

GHANSHYAM UPADHYAY A

v.

STATE OF U.P. & ORS.

(Criminal Miscellaneous Petition No. 70798/2020

In B
(Writ Petition (Criminal) No. 177 of 2020)

AUGUST 19, 2020

[S. A. BOBDE, CJI, A. S. BOPANNA AND
V. RAMASUBRAMANIAN, JJ.]

Inquiry: C

Commission of Inquiry – Constitution of – By Supreme Court – To investigate the alleged encounter of ‘Vikas Dubey’ – Application by the petitioner seeking scrapping of the Commission alleging ‘conflict of interest’ and ‘bias’ against the two of the members of the Commission – Held: The basis for allegation was newspaper report – The newspaper report without further proof has no evidentiary value – The present case is a fact-finding exercise – The Commission has been constituted under Commissions of Inquiry Act, which is empowered merely to investigate, record its findings and make its recommendations – The recommendations are not enforceable proprio vigore – There would be sufficient safeguard to the manner in which the inquiry would be held.

Dismissing the application, the Court

HELD: 1.1. The entire basis for making the allegations as contained in the miscellaneous petition is an Article relied on by the petitioner said to have been published in the newspaper. There is no other material on record to confirm the truth or otherwise of the statement made in the newspaper. This Court will have to be very circumspect while accepting such contentions based only on certain newspaper reports. The newspaper item without any further proof is of no evidentiary value. [Para 6] [987-F-G]

Kushum Lata v. Union of India & Ors. (2006) 6 SCC 180 : [2006] 3 Suppl. SCR 462; Rohit Pandey v. Union of India (2005) 13 SCC 702 – relied on.

- A **1.2** In the instant case, the Chairman and a Member of the Commission had held high Constitutional positions and while making allegations, the petitioner has based his claim only on the newspaper report and the manner in which the averments are made in the application is unacceptable. In any case, the allegation that the brother of the chairman of the Commission is a legislator belonging to or supporting the party in power and that the member of the Commission is related to the IG of Police are not sufficient to come to the conclusion that it would lead to *bias* or conflict of interest since there is no indication whatsoever as to the nature of influence such of those relatives would be able to exert and as to whether they are in a dominant position. [Paras 8-9][988-C-E]
- B **1.3** In the present case, the Petitioner is a lawyer by profession who practices in Mumbai and has come up by way of Public Interest Litigation. Therefore, the allegations of *bias* made by him against the members of the Commission merely on the basis of newspaper reports and nothing more, are liable to be rejected outright. [Para 14][989-H; 990-A]
- C *Ranjit Thakur v. Union of India & Ors. (1987) 4 SCC 611 : [1988] 1 SCR 512 – distinguished.*
- D *K. Vijaya Bhaskar Reddy v. Government of Andhra Pradesh, AIR 1996 AP 62 – referred to.*
- E **2.** The Court is dealing here with an Inquiry Commission constituted under the Commissions of Inquiry Act, 1952 whose functions and role are by now well defined. A Commission constituted under the Commissions of Inquiry Act is empowered merely to investigate, record its findings and make its recommendations. These recommendations are not enforceable *proprio vigore*. The proceedings in the present case are not an *inter se* determination of legal issues between the parties but a fact-finding exercise. The petitioner herein is an advocate who practices law in Mumbai, Maharashtra and is in no way connected to the incident in question which took place in U.P. However, the petition filed by him in public interest was accepted and the Commission of Inquiry consisting of persons who had held high
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position has been constituted. The enquiry held would be in public domain and the petitioner has already been granted the liberty of participating therein. The report of the enquiry is ordered to be filed in the petitions which were filed before this Court. Therefore, there would be sufficient safeguard to the manner in which the inquiry would be held. The petitioner has been raising unnecessary apprehensions and repeated applications are being filed which in fact is hampering the process of inquiry. [Paras 10 and 15][988-F-G; 990-C-E]

