

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present : The Hon'ble Justice Dipankar Datta

W.P. No. 9909 (W) of 2016

Sri Kanti Ganguy
vs.
State of West Bengal & ors.

For the petitioner : Mr. B. R. Bhattacharya, Sr. Advocate,
Mr. Arunava Ghosh, Advocate,
Mr. Dwaipayan Sengupta, Advocate,
Mr. Jayanta Narayan Chatterjee, Advocate,
Mr. Anindya Lahiri, Advocate,
Mr. Shirsendu Sinha Ray, Advocate,
Mr. Debashis Banerjee, Advocate,
Mr. Apalak Basu, Advocate.

For the respondent : Mr. L. K. Gupta, Addl. Advocate General,
No.1 Mr. Jayak Kr. Gupta, Advocate.

For the respondent : Mr. Subroto Mookherjee, Advocate.
No.4

Hearing concluded on : June 27, 2016

Judgment on : July 8, 2016

1. An unfortunate incident of attack and assault on some brahmacharis and brahmacharinis belonging to the Ananda Marg resulted in the death of 17 persons and injuries to few others on April 30, 1982 in the vicinity of Bullygunge Railway Station, Bijan Setu and Bondel Road Gate in south Calcutta. The aforesaid incident was considered by the Government of the time to be a definite

2

matter of public importance, consequently leading to the formation of an opinion in favour of appointing a Commission of Inquiry for making an inquiry. In exercise of power conferred by section 3 of the Commissions of Inquiry Act, 1952 [hereafter the Act], the Governor was pleased to appoint a Commission of inquiry consisting of Shri Justice Samarendra Chandra Deb, Judge of the Calcutta High Court [hereafter referred to as the (Justice Deb) Commission] by a notification published in the Calcutta Gazette dated May 12, 1982. The terms of reference of the (Justice Deb) Commission were :

"2. The terms of reference of the Commission shall be as follows:-

- (i) to inquire into and to find out the circumstances and the course of events leading to the death of seventeen persons and injuries to some others during the aforesaid incidents on the 30th April, 1982;
- (ii) to inquire into and to find out the cause of attacks and assaults on the Anandamargees on the 30th April, 1982 at the aforesaid three places leading to the death of seventeen persons and injuries to others;
- (iii) to inquire into and to find out the immediate cause of death and of injuries to the Anandamargees, who were attacked and assaulted during the said incidents;
- (iv) to inquire into and to find out if there was delay on the part of the Police to arrive at the places of incidents;
- (v) to consider such other matters which in the opinion of the Commission have any relevance to the aforesaid terms of reference; and
- (vi) to recommend measures which may be adopted so that recurrence of such incidents may be avoided in future."

The final report of the (Justice Deb) Commission to the State Government was required to be submitted within a period of two months from the date of the notification, with liberty to submit an interim report within the said period.

2. It appears from the materials on record that the time for submission of the final report by the (Justice Deb) Commission was initially extended till January 12, 1982, thereafter till June 13, 1983, thereafter till September 13, 1983 and then

again till October 31, 1983. There is, however, no material to suggest that the period was extended further with effect from November 1, 1983 by the Governor. On the contrary, a letter dated November 1, 1983 of the Secretary to the (Justice Deb) Commission dated November 1, 1983 addressed to the Secretary to the Government of West Bengal reveals that the (Justice Deb) Commission ceased to exist with effect from November 1, 1983, although certain residual works remained which need to be completed before winding up its office. Another letter dated November 2, 1983, written by the Secretary to the (Justice Deb) Commission reveals a request made to an agency which had supplied furniture to the (Justice Deb) Commission for office use to take back the same by November 9, 1983 positively.

3. Whether or not any final report was submitted by the (Justice Deb) Commission is not known, as it appears on further perusal of the materials on record.
4. In its decision reported in (2014) 2 CAL LT 175 (HC) (Raj Kamal Johri vs. State of West Bengal & ors.), this Bench while dealing with an issue arising out of another Commission of Inquiry that was appointed, had the occasion to record its perception in the following words:

“17. However despite the Act being in existence for more than half a century, the futility of the proceedings under the Act has attracted more attention in comparison to the utility thereof. ***”

It is indeed unfortunate that insofar as this State is concerned, such perception seems to have attained prophetic truth. The Bench could have moved forward with some sense of satisfaction if it were proved wrong.

