
(2021) 10 TEL CK 0049

In the Telangana High Court

Case No : Writ Petition Nos. 26463, 26464 Of 2021

Vasam Surrender

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 28-10-2021

Acts Referred:

Commissions of Inquiry (Central) Rules, 1972 — Rule 4, 5, 5(a), 5(2)(b), 10
Commissions of Inquiry Act, 1952 — Section 4, 5, 8, 8A, 8B, 8C, 12

Citation : (2021) 10 TEL CK 0049

Hon'ble Judges : Satish Chandra Sharma, CJ;A. Rajasheker Reddy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously heard and by a common order, they are being disposed of by this Court. Facts of the W.P. No.26463 of 2021 are narrated hereunder.

The petitioner before this Court serving on the post of Deputy Superintendent of Police (CID) has filed the present petition being aggrieved by the Order dated 21.10.2021 by which the Interlocutory Application No.27 of 2021 filed by the petitioner before the Inquiry Commission constituted by the Hon'ble Supreme Court of India by Order dated 12.12.2019 in W.P. (Crl) No.348 of 2019 has been rejected.

The petitioner's contention is that the petitioner has preferred I.A.No.27 of 2021 to treat him as an independent witness under Section 8-B of the Commissions of Inquiry Act, 1952 and to examine the petitioner after other witnesses are examined keeping in view the Judgment delivered by the Supreme Court in the case of Kiran Bedi v Committee of Inquiry (1989) 1 SCC 494.

The facts reveal that on 28.11.2019, in an incident in Hyderabad in the State of Telangana, a young Veterinary Doctor was raped, murdered and her dead body

burnt. Four persons, namely Mohammed Arif, Chintakunta Chennakeshavulu, Jolu Shiva and Jollu Naveen were arrested in connection with the said offence and were sent to judicial custody. The facts further reveal that subsequently when the accused persons were taken to the scene of crime, an incident took place resulting in death of four accused persons and the Hon'ble Supreme Court of India in W.P. (CrI) No.348 of 2019 has passed the following order:-

"Keeping in view all the peculiarities of the case, it is desirable and necessary to know the truth relating to the incident which has resulted in death of all the four accused persons when they were in custody of the police pursuant to an order passed by the Court. In other words, police was given custody of the four accused persons under a Court order. The death had occurred when the accused were in custody of law.

We are, therefore, of the considered view that an Inquiry Commission needs to be constituted for inquiring into the circumstances in which the four accused persons, namely, Mohammed Arif, Chintakunta Chennakeshavulu, Jolu Shiva and Jollu Naveen, were killed in Hyderabad on 6th December, 2019. The Inquiry Commission shall be headed by Mr. Justice V. S. Sirpurkar (Retd), a former Judge of this Court, as Chairman and shall comprise of Ms. R. P. Sondurbaldota, a former Judge of the Bombay High Court and Mr. D. R. Karthikeyan, former Director of the Central Bureau of Investigation as its Members. The Commission shall have all the powers of a Commission under the Commissions of Inquiry Act, 1952."

The respondent No.3/Commission constituted under the provisions of the Commissions of Inquiry Act, 1952 issued a Notification dated 04.02.2020 under Rule 5(2)(b) of the Commissions of Inquiry (Central) Rules, 1972 calling upon the general public to submit their response to the Notification and the petitioner did not submit any affidavit in response to the said Notification, as stated in the writ petition. The petitioner in the writ petition has stated that the petitioner and other persons were orally instructed to file their affidavits before the Commission and on such oral instructions, the petitioner and other police personnel have filed their affidavits. The facts, as stated in the writ petition, further reveal that on 08.03.2021, the Commission has issued a direction for issuance of Notice under Section 8-B of the Commissions of Inquiry Act to the petitioner and others and finally a Notice was issued on 10.03.2021 to the petitioner and others calling upon them to appear before the Commission. The petitioner thereafter filed an Interlocutory Application to permit the petitioner and others to represent them before the third respondent through a legal practitioner in terms of Section 8C of the Commissions of Inquiry Act and the same was allowed.

