

CASE NO.:

Appeal (civil) 4138 of 2001

Special Leave Petition (civil) 14350 of 1999

PETITIONER:

P. JANARDHANA REDDY

Vs.

RESPONDENT:

STATE OF A.P. & ORS.

DATE OF JUDGMENT: 13/07/2001

BENCH:

S.V.Patil, D.P.Mohapatro

JUDGMENT:

D.P.MOHAPATRA, J.

Leave granted.

These appeals are directed against the common judgment dated 23.6.1999 of the Andhra Pradesh High Court in Writ Petition No. 14282 of 1998 in which the orders of the State Government appointing the Commission under the Commission of Inquiry Act, 1952 (for short 'the Act'), vide G.O.Ms.No.83 dated 5.2.1997 and G.O.Ms. No.468 dated 2.6.1997 were set aside holding, inter alia, that the Government did not form any opinion to appoint the Commission under the Act.

The factual backdrop of the case leading to the present proceeding may be shortly stated thus :

For construction of Yeleru Left Canal, land in Visakhapatnam District was acquired on the requisition of the Irrigation Department. Awards were passed by the Land Acquisition Officer after completing the formalities under the Land Acquisition Act, 1894. Not satisfied with the quantum of compensation fixed by the Land Acquisition Officers, the Awardees sought reference under Section 18. The Subordinate Courts of Anakapally and Chodavaram enhanced the Compensation in the reference proceedings. The process of acquisition had started in the year 1980 and the awards were passed by the Civil Court after lapse of 4 to 5 years. In the meantime another set of acquisition proposals for house sites for the poor was initiated by the Social Welfare Department and in that also the compensation was determined. The compensation which was determined by the Civil Courts was found to be too exorbitant, as compared to the compensation determined by the Land Acquisition Officers and this attracted attention of the public spirited persons which led to serious criticisms. It came to the notice of the State Government in November 1996 that several irregularities had been committed in the proceedings. The High Court was also apprised of the situation by the District Judge Vishakhapatnam. Certain

criminal prosecutions were launched. Before any action could be initiated in the matter, a part of the compensation amount had already been withdrawn and when the amount of Rs.6.55 crores was deposited the Subordinate Judge, Chodavaram entertained a doubt as to whether the compensation has to be paid or not and then sought clarification from the District Judge, Visakhapatnam, who by his letter dated 9.12.1996 sought guidance from the High Court. In the said letter it was stated, inter alia, that in respect of the execution petitions relating to recovery of land compensation amount for the lands acquired for the Yeleru Left Main Canal, an amount of Rs.6.55 crores has been deposited in the Court of Subordinate Judge Chodavaram on 8.11.1996 by the Executive Engineer, Peddapuram Irrigation Division; that the decree holders filed petitions on 11.11.1996 for withdrawal of the said amount; that in the statement made by the Chief Minister published in newspapers on 8.12.1996 it was stated that the disbursement of the said amount was stayed; that after seeing that statement, the Subordinate Judge, Chodavaram informed the District Judge on phone that no evidence was produced before him on behalf of the State Government to show that any appeal has been filed against the Awards and stay has been obtained and that he was put in an embarrassing situation as the counsel for decree holders is pressing for issue of cheques.

The said letter of the District Judge dated 9.12.1996 was taken as a suo motu writ petition on 10.12.1996 and was numbered as W.P.No.26456/96. The Full Bench comprising of the Chief Justice and two other learned Judges directed notices to be issued to the respondents and ordered that pending further orders, stay of payment of amounts under the decrees relating to Yeleru Reservoir land acquisition cases. The matter was then directed to be listed before a Division Bench. The State Government had directed investigation by C.B. C.I.D.. In November, 1996 enquiry was also ordered into the alleged irregularities in the matter of payment of compensation for the acquired lands. Mr. Samarjit Ray, IAS, Principal Secretary, Social Welfare Department was appointed as Inquiry officer to conduct the enquiry and submit a report. The necessary Government order G.O.Ms.No.1027 Revenue (LA)Department dated 10.12.1996 was issued by the Principal Secretary Revenue Department of the State Government.