4

5. To complete the factual narration, it transpires that after the Left-Front Government was voted out of power in 2011 and governance of the State had been entrusted to the Trinamul Congress by the electorate, it was found by the State Government that there was no record to support submission of any report of the (Justice Deb) Commission together with the memorandum of action taken thereon, and further as to whether the same were laid before the legislature of the State. Having regard to the gravity of the situation, the State Government was of the opinion that it was necessary to appoint another Commission of Inquiry to inquire into and report on the incident of disturbances in the vicinity of Bullygunge Railway Station, Bijan Setu and Bondel Road Gate on April 30, 1982 including provocations/instigations from any persons/group of persons, if any, leading to the massacre of certain Anandamargees. Upon consideration thereof, the Governor in exercise of power conferred by section 3 of the Act by notification dated March 14, 2012 appointed a Commission of Inquiry consisting of Hon'ble Mr. Justice Santosh Kumar Phaujdar, retired judge, High Court, Calcutta [hereafter the (Justice Phaujdar) Commission] to inquire into the said incident. The terms of reference of the (Justice Phaujdar) Commission were :

- “(a) To inquire into the events leading to the incident which took place on 30th April, 1982 as aforesaid;
- (b) To investigate into circumstances including provocations, instigations from any persons/group of persons, if any, leading to incident;
- (c) To inquire into the role of police/other authorities;
- (d) To recommend the legal action against all those involved in the incident as aforesaid;
- (e) To inquire about the persons arrested/convicted etc., if any;
- (f) To ascertain as to who were involved and/or responsible for the incident;
- (g) To inquire into the details of the victims and/or persons affected;

5

(h) To inquire into as to whether any report has been submitted by the commission constituted earlier;

(i) To examine any other matter relevant to or incidental thereto above questions which the Commission may deem fit and proper to investigate."

The (Justice Phaujdar) Commission was required to submit a report embodying its findings and recommendations to the State Government within three months from the date of the notification. The period was subsequently extended by six months with effect from June 14, 2012 by notification dated July 16, 2012.

6. By notification dated April 9, 2013 published in the Kolkata Gazette dated May 2, 2013, Hon'ble Mr. Justice Amitabha Lala, former Acting Chief Justice, Allahabad High Court, was appointed instead and in place of Justice Phaujdar to head the Commission of Inquiry (hereafter the (Justice Lala) Commission). The period for submission of report was extended by six months from May 2, 2013 or till submission of report whichever is earlier. Such period was extended from time to time and finally by a notification dated September 4, 2015, published in the Kolkata Gazette dated September 7, 2015, the term of the (Justice Lala) Commission has been extended with its existing terms and conditions for a period of one year with effect from October 5, 2015 or until submission of its report, whichever is earlier.

7. This writ petition has been presented on June 6, 2016 by a "politician" to whom notice under sections 4 and 5 of the Act read with rule 5(A)(ii) of the Commission of Inquiry Rules, 1972 has been issued by the (Justice Lala) Commission requiring him to appear as a witness for tendering evidence. It registers a challenge to the constitution of the (Justice Phaujdar) Commission and the (Justice Lala) Commission vide notifications dated March 14, 2012 and March 3,

6

2014 respectively on the ground that the same are *ultra vires* section 7 of the Act and the Rules framed thereunder.

8. Mr. Bhattacharya, learned senior advocate for the petitioner, duly assisted by Mr. Ghosh, learned advocate contended that constitution of the (Justice Phaujdar) Commission followed by the (Justice Lala) Commission to inquire into the incident of April 30, 1982, having regard to the prior constitution of the (Justice Deb) Commission, is illegal, unauthorized and contrary to the spirit and object of the Act. Reliance was placed on section 7 of the Act to contend that in the absence of any notification issued under sub-section (1) of section 7 specifying the date from which the (Justice Deb) Commission ceased to exist, no further Commission of Inquiry could be constituted to conduct inquiry with more or less the same terms of reference.
9. Attention of this Bench was drawn by Mr. Bhattacharya to an interim judgment dated December 21, 2012 of this Bench rendered in W.P. 10259 of 2012 (Durga Shibaprasad Roy v. Union of India & ors.) with W.P. 7114 of 2012 (Rajat Kumar Bandhyopadhyay & ors v. Samar Ghosh, Chief Secretary, Govt. of W.B. & ors.). wherein it was, *inter alia*, held as follows:

