costs, which are quantified at Rs. 100/-.

8. Rule made absolute.