On 13.12.1996 the issue with regard to the alleged scam came up for discussion before the Legislative Assembly. In that connection it was stated by the Chief Minister that he has no objection if a sitting Judge is specially posted for conducting enquiry and rendering punishment under the supervision of the High Court, as suggested by Mr. Vidyasagar Rao and some others. But there was no resolution passed by the Legislative Assembly for constituting a Commission under the Act. In pursuance to the Government Order issued in G.O.Ms. No.1042 dated 14.12.1996 specifying the terms of reference for the inquiry by Mr. Samarjit Ray, Principal Secretary to the Government, Social Welfare Department an enquiry was conducted by the said officer between 20.1.1997 to 27.1.1997 and interim report dated 3.2.1997 was submitted. A note was put up by the Principal Secretary Revenue to the Chief Secretary on 8.1.1997 making a suggestion that it would be advisable to direct Shri S. Ray, IAS also to look into the Social Welfare land acquisition cases in Visakhapatnam district wherever abnormal increase in

compensation has been awarded by the Courts. The said note was approved by the Chief Secretary on 10.1.1997 and was sent to the office of the Chief Minister on 18.1.1997 for approval. The Chief Minister accorded his approval on 19.1.1997 and consequential orders were issued by the Principal Secretary. Thus the action that the Government had contemplated was the enquiry by Mr. S. Ray, Principal Secretary to the Government relating to both Yeleru Canal and Social Welfare land acquisition cases. On 29.1.1997 W.P. No.1235/97 was taken up for hearing and suo motu W.P. No.26456/96 was also clubbed with it. The Division Bench of the High Court presided over by the Chief Justice passed the following order:

"When the instant case was taken up, it was felt desirable to take up W.P.No.26456 of 1996 along with it. Accordingly, the two matters are taken up together. In course of the hearing, it has transpired that the Government has been ready and willing for the appointment of a sitting Judge of the High Court as a Commission of Inquiry under Section 3 of the Commissions of Inquiry Act, 1952. Proceeding in W.P.No.26456 of 1996 has been taken up on the basis of a report of the District Judge, Visakhapatnam and by order of this Court, issuance of cheques in Land Acquisition cases, pending at various stages in the Sub-courts at Anakapalle and Chodavaram, Visakhapatnam District has been stayed. It is agreed at the Bar that until the completion of the enquiry and consequential actions, if any, the stay, as ordered by this Court on 10th of December, 1996 shall continue and the cases already registered and investigations taken up by CB CID shall continue on condition that materials collected in course of investigation and/or statements recorded in course of the investigation of the cases shall be made available to the commission appointed for the purpose of enquiry into the matter.

Since a sitting Judge of this Court is proposed to be appointed as the Commission of Inquiry, it is felt that except notifying the appointment of the Secretary and other staff of the Commission of Inquiry, from amongst members of the Registry of the High Court and/ or the Courts in the State including subordinate staff, no independent selection is required and no extra financial burden is involved. It is felt, however, that the Commission may need assistance of investigating agencies in matters, which in course of enquiry, may require special attention. A notification in this behalf, empowering the Commission to

requisition the services of the officers in the police service of the State, including members of the Indian Police Service (IPS) allotted to the State, shall be necessary. All concerned, wherever they are, who have control and custody of the records pertaining to the matter, shall be directed accordingly to make all such records available and all persons, who are in the know of /or informed about any thing concerning the subject of enquiry shall be directed to appear and make themselves available for evidence, as and when required and/or for consultations as and when required by the Commission.

Learned Additional Advocate - General has informed the court that necessary notification in this behalf shall issue without delay.

The Registrar (General) is, however, required to make immediate communication of the name and consent of the learned Judge nominated for the said purpose by the Chief Justice.

The learned Additional Advocate -General has also stated that terms of the reference shall be finalised in consultation with the Chief Justice of the Court within a couple of days.

The two petitions are ordered accordingly and disposed of."

Pursuant to the above order Justice S.R. Nayak was appointed by G.O.Ms. No.83 dated 5.2.1997 and after his resignation, the Commission was reconstituted with Justice B.K.Somasekhara by G.O.Ms. No.468 dated 2.6.1997. The tenure of the Commission was stated as six months i.e. up to 2.12.1997. The appointment of the said commission was assailed before the High Court on the grounds inter alia, that the Commission was constituted at the behest of the Andhra Pradesh High Court and that the State Government had not independently applied its mind to form an opinion necessitating the constitution of such commission, and therefore, the notification appointing the Commission is illegal and ultra vires the statute.

In the counter affidavits filed on behalf of the State Government (1st respondent) and also the Commission (the 2nd respondent) it was averred inter alia that in view of the irregularity committed in the payment of compensation relating to both Yeleru Canal and land acquisition for house sites the Commission was appointed to make inquiry and there was no legal infirmity in the appointment of the Commission. Insofar as the High Court Rules was concerned it was stated that in course of hearing of the Writ Petitions the High Court had taken cognizance of readiness and willingness of the Government to constitute a Commission and orders were passed constituting the Commission. The allegations regarding bias on the part of

the Judge who was appointed as Commissioner were denied. It was also contended on behalf of the respondents that the terms of reference of the Commission were decided by the State Government.