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*Ram Krishna Dalmia v. Justice S. R. Tendolkar [1959]
SCR 279; State of Karnataka v. Union of India (1977)
4 SCC 608 : [1978] 2 SCR 1; Sham Kant v. State of Maharashtra (1992) 2 Suppl. SCC 521 – relied on.*

Case Law Reference

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|-------------------------|---------------|---------|---|
| [2006] 3 Suppl. SCR 462 | relied on | Para 6 | D |
| (2005) 13 SCC 702 | relied on | Para 7 | |
| [1959] SCR 279 | relied on | Para 10 | |
| [1978] 2 SCR 1 | relied on | Para 10 | |
| (1992) 2 Suppl. SCC 521 | relied on | Para 10 | E |
| AIR 1996 AP 62 | referred to | Para 11 | |
| [1988] 1 SCR 512 | distinguished | Para 15 | |

CRIMINAL ORIGINAL JURISDICTION: CRL.M.P. No. F
70798/2020 in Writ Petition (Criminal) No. 177 of 2020.

Under Article 32 of the Constitution of India

Tushar Mehta, SG, K.M. Nataraj, ASG, Ms. Garima Prashad, Prashant Singh, Shiv Nath Tilhari, Rajat Nair, Kanu Agrawal, Arvind Kumar Sharma, Ms. Aparna Bhat, Ms. Anupama Ngangom, Advs. for the appearing parties.

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Petitioner-in-person.

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A The following Order of the Court was passed:

O R D E R

1. The petitioner in this Criminal Miscellaneous Petition/application is the petitioner in W.P (Crl.) No.177/2020. The said writ petition was filed under Article 32 of the Constitution of India, in the nature of public interest seeking for issue of Writ of Mandamus and direct the respondent Nos.1 to 3 in the writ petition to initiate action with regard to the destruction of residential building and other properties of accused – Vikas Dubey and to safeguard the life of the accused. Before the petition was taken up for consideration certain other developments had occurred,
- B interest seeking for issue of Writ of Mandamus and direct the respondent Nos.1 to 3 in the writ petition to initiate action with regard to the destruction of residential building and other properties of accused – Vikas Dubey and to safeguard the life of the accused. Before the petition was taken up for consideration certain other developments had occurred,
- C inasmuch as the said Vikas Dubey was killed by the police in an alleged encounter. Along with the said writ petition, certain other writ petitions which were also filed in public interest seeking for an appropriate enquiry in that regard were tagged. All the related writ petitions were taken up for consideration together. The State Government in a reply filed to the said writ petitions, apart from referring to the other aspects of the matter had also indicated that the Government having taken serious cognizance of all the events, apart from constituting a Special Investigation Team had also constituted a Commission of Inquiry under the Commission of Inquiries Act, 1951 headed by a former Judge of Allahabad High Court. In that regard it is to be noted that Shri Justice Shashikant Agrawal, a former Judge had been appointed.
- D had also indicated that the Government having taken serious cognizance of all the events, apart from constituting a Special Investigation Team had also constituted a Commission of Inquiry under the Commission of Inquiries Act, 1951 headed by a former Judge of Allahabad High Court. In that regard it is to be noted that Shri Justice Shashikant Agrawal, a former Judge had been appointed.
- E former Judge had been appointed.
2. In the course of the proceedings before this Court, based on a suggestion made by this Court, the State Government had undertaken the exercise to expand the composition of the Commission. Accordingly, in addition to the former High Court Judge who had been appointed the State Government suggested the name of Dr. Justice B.S. Chauhan, a former Judge of this Court to be the Chairman and Mr. K.L. Gupta, IPS, Former Director General of Police to be a Member. This Court having considered it appropriate had through the order dated 22.07.2020 accepted the constitution of the Commission of Inquiry in the said manner and the writ petition was directed to be listed along with the report of the Commission. The petitioners were also granted the liberty of applying to the Inquiry Commission to be heard in the matter.
- G Commission. The petitioners were also granted the liberty of applying to the Inquiry Commission to be heard in the matter.
- H When this is the position the instant criminal miscellaneous petition is filed by the petitioner seeking that the Judicial Commission constituted by the State be scrapped and a SIT as sought by the petitioner

be constituted by this Court to carry out investigation on all issues raised by the petitioner. The said prayer is made by the petitioner alleging conflict of interest and likely bias on the part of the Chairman, Dr. Justice B.S. Chauhan and Shri K.L. Gupta, the Member. The petitioner in that regard has relied upon an Article published in “The Wire” dated 29.07.2020.