The contention of the petitioner is that very issuance of a Notice under Section 8B of the Commissions of Inquiry Act is in contravention of the provisions of the Commissions of Inquiry Act and the Rules. The petitioner further contended that recording of the evidence of the State witnesses commenced on 21.08.2021 and after completion of examination of the State witness No.S.W.3, the petitioner

was required to give evidence before the Commission and therefore, the petitioner filed an Interlocutory Application i.e., I.A.No.27 of 2021 to treat the petitioner as an independent witness. The petitioner further stated that on 21.10.2021, some other police personnel have also received notices under Section 8B of the Commissions of Inquiry Act to specify their stand as to whether they want to depose as a Commission witness or would have to be treated as an independent witness as recipient of Notice under Section 8B of the Commissions of Inquiry Act. It has been stated in the writ petition that other police personnel, in pursuance of summons issued to them, are ready to appear before the Commission as Commission witnesses. It is further stated in the writ petition that the examination of witnesses of the State and the Commission and their recall was completed on 20.10.2021 and a prayer that was made by the petitioner for examination, after all other witnesses are examined, has been turned down. The Order, dated 21.10.2021, passed by the Commission is reproduced as under:-

"1. These two applications are being disposed of by a common order since the contentions taken therein and relief sought based on the contentions taken are identical. The relief sought in the two applications is that for the purpose of the proceedings before the Commission, the applicants be treated neither as witnesses of the State nor witnesses of the Commission. They should be treated as independent witnesses.

2. Heard Sri Keerthi Kiran Kota, Advocate appearing in Application No.27 of 2021, Sri Praveen Chillara, Advocate appearing in Application No.28 of 2021 and Sri E.Uma Maheshwar Rao, Advocate appearing for the State of Telangana.

3. The learned Advocates appearing for the Applicants submitted that the Applicants were served notices under Section 8B of the Commissions of Inquiry Act, 1952 and have been permitted to have legal representation. According to them, the defense of the Applicants is independent of the stand of the State. Therefore, they had requested the Chief Secretary not to cite them as State's witnesses. However, both came to be cited as State's witnesses. Subsequently on the applications being made by the applicants, the State conceded to have them examined towards the end of the evidence independently through his Advocate and that the Commission had accepted the said submission. Therefore, it is contended that the Applicant cannot be treated as a State's witness or commission's witness, but has to be permitted to be examined as an independent witness through his Advocate.

4. Sri E. Uma Maheshwar Rao, Advocate appearing for the State of Telangana contended that since the Applicants are coming forward to be examined as a witness on their own, the State has no objection for their examination as such and also filed a memo stating that the State of Telangana would not be examining the Applicants as State witnesses.

5. Section 8B of the Commissions of Inquiry provides certain protections to persons who may be prejudiced by the findings of the Commission. The

protection given to persons falling within the purview of the said Section extends to being permitted legal representation through advocates, permitting cross-examination of witnesses and producing witnesses and records in their defense. However that does not confer upon such persons the status of independent witnesses. The Commission in the course of its inquiry would examine several witnesses. Those witnesses who, in the opinion of the Commission may be prejudiced by the findings of the Commission or whose conduct has to be inquired into will be entitled to protection of Section 8B.

6. It is also to be noted that the Inquiry of the Commission is Inquisitorial and there are no opposing parties. In *Kehar Singh v. State of Delhi* [(1988) 3 SCC 609], the Supreme Court held that "... The Commission under the Act is given the power to regulate its own procedure and also to decide whether to sit in camera or in public. A Commission appointed under the Act does not decide any dispute. There are no parties before the Commission. There is no lis. The Commission is not a Court except for a limited purpose. The procedure of the Commission is inquisitorial rather than accusatorial."

