
(2010) 08 KL CK 0003

In the High Court Of Kerala

Case No : Writ Petition (C) No. 8958 of 2010 (T)

Viswambaran P. A.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 02-08-2010

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 3

Citation : (2010) 3 KLJ 140

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : A.X. Varghese and A.V. Jojo, for the Appellant; R. Lakshmi Narayanan, G.P. and Blaze K. Jose, for the Respondent

Final Decision : Dismissed

Judgement

Ramachandran Nair, J.—Petitioner served as Inspector in the Central Intelligence Bureau and took voluntary retirement in 1996. He was a member of the Special Investigation Team constituted in 1994 to enquire into the then known ISRO Espionage case. The Special Investigation Team was constituted with senior level police officer from Kerala as Head of the investigation agency. However, during the course of investigation by the SIT, investigation was referred to CBI on 3.12.1994. This was with the approval of the then State Government. However, CBI after enquiry filed a report in the CJM's court stating that there is no substance in the allegations and there is no case to be proceeded against any of those named in the FIR. CJM in terms of the report filed by the CBI closed the matter. However, the State Government ordered fresh enquiry after recalling the consent given for CBI investigation. This was challenged by those arrayed as accused by the SIT before this Court, but without success. This Court permitted further investigation by the SIT against which SLP was filed. The Supreme Court vide judgment reported in *MARIAM RASHEEDA V. STATE OF KERALA*, (1998) 1 KLT 835 (SC) put a quietus to the matter by stating that after CBI concluded the investigation there is no scope for any enquiry by SIT in terms of the State

Government's order. The Supreme Court adversely commented upon the role of the State Government and also the Director General of Police, Kerala. Later, the victims who faced investigation by SIT approached the National Human Rights Commission, which passed certain interim orders granting compensation and the State Government challenged those orders before this Court. It is reported that this Court has interfered with the interim orders passed by NHRC and it is not known whether the matter is still pending or not. On being dissatisfied with CBI enquiry and closure of the matter and after judgment of the Supreme Court, the petitioner approached this Court with a Writ Petition, WPC 24780 of 2003 wherein the relief sought for was judicial enquiry. This Court vide judgment dated 25.8.2003 dismissed the Writ Petition. It is to be noted that question of judicial enquiry was considered by the State Government at that time and when the State declined to order judicial enquiry, the then opposition leader filed O.P. No. 5128 of 1996 before this Court which was also dismissed vide Ext. P1 judgment dated 27.5.1996. As the matters stood as above, petitioner filed a representation Ext. P2 on 13.7.2006 before the Chief Minister of the State requesting him to order judicial enquiry. Though Government referred the representation to the Home Ministry, petitioner has not heard anything about the matter. Petitioner therefore filed another representation on 10.10.2007 which is also a representation to the Chief Minister for holding judicial enquiry. Since Chief Minister of the State has not responded to the petitioner's representations made in 2006 and 2007 petitioner has filed this Writ Petition for direction to the Government to consider and pass orders on the representations. We have heard counsel appearing for the petitioner, Government Pleader for respondents 1 and 3, respondent 2 having been deleted, and counsel appearing for additional fourth respondent impleaded as per order dated 26.3.2010 at his request.

2. During admission hearing of this matter before us, counsel appearing for the addl. fourth respondent impleaded submitted that WPC itself is filed without any bona fides and it is only to resist the relief sought for by the said respondent in WPC 8080 of 2010 filed by him. Even though we have not heard that case, we notice that WPC 8080 of 2010 is a public interest litigation filed by the addl. fourth respondent herein for a direction to the State Government to take appropriate action against the government officials based on CBI recommendation and observations of the Supreme Court. The question to be considered is whether petitioner is entitled to mandamus to the State Government to consider appointment of judicial commission to inquire into the matter. Sri. A.X. Varghese, counsel appearing for the petitioner submitted that the very purpose of judicial enquiry is to bring out true facts for information of the public and to prevent repetition of such lapses or mistakes in the future. Though in principle we accept the contention of learned counsel for the petitioner that judicial enquiry will help to bring out truth and in appropriate cases it should be ordered, we are not inclined to issue any direction to the State Government to consider petitioner's representations for appointment of judicial commission in this matter for more than one reason. In the first place we do not think a

mandamus can be issued to the Government for appointment of judicial commission u/s 3 of the Commission of Inquiry Act which is a matter to be initiated and decided in Assembly and if not by the Government suo motu. Secondly if at all a mandamus can be issued to the Government to consider representations for appointment of judicial commission, we do not think developments in this case justify any such decision by Government because in our view after the judgment of the Supreme Court and two judgments of this Court above referred, Government will not be justified in ordering judicial enquiry in the matter. In the first place, the Supreme court vide judgment reported in MARIAM RASHEEDA's case (supra) accepted the closure of the investigation by the CBI and the orders passed by CJM closing the matter and so much so there is no scope for further enquiry at all. In fact retrospective withdrawal of sanction granted by the State Government and the proposal of the State Government to order fresh investigation by it's police agency was turned down by the Supreme Court. It is also to be noted that this Court has considered the question of issuing a mandamus to the Government to order judicial enquiry on a Writ Petition filed by the then opposition leader of the assembly vide Ext. P1 judgment but rejected the request. Similarly even though petitioner filed WPC No. 24780 of 2003 for re-ordering investigation, he did not succeed, and at that time he had no request for a judicial enquiry. It is seen from the judgment of the Supreme Court above referred that Supreme Court accepted the CBI report and even ordered heavy costs of Rs. 1 lakh against the State payable to all accused. The so-called Espionage is alleged to have taken place in the year 1994 and the matter got finally concluded by the judgment of the Supreme Court in 1998. We do not find any bona fides in the petitioner approaching this Court at this distance of time, that is 12 years after the judgment of the Supreme Court, for a direction to the State Government to consider his request for appointing a Judicial Commission to inquire into the matter. As already stated, desirability of judicial commission was already considered by this Court and the request was turned down by this Court vide Ext. P1 judgment, that too filed by the then opposition leader. Even when the petitioner approached this Court in 2003, petitioner had no demand for appointment of any judicial commission. It is also seen that petitioner had not shown any interest even when the matter was pending before this Court or Supreme Court. Therefore we are of the view that the object of the writ petition is not appointment of judicial commission but to offer resistance to the Writ Petition filed by addl. fourth respondent herein for appropriate direction to the State and it's agencies to take action pursuant to CBI report and observations of the Supreme Court.

Writ Petition lacks any bona fides and the same is dismissed.