4. We have heard the petitioner-in-person and perused the petition papers.

5. At the outset it is necessary to notice that the petitioner herein had filed the applications in I.A. No.68207/2020 and I.A. No.67940/2020 after the constitution of the Inquiry Commission raising certain objections with regard to Shri K.L. Gupta being the Member of the Commission since according to the petitioner he had made certain comments in favour of the police in the interview given to the media. This Court having considered the same and on not finding it objectionable, dismissed the application through the order dated 28.07.2020 holding the application to be devoid of merits. Despite the same, the very same contentions are urged in the instant application as well and has also raised an additional contention that the said Shri K.L. Gupta is related to Shri Mohit Agarwal, the IG of Kanpur Zone. Further, objection is raised to the continuation of Dr. Justice B.S. Chauhan as the Chairman of the Commission since the news report relied on by the petitioner states that his brother and relative are legislators from the Bhartiya Janata Party which runs the Government in Uttar Pradesh.

6. As noted, the entire basis for making the allegations as contained in the miscellaneous petition is an Article relied on by the petitioner said to have been published in the newspaper. There is no other material on record to confirm the truth or otherwise of the statement made in the newspaper. In our view this Court will have to be very circumspect while accepting such contentions based only on certain newspaper reports. This Court in a series of decisions has repeatedly held that the newspaper item without any further proof is of no evidentiary value. The said principle laid down has thereafter been taken note in several public interest litigations to reject the allegations contained in the petition supported by newspaper report. It would be appropriate to notice the decision in the case of ***Kushum Lata vs. Union of India & Ors.*** (2006) 6 SCC 180 wherein it is observed thus, “.... *It is also noticed that the petitions are based on newspaper reports without any attempt to verify their authenticity. As observed by this Court in several cases, newspaper*

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- A *reports do not constitute evidence. A petition based on unconfirmed news reports, without verifying their authenticity should not normally be entertained. As noted above, such petitions do not provide any basis for verifying the correctness of statements made and information given in the petition.”*
- B 7. This Court in the case of **Rohit Pandey vs. Union of India** (2005) 13 SCC 702 while considering the petition purporting to be in public interest filed by a Member of the Legal Fraternity had come down heavily on the petitioner since the said petition was based only on two newspaper reports without further verification.
- C 8. In the above backdrop, in the instant case it is to be noticed that the Chairman and a Member of the Commission had held high Constitutional positions and while making allegations the petitioner has based his claim only on the newspaper report and the manner in which the averments are made in the application is unacceptable.
- D 9. In any case, the allegation that the brother of the chairman of the Commission is a legislator belonging to or supporting the party in power and that the member of the Commission is related to the IG of Police (Kanpur Range) are not sufficient to come to the conclusion that it would lead to bias or conflict of interest since there is no indication whatsoever as to the nature of influence such of those relatives would be able to exert and as to whether they are in a dominant position.
- E 10. It must be remembered that we are dealing here with an Inquiry Commission constituted under the Commissions of Inquiry Act, whose functions and role are by now well defined. As held by the Constitution Bench in **Ram Krishna Dalmia vs. Justice S. R. Tendolkar**, 1959
- F SCR 279, a commission constituted under the Commissions of Inquiry Act, 1952 is empowered merely to investigate, record its findings and make its recommendations. These recommendations are not enforceable *proprio vigore*. The view taken in **Ram Krishna Dalmia**, was reinforced by a larger bench in **State of Karnataka vs. Union of India**,
- G (1977) 4 SCC 608. In fact, this Court went in **Sham Kant vs. State of Maharashtra**, 1992 Suppl. (2) SCC 521, to the extent of holding that the findings of the Inquiry Commission are not binding on the Court, while dealing with an appeal arising out of conviction and sentence of a police officer. The police officer who was the appellant before this Court in the said case sought to rely upon the findings of the Inquiry Commission
- H that the victim of custodial violence could have sustained injuries prior to

his arrest. But this Court refused to rely upon the findings of the Inquiry Commission to overturn the conviction of the police officer.