7. The Appellant herein was served summons to appear before the Commission for examination as a witness. It is the prerogative of the Commission under Section 4 of the Commissions of Inquiry Act, 1952 read with Rule 4 and Rule 5(a) of the Commissions of Inquiry (Central) Rules, 1972 to summon a witness and examine him, in pursuit of truth. As stated earlier there is no lis and there are no contesting parties to the proceedings before the Commission. In such circumstances, there are no prosecution witnesses or defense witnesses. All witnesses aid the Commission in arriving at the truth of the facts in issue. Therefore, no person summoned by the Commission can claim that he is an independent witness and that he ought not be examined by the Commission as a witness it has summoned. Neither the Act nor the Rules envisage a separate category of witnesses under Section 8B. It is true that the persons who have been served notices under Section 8B are entitled to certain protections including the right to lead evidence in their defense. The Applicants herein also will be entitled to the same. However, when they are summoned by the Commission to give evidence as a witness they cannot insist that they be summoned by the Commission to give evidence as a witness they cannot insist that they be examined as independent witnesses. The Commission giving due regard to their rights along with other persons served with notices under Section 8B has deferred their examination till examination of other witnesses is complete. In such circumstances, it is not open for the Applicants to state that they be examined as an independent witness. Since the Applicants were originally cited as State's witnesses and since the State has now stated that the Applicants will not be examined as State's witnesses, the Applicants will be examined as Commission's witnesses.

8. This view of the Commission is fortified by the decision of the Supreme Court in *Kiran Bedi v. Committee of Inquiry* [(1989) 1 SCC 494] where, while

discussing the powers of the Commission to summon persons who have been issued notices under Section 8B, as witnesses to the inquiry, the Supreme Court held that:

"To us this apprehension seems to be more imaginary than real inasmuch as the power of the Constitution to call upon any person to appear as a witness under Section 4 of the Act which in terms is very wide and is not circumscribed by fetters of stage, will be available to the Commission and the Commission would be entitled to call such person as a witness even at that stage."

9. Additionally, the Applicants have not averred nor demonstrated as to what legal right would be prejudicially affected if they are not examined as an independent witness. The applications are totally silent in this regard. The applications are misconceived and devoid of any merit.

10. Applications are therefore dismissed."

It has been further stated that the prayer of the petitioner was orally rejected and as no Order was available, the writ petition was filed without an Order against the oral rejection Order dated 21.10.2021 and later on the Order passed by the Commission has been brought on record. The Order, dated 21.10.2021, passed by the Commission has already been reproduced above.

Learned Senior Counsel Mr. Vivek Reddy appearing for the petitioner has vehemently argued before this Court that the provisions of the Commissions of Inquiry Act and the Rules do not allow any person assisting the Commission to examine or cross-examine the witnesses. It is further contended that the provisions of Section 8C of the Commissions of Inquiry Act would only allow appropriate Government or the person to whom Notice under Section 8B of the Commissions of Inquiry Act has been issued. It is further contended by the learned Senior Counsel that the examination of the petitioner prior to Commission witness though protected under Section 8B of the Commissions of Inquiry Act and further action of allowing the advocates assisting the Commission to examine and re-examine the petitioner is contrary to the provisions of the Commissions of Inquiry Act and the Rules and his fundamental rights are being infringed. Heavy reliance was placed on the Judgment delivered in the case of Kiran Bedi (supra). In short, the petitioner's contention is that the petitioner's examination be deferred till all other witnesses are examined and the Order passed by the Commission dated 21.10.2021 be quashed.

Reliance has also been placed upon a Judgment delivered in the case of Indira Gandhi v. J.C.Shah (1980) ILR 1 Delhi 552. This Court has carefully gone through the Judgments delivered in the case of Indira Gandhi (supra) as well as the Judgment delivered in the case of Kiran Bedi (supra).

The statutory provisions governing the field as contained in Sections 8, 8A, 8B and 8C of the Commissions of Inquiry Act are reproduced as under:-

"8. Procedure to be followed by the Commission.-The Commission shall, subject

to any rules that may be made in this behalf, have power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private).

8A. Inquiry not to be interrupted by reason of vacancy or change in the constitution of the Commission.-

(1) Where the Commission consists of two or more members, it may act notwithstanding the absence of the Chairman or any other member or any vacancy among its members.

(2) Where during the course of an inquiry before a Commission, a change has taken place in the constitution of the Commission by reason of any vacancy having, been filled or by any other reason, it shall not be necessary for the Commission to commence the inquiry afresh and the inquiry may be continued from the stage at which the change took place.

8B. Persons likely to be prejudicially affected to be heard.- If, at any stage of the inquiry, the Commission,-

(a) considers it necessary to inquire into the conduct of any person; or

(b) is of opinion that the reputation of any person is likely to be prejudicially affected by the inquiry,

the Commission shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defense.