The High Court accepted the contention that there cannot be any direction to appoint a commission under the Commission of Inquiry Act, but should the High Court feel that a fact finding is necessary then it can itself appoint the Committee or Commission. The High Court, however, held that "readiness and willingness" for appointment of a Commission does not connote the formation of opinion by the Government to appoint a Commission. The High Court came to hold that it is Government's absolute discretion either to appoint the Commission or not. It has to exercise such discretion by applying its mind independently and form an opinion that it is necessary to appoint a Commission under the Act. On perusal of the Government file the High Court found that there was no material to show that the Government had formed an opinion regarding necessity of setting up the Commission under the Act. The High Court summed up its findings in the following words :

"In view of what is stated supra, we hold:

(1) That the 2nd respondent-Commission has not been validly constituted in consonance with Section 3 of the Act and thus, cannot function any further.

(2) That the cases relating to Crime Nos. 327/96, 6/97 and Crime Nos.7/97 and 10/97 shall be tried and disposed of within a period of one year from the date of the receipt of a copy of this order.

(3) The disciplinary proceedings initiated, both against the Judicial Officer, Judicial Ministerial staff and others and also others, shall be disposed of by the respective authorities, within a period of six months from the date of the receipt of a copy of this order.

(4) The remaining appeal suits arising out of the O.Ps. enhancing the compensation amounts and pending before this court shall be disposed of by constituting a Special Bench within a period of two months from the date of the receipt of a copy of this order; and

(5) In the cases where the decrees passed enhancing the compensation amount had become final, the respective claimants shall be entitled to file execution petitions and the cheque petitions have to be duly verified by the concerned executing courts and the amounts have to be paid to the

decree holders by crossed-demand drafts and depositing the same in the banks by opening the accounts by the Presiding Officers of the Executing Courts. Thorough and proper enquiry has to be conducted by the Presiding Officers of the Executive Courts with regard to identity of the decree-holders. W.P. is allowed accordingly. No costs."

The said judgment is under challenge in these appeals.

The question that arises for consideration is whether on the facts and circumstances of the case the High Court was right in quashing the notification appointing the Commission of Inquiry on the sole ground that the State Government had not formed an opinion as required under section 3 of the Act before issuing the notification. It is the settled position that appointment of a Commission is a matter at the discretion of the appropriate Government; such an appointment is meant primarily for the purpose of information of the Government; the Commission does not adjudicate on any matter; its report has no value per se excepting giving advice and providing guidance to the Government. It is mandated in sub-section (1) of section 3 of the Act that the appropriate Government may if it is of opinion that it is necessary so to do, appoint a Commission of Inquiry for the purpose of making an enquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification and the commission so appointed shall make the inquiry and perform the functions accordingly. The matter stands on a different footing if a resolution in this behalf is passed by each House of the Parliament or State Legislative, as the case may be, in which case the appropriate Government shall appoint the Commission for the purpose. On a plain reading of the statutory provision it is clear that there is no prescribed form or particular manner for the appropriate Government to express its opinion that it is necessary to appoint a Commission of Inquiry. Such opinion may be expressed in any manner by which the public would get the information about such appointment. When the Chief Minister of the State expressed on the floor of the State Legislature that he has no objection for appointment of a Commission of Inquiry under the Act to inquire into the serious allegations regarding irregularities in payment of compensation for the acquired land, it is reasonable to presume that he had given necessary thought to the matter and on being satisfied that it is necessary so to do expressed his agreement for appointment of a Commission of Inquiry under the Act. The statement was made on behalf of the State Government. This was followed by the categorical statement of the Advocate General representing the State before the High Court that the requisite notification will be issued without delay and indeed such notification was issued. It is relevant to note that it was not the case of the writ petitioners that the subject matter of inquiry was not a definite matter of public importance or that no inquiry into such matter was necessary. Indeed, there is little scope for doubt that the controversy is a matter of public importance

and it is but appropriate that the State Government wanted a detailed enquiry in the matter for its information and guidance. The High Court, as noted earlier, has simply held that since there is no specific order in the file which would show that the State Government had formed such opinion as required under section 3(1) of the Act; therefore, the notification appointing the Commission of Inquiry was not in accordance with law. On the facts and circumstances of the case noted above, we are of the view that the High Court took a hyper technical view of the matter in which the State Government which is the repository of the authority had made the appointment. A serious matter of public importance which gave rise to criticisms from different quarters against public functionaries and also private persons is a matter which calls for proper inquiry and if the State Government in its wisdom thought it proper to entrust the inquiry to a sitting or retired Judge of the High Court, no exception can be taken to such action. It is desirable that activities of public functionaries should be above board and if allegations and criticisms are received in that regard the matter should be promptly inquired into and appropriate follow-up action taken. The need is all the more important in matters relating to public money. The High Court, in our considered view, omitted to look to the main purpose of appointment of Commission of Inquiry under the Act and interfered with the notification issued by the State Government without firm basis in law and without justification on facts.