“***I am inclined to hold the prima facie view that consideration of a report of inquiry by the Parliament or the concerned State Legislature, as the case may be, is mandatory before a second inquiry in respect of the same matter could be ordered by that Government, which ordered the first inquiry. Ordering of a second inquiry has to be preceded by rejection of the report of inquiry, for adequate reasons. The Central Government or the State Government, as the case may be, at its sweet will and without justifiable reasons, cannot decline consideration of a report submitted by the first commission if it were found to be unpalatable and then order a second inquiry, much for the same reason that necessitated the earlier inquiry. If this were held to be permissible, the power that has been conferred could well be open to misuse, and

also abuse..... The provisions of the Act ought not to be read in a manner that legitimises an intention to obtain a report, contents whereof are to the liking of the Government that appointed the commission. Appointment of a subsequent commission without rejection of the report of inquiry submitted by a previous commission in respect of the same matter has to be read in the statute as a prohibition, or else so long a report that pleases the concerned Government is not submitted, it would be open to it to appoint successive commissions of inquiry.”

10. Reliance was placed by Mr. Bhattacharya on the decisions reported in (2008) 4 SCC 755 [Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.], (2007) 5 SCC 85 [Kunwar Pal Singh v. State of Uttar Pradesh & ors.], (2007) 2 SCC 588 [Ram Chandra Murarilal Bhattad v. State of Maharashtra & ors.], (2004) 2 SCC 759 [Ram Phal Kundu v. Kamal Sharma] and (2004) 2 SCC 56 [Prabha Shankar Dubey v. State of M.P.], for the proposition that where a statute provides for a thing to be done in a particular manner, then it has to be done in that manner only or not at all.
11. Mr. Bhattacharya placed further reliance on the decisions reported in (2001) 4 SCC 139 [Union of India v. Elphinston] and 2004 (3) CHN 483 [Indrani Wahi v. Registrar, West Bengal Co-operative Societies & ors.] for the proposition that while construing a statute the meaning whereof is clear and unambiguous, the court cannot add or read words in a statute.
12. For the proposition that the court cannot re-legislate in the guise of interpretation, for, that would be contrary to the will expressed in the enactment itself, reliance was placed on the decision reported in (2003) 1 SCC 730 [Jinia Keotin & ors. v. Kumar Sitaram Manjhi & ors.].

13. It was further submitted that a lacuna or defect in an enactment can be corrected by the legislature by way of an amendment and that the court has no power to do so. In this connection, the attention of the Bench was invited to the decision reported in (2008) 5 SCC 511 [Common Cause v. Union of India & ors.].
14. It was next contended that although the petitioner had been summoned to appear as a witness for tendering evidence, the petitioner upon appearing before the (Justice Lala) Commission found advocates representing the Ananda Marga and the Criminal Investigation Department, West Bengal (hereafter the C.I.D.) present there requesting the Commission to cross-examine the petitioner especially on the basis of the depositions made before it by the previous witnesses. Referring to section 8 of the Act it was contended that the **Commission cannot call upon the petitioner** as a mere witness to be cross-examined without there being any examination-in-chief. Also, the petitioner cannot be expected to make any statement without being supplied with copies of depositions of witnesses recorded by the Commission. It was also contended that pertaining to the incident of death of 17 persons and injuries suffered by several others on April 30, 1982, an F.I.R. was registered and upon investigation thereof police report (charge-sheet) under section 173(2), Code of Criminal Procedure (hereafter the Cr.P.C.) had been submitted by the C.I.D. and in view thereof such department had no right to cross-examine the petitioner at this belated stage.
15. Insofar as the members of Ananda Marga or the learned advocates appearing on their behalf are concerned, it was submitted that they were equally disqualified

to cross-examine the petitioner since no petition under section 173(8) Cr.P.C. was filed objecting to the charge-sheet that had been filed by the C.I.D.

16. Referring to paragraph 22 of the writ petition it was vehemently argued by Mr. Bhattacharya that despite the objections raised by the petitioner, the Commission permitted the learned advocates on behalf of and/or representing the C.I.D. and/or Ananda Marga to cross-examine the petitioner which is absolutely contrary to the law enunciated by this court in its various judgments pertaining to the procedure to be followed by a Commission of Inquiry constituted in terms of the Act.
17. A prayer was accordingly made to restrain the (Justice Lala) Commission from proceeding further against the petitioner.
18. **Mr. L. K. Gupta**, learned Additional Advocate General representing the State contended that constitution of neither the (Justice Phaujdar) Commission nor the (Justice Lala) Commission violate any provision of the Act. Referring to the affidavit of Shri Arun Prasad Sen, Joint Secretary, Home Department, he pointed out that official records do not reveal submission of any report on conclusion of inquiry by the (Justice Deb) Commission and beyond October 31, 1983. the term of such Commission was not extended by the Government; as a consequence, the (Justice Deb) Commission ceased to exist by efflux of time. According to him, there being no report of the (Justice Deb) Commission, question of its placement before the legislature did not arise. Referring to section 7 of the Act, it was submitted that the situation for invocation of the same had not arisen on facts

