

UNIVERSITY OF KERALA
v
COUNCIL, PRINCIPALS' COLLEGES, KERALA AND ORS.

APRIL 9, 2007

[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

Commission of Inquiry Act, 1952:

s.3 r/w s.5(1)—Commission of Inquiry—Appointment of sitting Judge of High Court—Direction of Supreme Court that no sitting Judge of any High Court would continue as a Commission—IA by State Government for modification of the order—Held, considerations have to be of several aspects including the determinative “paramount national interest” angle—On facts, the issues being inquired into by the Commission have not been shown to be of “paramount national interest” IA rejected—Judiciary—Sitting Judge of High Court—When can be appointed as Commission of Inquiry.

State of Orissa filed the present IA for modification of the order dated 27.11.1996 passed by the Supreme Court in Special Leave Petition (c) No. 24295 of 2004, whereby the Court had directed that in no case a sitting Judge of any High Court would continue as a Commission of Inquiry except where the inquiry was at the fag end. It was contended for the appellant-State that in view of para 16(1) of the judgment in *T. Fenn Walter's case*¹, appointment of a sitting Judge as Commission was possible.

Dismissing the application, the Court

HELD: 1.1. For appointment of a sitting Judge of a High Court as Commission of Inquiry, the considerations have to be of several aspects including the determinative “paramount national interest”. It could not be shown as to how the issues being enquired into by the Commission are of paramount national interest. From a reading of the letters of the Chief Minister and the Chief Justice it nowhere appears that either the State Government or the Chief Justice considered the matter to be of “paramount national interest” to warrant appointment of a sitting Judge of a High Court as Commission. All that has been stated by the Chief Minister and the Chief Justice is about the “seriousness of the problem”. Even the notification dated

A 4th February, 2006 does not indicate it to be of paramount national interest. [Para 5 and 6] [944-C-D; 992-E]

T. Fenn Walter and Ors. v. Union of India and Ors., [2002] Supp 1 SCR 134 200(6) SCC 184, relied on.

B 1.2. Though the case of the applicant – State is that the Commission was only permitted to work on holidays, that really is of no consequence. That does not appear to be a factor considered when the request was made for appointment of a sitting Judge as the commission and the reply of the Chief Justice of the High Court accepting the prayer. Further, the stand that the Commission was required to give recommendation on various other aspects like industrialization etc. is really of no consequence. It is not known as to on what basis a sitting Judge appointed as a Commission, can throw light on the broader issues like industrialization etc. In any event, the parameters of enquiry do not include these aspects. [Para 7] [994-C-E]

D CIVIL APPELLATE JURISDICTION : I.A. No. 6

IN

Special Leave Petition (Civil) No. 24295 of 2004.

E From the Judgment and Order dated 24.06.04 of the High Court of Kerala at Ernakulam in W.P. (C.) No. 30845 of 2003 (S).

R. Sathish, Dr. Sushil Balwada and Pooja Dhar (for AP & J Chambers) for the Appellant.

F Gopal Subramaniam, ASG., Sushma Suri, Abhishek Tewari, E.M.S. Anam, K.R. Sasiprabhu, M.K. Michael, M.K.D. Namboodiri, V.G. Pragasam, Shivaji M. Jadhav, Khwairakpam Nobin Singh, Kadha Shyam Jena, T.V. George and Sunil Kumar Dwivedi for the Respondents.

The Judgment of the Court was delivered by

G **DR. ARIJIT PASAYAT, J.** 1. The State of Orissa has filed this I.A. for modification of the Order dated 27.11.2006. By the said order, this Court had directed that in no case a sitting Judge of any High Court shall continue as a Commission. It was however made clear that the order shall not operate in cases where the inquiry is at the fag end, i.e. only where the report is to be submitted.

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2. In support of the application, learned counsel for the State submitted that a sitting Judge was appointed at the request of the State Government considering the "serious problem" highlighted in the letter of the Chief Minister addressed to the Chief Justice of the High Court. Though initially Chief Justice of the High Court had not acceded to the request of the State Government to appoint a sitting Judge as a Commission, purportedly considering the "seriousness of the problem" he suggested name of a sitting Judge to act as a Commission. It was, however, stated that the Commission shall hold sittings and enquiries only on Saturdays and Sundays and other High Court's holidays without interference with the normal work of the High Court. Accordingly, Justice A.S. Naidu was appointed as the Commission. It was submitted that the Commission was expected to throw light on various aspects which would help the State Government to address to the larger issues on industrialization, displacement and rights of citizens, in particular tribals.

3. Mr. Gopal Subramaniam, learned A.S.G. submitted that the State Government's application is clearly not acceptable, it is thoroughly misconceived. This Court in its order dated 27.11.2006 clearly indicated as to why sitting Judges should not act as Commission.