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

8C. Right of cross-examination and representation by legal practitioner.- The appropriate Government, every person referred to in Section 8B and, with the permission of the Commission, any other person whose evidence is recorded by the Commission,-

(a) may cross-examine a witness other than a witness produced by it or him;

(b) may address the Commission; and

(c) may be represented before the Commission by a legal practitioner or, with the permission of the Commission, by any other person."

Section 8 of the Commissions of Inquiry Act empowers the Commission to regulate its procedure subject to Rules framed in that behalf. The appropriate Government in exercise of powers conferred under Section 12 of the Commissions of Inquiry Act has framed Rules known as 'the Commissions of Inquiry (Central) Rules, 1972.

Rules 4 and 5 of the said Rules, which are relevant, are reproduced as under:-

"4. The issue and service of summons.- (1) A Commission may issue summons

to persons whose attendance before it may be required either to give evidence or to produce documents.

(2) Every summons issued by a Commission shall be in duplicate and shall be signed by the Chairman thereof or by such person as he may empower in this behalf. It shall be sealed with the seal of the Commission and shall specify the time and place at which the person summoned is required to attend and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both the purposes.

(3) A person may be summoned to produce a document, without being summoned to give evidence, and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

(4) A summons to produce documents, may be for the production of all documents of a certain description in the possession or control of the person summoned.

(5) Every summon shall be served by sending it by post to the person, for whom it is intended or in such other manner as the Commission may direct.

(6) The provisions of sub-rules (1) to (5) shall apply, as far as may be, to every other process issued by a Commission.

5. Procedure of inquiry.- (1) A Commission may sit in public or in private as it thinks fit:

Provided that a Commission shall sit in private on a request being made by the Central Government in that behalf.

(2) A Commission shall, as soon as may be after its appointment-

(a) issue a notice to every person, who in its opinion should be given an opportunity of being heard in the inquiry, to furnish to the Commission a statement relating to such matters as may be specified in the notice;

(b) issue a notification, to be published in such manner as it may deem fit, inviting all persons acquainted with the subject matter of the inquiry to furnish to the Commission a statement relating to such matters as may be specified in the notification.

(3) Every statement furnished under clause (a) of sub-rule (2) shall be accompanied by an affidavit in support of the facts set out in the statement sworn by the person furnishing the statement.

(4) Every person furnishing a statement under clause (a) of sub-rule (2) shall also furnish to the Commission along with the statement a list of the documents, if any, on which he proposes to rely and forward to the Commission, wherever practicable the originals or true copies of such of the documents as may be in his possession or control and shall state the name and address of the person from

whom the remaining documents may be obtained.

(5) (a) A Commission shall examine all statements furnished to it under clause (b) of sub-rule (2) and if, after such examination, the Commission considers it necessary to record evidence, it shall first record the evidence, if any, produced by the Central Government and may thereafter record evidence in such order as it may deem fit:

(i) the evidence of any person who has furnished a statement under clause (a) of sub-rule (2) and whose evidence the Commission having regard to the statement, considers relevant for the purpose of the inquiry; and

(ii) the evidence of any person whose evidence, in the opinion of the Commission, is relevant to the inquiry;

Provided that the Commission may dispense with the attendance of any person for the purpose of giving evidence before it, if in its opinion-

(i) such attendance cannot be enforced except by causing undue hardship or inconvenience to that person;

(ii) such attendance should be dispensed with for any other sufficient reason to be recorded by it in writing.

(b) If, after all the evidence is recorded under clause (a) of sub-rule (5), the Central Government applies to the Commission to recall any witness already examined or to examine any new witness, the Commission, if satisfied that it is necessary for the proper determination of any relevant fact to do so, shall recall such witness or examine any such new witness.

(6) The Commission may pay the travelling and other expenses to a person who is summoned to assist the Commission at the stage of preliminary investigation or to give evidence or to produce documents before a Commission, as prescribed from time to time by the Central Government.

(7) The Commission shall have the powers of a civil court to make local investigation, either personally or through any person, duly authorised by it into any matters falling within its terms of reference.