11. In *K. Vijaya Bhaskar Reddy vs. Government of Andhra Pradesh*, AIR 1996 AP 62, a Division Bench of the Andhra Pradesh High Court had an occasion to deal with the challenge to the appointment of a one-man Commission of Inquiry under the Commissions of Inquiry Act, 1952. One of the grounds of challenge was bias on the part of the appointee. After pointing out that bias by interest which disqualifies a Judge, may fall into two broad classes namely, (i) bias arising out of pecuniary interest, and (ii) bias arising out of personal interest in the outcome, on account of the Judge's relationship with one of the parties, the Division Bench of the Andhra Pradesh High Court quoted Massey from his Treatise on Administrative Law to the following effect: "*personal bias arises from a certain relationship equation between the deciding authority and the parties which incline him unfavourably or otherwise on the side of one of the parties before him*".

12. Though a contention was raised in *K. Vijaya Bhaskar Reddy* that the principle has no application to the proceedings before an Inquiry Commission, which are basically inquisitorial and not judicial or quasi-judicial or adversarial, the Division Bench of the Andhra Pradesh High Court held that the duty to act fairly and impartially flowed out of the principles of natural justice. Therefore, the Andhra Pradesh High Court upheld the right of the petitioner therein to raise the plea of bias. However, the Court held that to sustain a plea of reasonable apprehension of bias, (i) there must be cogent, uncontroverted and undisputed material, and (ii) the court cannot go by vague, whimsical and capricious suspicion. Applying these principles, the Andhra Pradesh High Court rejected the challenge made by a former Chief Minister of the state, to the appointment of a retired Judge as one-man Commission to inquire into certain alleged irregularities committed by him while in office.

13. Thus, even in a case where the petitioner before the Court was a person against whom the Commission of Inquiry was constituted, the Court applied strict standards, for testing the allegation of personal bias against the Inquiry Commission.

14. In the case on hand, the Petitioner is a lawyer by profession who practices in Mumbai and has come up by way of Public Interest

- A Litigation. Therefore, the allegations of bias made by him against the members of the Commission merely on the basis of newspaper reports and nothing more, are liable to be rejected outright.
15. The petitioner has relied on the decision of this Court in the case of **Ranjit Thakur vs. Union of India & Ors.** (1987) 4 SCC 611 to contend that this Court held that the Likelihood of bias in the mind of the party would be sufficient to complain. The facts in the said case led to such conclusion inasmuch as the nature of involvement of respondent No.4 in punishing the appellant in that case and thereafter participating lead to bias and that position was accepted. The facts involved herein are entirely different. The proceedings herein are not an *inter se* determination of legal issues between the parties but a fact-finding exercise. The petitioner herein is an advocate who practices law in Mumbai, Maharashtra and is in no way connected to the incident in question which took place in U.P. However, the petition filed by him in public interest was accepted and the Commission of Inquiry consisting of persons who had held high position has been constituted. The enquiry held would be in public domain and the petitioner has already been granted the liberty of participating therein. The report of the enquiry is ordered to be filed in the petitions which were filed before this Court. Therefore, there would be sufficient safeguard to the manner in which the inquiry would be held. We find that the petitioner has been raising unnecessary apprehensions and repeated applications are being filed which in fact is hampering the process of inquiry.

16. For all the aforestated reasons we are of the opinion that the instant petition/application is without any merit and the same is accordingly dismissed.

Kalpana K. Tripathy

Petition/Application dismissed.