

(1982) 07 KL CK 0007
In the High Court Of Kerala

T.A. Rajendran

APPELLANT

Vs

V. Bhaskaran Nambiar, Advocate-General and Another

RESPONDENT

Date of Decision : 21-07-1982

Acts Referred:

Constitution of India, 1950 — Article 215, 226
Contempt of Courts Act, 1971 — Section 14

Citation : (1982) CriLJ 2280

Hon'ble Judges : P.C. Balakrishna Menon, J;K. Bhaskaran, J

Bench : Division Bench

Judgement

K. Bhaskaran, J.—The petitioner in this Contempt O. P. is Sri T. A. Rajendran, Editor, Navab, Trichur. He was the petitioner in O. P. No. 3555 of 1982, and the appellant in W. A. No. 244 of 1982 filed against the dismissal of that writ petition. He was also the petitioner in O. P. No. 4980 of 1982 referred to in this writ petition.

2. O.P. No. 3555 of 1982 was mainly for the issue of a writ in the nature of mandamus or any appropriate writ, to direct 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 Sections 3 and 11 of the Commission of Inquiry Act, 1952 (Central), (the Act) into the allegations levelled against respondents 4, 5 and 6 therein, namely, Sri K. Karunakaran, Chief Minister of Kerala, Trivandrum, Sri V.N. Rajan, Director, Institute of Criminology and Forensic Science, Ministry of Home Affairs, New Delhi, and Sri Jayaram Padikkal, Deputy Director, Vigilance Investigation, Kerala, Trivandrum. That writ petition was dismissed by a learned single Judge by the judgment dated 27-5-1982; and the Writ Appeal filed against that judgment was also dismissed by a Division Bench holding that the writ petition was not maintainable as in terms of Section 3 of the Act the petitioner was not entitled to seek the relief. It was also pointed out that the petitioner had no case that he had made a specific demand to the Government for the appointment of a Commission in terms of Section 3 of the Act, and that the Government had refused to do so. It

was further noted by the Division Bench that there was inordinate delay in the petitioner approaching this Court with the writ petition. Passingly this Court also stated in paragraph 5 of the judgment as follows:

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 applicant-petitioner approached this Court without bearing in mind the limitations on the writ jurisdiction of this Court...

From the averments made in the present writ petition it would appear that the petitioner, though made a search in the Kerala High Court Library, he could not get a copy of G.O. Ms. 386/Home dated 20-12-1969. He, thereafter approached the 1st respondent herein, the Advocate General, to hand over a copy of the Government order to him. His request, it is stated, was, however, declined without giving any reason. Then he made a stamped application dated 9-7-1982 to the Regional Archives, Ernakulam, for a certified copy of that Government order. He was, however, told by the office of the Archives that that Government order was not available in that office at that time. Subsequently the petitioner filed O.P. No. 4980 of 1982 and obtained a direction from this Court to the 2nd respondent, State of Kerala, to issue a certified copy of that order to him within three days of the valid submission of a copy application in that behalf, Ext. P-1 is the certified copy of that order obtained by the petitioner. It is averred in the writ petition that having gone through Ext. P-1", it was found that its application was restricted to inquiry into the allegation of misconduct against Ministers including the Chief Minister or the M.L.As., of the Kerala State who held or had held the offices.

3. It is, therefore, contended by Sri A.K. Verghese, the counsel for the petitioner, that while arguing O. P. No. 3455 of 1982 and W. A. No. 244 of 1982 on behalf of the State, with reference to Ext. P-1 Government order, without producing a copy thereof, the 1st respondent, the Advocate General, had the knowledge that the petitioner's grievance was not confined to misconduct of a Minister of the State, as there were serious allegations against two other top Government officials, who figured as respondents 5 and 6 in those proceedings, and it was knowing fully well that that Government Order (Ext. P-1) was of no avail against them, deliberately and without bona fides misled the Court by making the Judges believe that all that the petitioner needed to do was to invoke that Government order (Ext. P-1) to secure effective and efficacious relief as against all the respondents therein, including the two Government officials. He considers that but for this oral submission made by the 1st respondent, the Judges would not have declined to entertain the writ petition and the Writ Appeal by the petitioner. It is on this reasoning that the petition for taking action under the provisions of Article 215 of the Constitution of India and Section 14 of the Contempt of Courts Act, 1971 (Central) has been filed by the petitioner.