(8) A Commission shall have the power to regulate its own procedure in respect of any matter for which no provision is made in these Rules."

The basic issue which is required to be answered in the present petition is in respect of the procedure which is being followed by the Commission while conducting an inquiry. The inquiry by the Commission is inquisitorial rather than accusatorial. In the proceedings before the Commission, there are no parties to the proceedings having any lis between them, which is to be decided and whatever facts are placed by them before the Commission in the shape of evidence, including the affidavits and the statements etc, the Commission of Inquiry has to consider that material and record its findings. These findings are

neither a decision nor they are enforceable. Undisputably, the Commission has also been given power to frame its own Rules and Procedure and the Order passed by the Commission makes it very clear that the Commission in exercise of powers under the Commissions of Inquiry Act and the Rules framed thereunder, is proceeding ahead in the matter.

In the case of Kiran Bedi (supra), the Hon'ble Supreme Court did not think it expedient to lay down any rigid procedure for proceeding ahead. Each witness before the Commission/participant has to place its facts before the Commission and it has to be in one or the other sequence. The Commission of Inquiry has to look into the facts that are put by different parties and members of public etc., and it has to ascertain only the facts in the matter and forward its report containing the findings of the Commission. It is only thereafter the Government has to take a decision and to decide what measures or actions it has to take, if at all.

A Division Bench of Allahabad High Court in the case of Sardar Malkeet Singh v. State of U.P. AIR 1993 All 343, has dealt with a similar issue. Paragraphs 17, 18 and 21 to 24 of the aforesaid Order read as under:-

"17. After recording a finding that the appointment of Hon'ble Mr. Justice K.P. Singh suffers from no illegality, we may next examine as to whether the orders passed by the Commission contained in Annexures 1 and 2 to the writ petition are valid or not. Let us examine Annexure-2 first. It is an order dated 22-2-1992, by which the Commission required, the affected persons, who allege that ten persons were killed in fake encounters, to lead evidence in support of their contention. According to the learned counsel for the petitioners, the Commission should have required the police officers to lead their evidence first and not the affected persons. In this connection he has drawn our attention to the observation made by the Commission in the order to the effect, "since the burden is on the affected persons to show that the affected persons were pilgrims.....Therefore, it is but necessary that the affected persons should lead evidence in support of the contentions raised by them." The submission is that the commission has required the affected persons to adduce their evidence first on the assumption that burden of proof is upon them to establish their case. It is submitted that normally the police is not supposed to resort to firing and to kill persons. Even if it becomes necessary to open fire, it should not be more than what may be just necessary ten persons have been killed by the police. The Government has considered it to be a matter of Public importance. In these circumstances the police officers are required to explain their conduct and the above facts, first.

18. In connection with the above contention, it will be necessary to find out the nature of enquiry, that is held under the Commissions of Enquiry Act. It is well settled and not in dispute that such an enquiry is only a fact finding enquiry. It is "inquisitorial" and not accusatorial. The findings are not enforceable. After a report of fact finding is submitted to the Government, it takes a decision on the

report. It is equally settled and also not in dispute that the provisions of the Evidence Act do not apply to these proceedings, hence the law relating to burden of proof does not apply.

... ..