4. At this juncture it would be appropriate to take note of what has been stated by this Court in *T.Fenn Walter and Ors. v. Union of India and Ors.*, [2002] 6 SCC 184). Though learned counsel for the applicant - State submitted that in terms of paragraph 16(1) of the judgment, appointment of a sitting Judge as Commission is permissible, it has to be noted that the same has to be read along with paragraph 14 of the judgment. The said paragraph reads as follows:

"Quite often sitting Judges are appointed as Inquiry Commissions. Generally it may not create any difficulty, if the inquiry itself can be conducted without prejudice to other judicial work as a judge of the superior court. However, the appointment of Judges to head or chair a Commission of Inquiry or to perform other non-judicial work would create unnecessary burden on the Judges and it would affect the administration of justice. The work of these Commissions takes considerable time and there are several instances where the work of the Commission continued for years. If a sitting Judge is appointed, considerable time is lost and the Judge would not be in a position to attend to his regular judicial work. In view of the mounting arrears of

A cases in superior courts, it would be difficult to lend services of a Judge for such commission work. Moreover, the report of the Commission of Inquiry is often stated to have only recommendatory value and the opinions expressed therein are not binding on the Government. Quite often the reports of the Commission are ignored and no follow-up actions are being taken by the Government. In some matters, when political issues are also involved, even impartiality and objectivity of the Court may sometimes be questioned due to some extraneous and oblique motives. The public image and prestige of the Court as guardian of the Constitution and rule of law has to be maintained. It is desirable that the Judges are not subjected to unwanted criticism on account of appointment as Inquiry Commission.

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C The image and the authority of the Court, which is of utmost importance, has to be upheld. Justice Harlan F. Stone in a letter as far back as in 1953 wrote: "It has been a long tradition of our Court that its members do not serve on committees or perform other services not having a direct relationship to the work of the Court." [Law Review (Vol. 87, 1953-54)] *Keeping in view all these aspects, the appointment of a sitting Judge as a Commission of Inquiry has to be made only on rare occasions if it becomes necessary for the paramount national interest of the country.*"

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(underlined for emphasis)

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5. From a reading of the letters of the Chief Minister and the Chief Justice it no where appears that either the State Government or the Chief Justice considered the matter to be of "paramount national interest" to warrant appointment of a sitting Judge of a High Court as Commission. All that has been stated by the Chief Minister and the Chief Justice is about the "seriousness of the problem".

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6. Even the notification dated 4th February, 2006 does not indicate it to be of paramount national interest. It only states as follows:

"The Orissa Gazette

Extraordinary

Published by Authority

No. 127, Cuttack, Thursday, February 9, 2006/Magha 20, 1927

HOME (SPECIAL SECTION) DEPARTMENT

H

NOTIFICATION

The 4th February 2006

S.R. No. 20/2006—Whereas it has been reported to the State Government that there had been a police firing on the 2nd January 2006 at Kalinga Nagar, Jajpur district, leading to the death of 12 persons. One Police Hawaldar had also died otherwise.

2. And whereas the State Government are deeply concerned about the incident of firing and are of the opinion that, this being a matter of public importance, should be inquired into by a Commission of Inquiry under the Commission of Inquiry, Act, 1952.

3. Now therefore, in exercise of the powers conferred by section 3 read with sub-section (1) of section 5 of the said Act, the State Government do hereby appoint a Commission of Inquiry consisting of Hon'ble Shri Justice A. Suryanarayan Naidu, a sitting Judge of Orissa High Court, to inquire into and report in respect of the following matters, within six months from the date of publication of this notification in the Orissa Gazette, namely :-

- (i) Analysis of the Sequence of events and circumstances leading to the police firing at Kalinga Nagar on the 2nd January 2006.
- (ii) Whether the measures taken, the quantum of force used in anticipating, preventing and handling situations were adequate, inadequate or in excess of requirement and the responsibility for such acts of commission or omission.
- (iii) The role, conduct and responsibility of the organizations, group of individuals or reasons if any, in influencing, precipitating or escalating the incident; and
- (iv) Any other matter connected with or incidental thereto as the Commission may consider appropriate.

4. Further, the State Government are of the opinion that having regard to the nature of inquiry to be made and the other circumstances pertaining to the incident, it would be appropriate that the provisions of sub-sections (2), (3), (4) & (5) of Section 5 of the said Act should apply to the conduct of this inquiry, by the Commission. Therefore, the State Government directs that the aforesaid provisions shall apply, accordingly.

A 5. The headquarters of the Commission shall be at Cuttack. However the Commission may hold the inquiry in Kalinga Nagar or any other place also as may be considered necessary by them for the purpose.

(No. 632/C)

B By order of the Governor

SANTOSH KUMAR

Principal Secretary to Government”

C 7. Though it was strenuously urged by the learned counsel for the applicant - State that the Commission was only permitted to work on holidays that really is of no consequence. As noted in *T. Fenn Walter's* case (supra) the considerations have to be of several aspects including the determinative “paramount national interest” angle. That does not appear to be a factor considered when the request was made for appointment of a sitting Judge as the commission and the reply of the Chief Justice of the High Court accepting the prayer. It could not be shown to us as to how the issues being enquired into by the Commission are of paramount national interest. Further the stand that the Commission was required to give recommendation on various other aspects like industrialization etc. is really of no consequence. It is not known as to on what basis a sitting Judge appointed as a Commission, can throw light on the broader issues like industrialization etc. In any event, the parameters of enquiry do not include these aspects.

8. The I.A. is sans merit, deserves dismissal, which we direct.

R.P.

I.A. dismissed.