4. For the sake of completeness the observations made by the learned single

Judge with respect to the submission made by the Advocate General also would be extracted below:

The Advocate General tells me that in terms of G.O. Ms. 386/Home dated 20-12-1969, it is open to any person to approach the Government to order a preliminary enquiry to decide as to whether or not there is prima facie case for the appointment of a Commission under the Act. This order is still in force and it is open to any person including the petitioner to approach the authorities if he has a legitimate allegation to make. (Vide paragraph 9 of the judgment in O. P. No. 3555 of 1982). The petitioner's belief or contention that but for the submission made by the Advocate General with respect to Ext. P-1 Government Order, his writ petition would have been entertained by the learned single Judge and also by the Division Bench does not appear to be correct. So far as the Division Bench decision is concerned, it is seen that primarily it was based on the interpretation of the petitioner's locus standi to move this Court in terms of Section 3 of the Act for the issue of a mandamus for appointment of a Commission in terms of that section, on the factual position that the petitioner had no case that he had made a demand to the Government for the appointment of a Commission, and the Government had refused to comply with such a request, and also on the reason that there was inordinate and unjustifiable delay in moving this Court under Article 226. In the writ appeal judgment there is only a passing reference to what the Advocate General submitted. A careful reading of the judgment would easily convince anyone that the submission made by the Advocate General was not the deciding factor so far as the Division Bench was concerned. The position does not appear to be different with respect to the decision by the learned single Judge also, as we do not for a moment believe or find it reasonable to hold that it was on the basis of the submission made by the Advocate General with respect to Ext. P-1 Government order that the learned single Judge declined to entertain the writ application filed by the petitioner.

5. That apart, we do not think that on the petitioner's own showing the Advocate General had made any submission to mislead the Court. The sum and substance of what the Advocate General stated before the Court seems to be that if at all the petitioner was entitled to any relief he was to look up to Ext. P-1 Government Order. The question whether that Government order was exhaustive enough to embrace all the categories of persons arrayed as respondents did not arise for consideration, as a detailed examination of that question was not felt necessary, for the writ Petition and the writ appeal were found to be not maintainable for other basic and more fundamental reasons, and only a passing reference to the submission made by the Advocate General with reference to Ext. P-1 Government Order was called for. It cannot also be understood that when the Advocate General mentioned about the existence of the Government Order, he wanted the Court or the petitioner to believe that that Government order was applicable to all the persons arrayed as respondents in the writ petition. It could be seen from both the judgments that the Advocate General's contention was that the writ petition was not maintainable in law and it was only by way of an

information that he stated that if the petitioner could think of any remedy, if aggrieved, it could only be under Ext. P-1 Government Order. We do not for a moment believe that it was the intention of the Advocate General either to mislead the Court or to give a wrong impression in the mind of the petitioner in regard to the real scope and ambit of Ext. P-1 Government Order.

6. Sri Varghese lastly made a request that in any event notice to the respondents may be issued so that the Court might have the benefit of knowing what they would state in their affidavits. The petitioner having failed to make out a case of contempt of court, he is not justified in asking for the issue of notice to the respondents. Action under the Contempt of Courts Act is a serious step as it partakes the character of criminal proceedings, though in an absolute sense it might not be purely criminal proceeding as such. Issue of notice to the respondents under the Contempt of Court Rules would necessitate their appearance in person unless their attendance in person is dispensed with, vide Rule 167 of the Kerala High Court Rules. Notice in a contempt action could not be issued in a light-hearted manner or as a matter of course unless a prima facie case is made out by the petitioner to the satisfaction of the Court. As a rule of prudence the High Court should refrain from issuing notice to the person charged with contempt without satisfying itself from the statement of facts and the pleadings in the affidavit that there is reasonable ground for considering that an offence of contempt had been committed. The petitioner having failed to satisfy us by means of the averments in the petition that there is a prima facie case for action, we decline to accede to the request of his counsel for the issue of notice to the respondents.

For the foregoing reasons we find that the contempt petition is without merit and it is accordingly dismissed.

Carbon copy of this judgment, may be granted to the counsel for the petitioner on usual terms, if applied for in that behalf.