In *Shri Ram Krishna Dalmia vs. Shri Justice R. Tendolkar & Ors.* (AIR 1958 SC 538), a Constitution Bench of this Court interpreting section 3(1) of the Act, ruled:

"...We see no warrant for the proposition that a definite matter of public importance must necessarily mean only some matter involving the public benefit or advantage in the abstract, e.g., public health, sanitation or the like or some public evil or prejudice, e.g., floods, famine or pestilence or the like. Quite conceivably the conduct of an individual person or company or a group of individual persons or companies may assume such a dangerous proportion and may so prejudicially affect or threaten to affect the public well-being as to make such conduct a definite matter of public importance urgently calling for a full inquiry. Besides, S. 3 itself authorises the appropriate Government to appoint a Commission of Inquiry not only for the purpose of making an inquiry into a definite matter of public importance but also for the purpose of performing such functions as may be specified in the notification. Therefore, the notification is well within the powers conferred on the appropriate Government by S.3 of the Act and it cannot be questioned on the ground of its going beyond the provisions of the Act."

(emphasis supplied)

In P.V.Jagannath Rao and others vs. The State of Bihar (AIR 1969 SC 215) a Constitution Bench of this Court held :

"..The purpose of the enquiry is stated in the preamble to the notification which states that "the matters aforesaid regarding the aforesaid persons should be enquired into through a Commission of Inquiry so that facts may be found which along will facilitate rectification and prevention of recurrence of such lapses and securing the ends of justice and establishing a moral public order in future". In other words, the object of the enquiry to be made by the Commission appointed under Section 3 of the Act was to take appropriate legislative or administrative measures to maintain the purity and integrity of political administration in the State. In our opinion the appointment of the Commission of Inquiry in the present case was in valid exercise of the statutory power by the State Government under Section 3 of the Act..."
(emphasis supplied)

In the case of Dr. Baliram Waman Hiray vs. Justice B. Lentin and others (1988 (4) SCC 419) this Court held that a Commission is appointed by the appropriate Government 'for the information of its mind' in order for it to decide as to the course of action to be followed. It is therefore a fact-finding body and is not required to adjudicate upon the rights of the parties and has no adjudicatory functions. The Government is not bound to accept its recommendations or act upon its findings. It is a familiar feature of modern legislation to set up bodies and tribunals, and entrust them with work of a judicial, quasi-judicial or administrative character, but they are not courts in the accepted sense of that term, though they may possess some of the trappings of a court.

In State of Madhya Pradesh vs. Arjun Singh and others (1993 (1) SCC 51), a Bench of three learned Judges of this Court considered the case in which the High Court had quashed the notification holding that it suffered from non application of mind and invalid exercise of power under section 3 of the Act. This Court considering the terms of reference issued under two notifications held that there can be no bar to the Commission to inquire into these matters under the original reference itself. So far as clause (C) of the second reference was concerned this Court took the view that the original reference in term No.1 itself covers the question as to how the affairs of Churhat Children's Welfare Society were conducted and how the profit derived or money collected through Churhat Lottery had been utilised. This Court made it clear that nothing precludes the Commission from making an Inquiry as to whether any profit derived or money collected from Churhat Lottery had been utilised for constructing the mansion/bungalow at Kerva Dam. But regarding the second reference this Court upheld the

decision of the High Court quashing the same as there was no relevant material before the appropriate Government for enlarging the scope of existing enquiry which was set up only to comply with the directions contained in the operative part of the judgment of the High Court in the Churhat lottery case. This Court further made it clear that the judgment would not preclude the State Government from appointing any Commission of Inquiry according to law after applying its mind to any fresh or further material placed before it and that such formation of opinion depends on the subjective satisfaction of the appropriate Government which should be based on objective or real material and not merely on some vague allegations, hearsay evidence or fishing enquiry.

Testing the case on hand on the touchstone of the principles laid down in the aforementioned decided cases, we find that the High Court has not held that there was no material of an objective or real nature to form the basis for the subjective satisfaction of the State Government that the matter is one of definite public importance into which an enquiry is necessary to be made. In the present case the exercise regarding payment of compensation were mostly based on records. In such a matter there is little scope to contend that the criticisms are merely on some vague allegations or hearsay evidence or the intention is to make a fishing inquiry.

On a careful consideration of the entire matter, we are not persuaded to accept the view taken in the Judgment of the High Court quashing the appointment of the Commission of Inquiry under the Act. Accordingly the appeals are allowed and the Judgment under challenge is set aside. There will however be no order for costs.