21. In matters of enquiries before a Commission of Enquiry, what weight and importance can be attached to the fact of leading evidence first, is a question which need be considered at this stage. It is needless to refer case law on the question of inapplicability of the Evidence Act in such proceedings. However, a reference has been made to a case reported in *State of Haryana v. Rattan Singh*, holding that in domestic enquiries and enquiries before the administrative tribunals etc., strict and sophisticated rules of the Evidence Act are not applicable. The legal position is also not in dispute between the parties. Both sides agree that the Evidence Act does not apply, nor any question of placing burden of proof on any party arises. So far the observation made by the Commission in the order, Annexure-2, observing "Since the burden is on the affected persons to show that....." is concerned, it is true, the word "burden" has been used in the order, but it does not mean that the Commission has placed the burden of proof upon the petitioners or upon the affected persons. Enquiry by a Commission under the Commissions of Enquiry Act does not culminate into any decision. There are no parties before it, nor there is any "list between the parties. The above position in law has been clearly laid down in the case reported in, (1988) 3 SCC 609 : AIR 1988 SC 1883, *Kehar Singh v. State*. The relevant observations are to be found in para 234 of the judgment. It is, also observed that the enquiry is "inquisitorial" rather than "accusatorial". Thus in a proceeding where there are no parties to the proceedings having any lis between them which is to be decided, in our view, question of burden of proof loses its importance. Both parties are aware of the matter. Whatever facts both parties place before the Commission in the shape of evidence including affidavits and statements etc., the Commission of Enquiry has to consider that material, and record its findings. These findings are neither a 'decision' nor they are enforceable. This position of law is evident from the decisions, namely, AIR 1958 SC 538, *Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar* and AIR 1967 SC 122, *The State of Jammu and Kashmir v. Bakshi Sulam Mohammad*. In the above circumstances, the mere use of the word "burden" in the order Annexure-2 passed by the Commission is of no significance or consequence.

22. The Commission has also been given power to frame its own rules and procedure. It has discretion to require any party to adduce evidence first. The opposite party No. 2 has also framed its rules of procedure in exercise of power under S. 8 of the Commissions of Enquiry Act, 1952 read with S. 4 and 5 of the said Act. Rule 10 of the Rules aforesaid provides as follows:-

"10. Oral evidence after examination of the Statement/affidavit of the parties received in response to the public notice, the Commission may in its discretion call upon any person to give oral evidence in addition to the witnesses, a list of

which would be filed by the respective parties. The Commission will decide the order in which the evidence will be recorded. On the request of the state or any party connected with the enquiry, the Commission may recall any witness already examined or summon any new witness, if it is established that it is necessary for the determination of a fact".

23. From the above rule, it is clear that it is the discretion of the Commission to decide, in which order the evidence shall be recorded. Another aspect of the matter which may be taken note of is that admittedly affidavits from both sides, namely, from the side of police officers as well as from the side of affected persons have already been filed, i.e. to say, both sides have disclosed their cases and they are quite aware of the cases of each other. It is now immaterial as to who leads the evidence first.

24. The case reported in (1989) 1 SCC 494 : AIR 1989 SC 714 : (1989 Cri LJ 903). Kiran Bedi and Jinder Singh v. Committee of Enquiry has also been referred. It mainly relates to the question of opportunity of hearing which an office is entitled to, under S. 8-B of the Commissions of Enquiry Act, but the question of sequence in which the evidence is to be produced was also considered. It appears that on behalf of the police officers it was submitted before the Commission of Enquiry that since serious accusations were made by the lawyers against Smt. Kiran Bedi, the lawyers should be called upon to lead their evidence to substantiate their allegations. This submission did not find favour with the Court for the reason that the stress seemed to be more on the question of burden of proof. The questions for consideration have been formulated in para 15 of the judgment, question No. (i) reads as follows - "whether the procedure adopted by the Committee with regard to the sequence in which witnesses were to be examined was legal?" The answer to this question No. (i) has been given in para 16 of the judgment which reads as follows:-

"With regard to point No. (i) we are of the opinion that apart from the directions contained in paragraph 4 of our order dated 18th August, 1988 reported in (1988) 4 SCC 49 : AIR 1988 SC 2252 regarding the stage at which persons falling under S. 8-B of the Act were to be examined and also what has been observed in para 2 of the said order, we do not find it expedient to lay down any particular rigid procedure to be followed by the Committee with regard to sequence in which witnesses were to be examined by it."

In the light of the aforesaid Judgment and keeping in view of the fact that there is no lis and there are no contesting parties to the proceedings before the Commission, the Commission is certainly empowered to frame its Rules and procedure and it is the discretion of the Commission to require any party to adduce the evidence first. It is certainly not at all open to the petitioner to state that he has to be examined as an independent witness or has to be examined in the last after examination of all witnesses is over.

The Order passed by the Commission, as the Commission has the power to

regulate its procedure subject to the Rules framed under the Commissions of Inquiry Act, does not warrant any interference.

Resultantly, the writ petitions are dismissed. Miscellaneous petitions, if any pending, shall stand dismissed. There shall be no order as to costs.