and in the circumstances and, therefore, the petitioner can have no cause for ventilating a baseless grievance. He thus prayed for dismissal of the writ petition.

19. Mr. Mookherjee, learned advocate representing the added respondent (the Ananda Marga) echoed the submissions of Mr. Gupta.

20. The writ petition was finally heard on June 27, 2016. While reserving judgment, the Bench had made it clear that the petitioner could appear before the (Justice Lala) Commission only to the extent he would like to have his version placed on record, but he shall not be cross-examined and shall also not be under any obligation to disclose his defence at this stage.

21. Two main points arise for determination on this writ petition:-

1) Whether, in the absence of any notification under section 7 of the Act, constitution of the (Justice Phaujdar) Commission and later the (Justice Lala) Commission is legal and valid?

2) Whether, the petitioner is under any obligation to face cross-examination and disclose his defence at this stage, when statements of all the witnesses have not been recorded by the (Justice Lala) Commission?

22. Point 1

i) Section 7 of the Act being relevant in this case, is set out below:

7. Commission to cease to exist when so notified.—(1) The appropriate Government may, by notification in the Official Gazette, declare that—

(a) a Commission (other than a Commission appointed in pursuance of a resolution passed by each House of Parliament or, as the case may be, the Legislature of the State shall cease to exist, if it is of opinion that the continued existence of the Commission is unnecessary;

(b) a Commission appointed in pursuance of a resolution passed by each House of Parliament or, as the case may be, the Legislature of the

State, shall cease to exist if a resolution for the discontinuance of the Commission is passed by each House of Parliament or, as the case may be, the Legislature of the State.

(2) Every notification issued under sub-section (1) shall specify the date from which the Commission shall cease to exist and on the issue of such notification, the Commission shall cease to exist with effect from the date specified therein.

- ii) Reading of section 7 of the Act for the purpose of a decision on this point would not be complete without reading section 3 thereof. Section 3 is quoted below:

3. Appointment of Commission.—(1) Save as otherwise provided in the Lokpal and Lokayuktas Act, 2013, the appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by each House of Parliament or, as the case may be, the Legislature of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry 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—

Provided that where any such Commission has been appointed to inquire into any matter :

(a) by the Central Government, no State Government shall, except with the approval of the Central Government, appoint another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government is functioning;

(b) by a State Government, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States.

(2) The Commission may consist of one or more members appointed by the appropriate Government, and where the Commission consists of more than one member, one of them may be appointed as the Chairman thereof.

(3) The appropriate Government may, at any stage of an inquiry by the Commission, fill any vacancy which may have arisen in the office of a member of the Commission whether consisting of one or more than one member.

(4) The appropriate Government shall cause to be laid before each House of Parliament or, as the case may be, the Legislature of the State, the report,

if any, of the Commission on the inquiry made by the Commission under sub-section (1) together with a memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government.

- iii) The opening words "Save as otherwise provided in the Lokpal and Lokayuktas Act, 2013" in sub-section (1) of section 3 of the Act were incorporated by way of an amendment by Act 1 of 2014 with effect from January 16, 2014. The appointments of the Commission of Inquiry headed by Justice Phaujdar and thereafter Justice Lala having been made prior to the relevant amendment becoming operative, section 3(1) as it stood prior to its amendment is only relevant.
- iv) It would appear from a bare reading of section 3 that a Commission of Inquiry may be appointed in two contingencies. - first, if the appropriate Government is of the opinion that it is necessary to appoint a Commission of Inquiry to inquire into a matter of definite public importance, it may proceed in that direction; secondly, the appropriate Government has no option but to appoint a Commission of Inquiry upon a resolution being passed by each House of Parliament or, as the case may be, the legislature of the State in this behalf.
- v) Sub-section (1) of section 7 contemplates two situations when the appropriate Government may by notification in the Official Gazette declare that a Commission of Inquiry that had been constituted ceases to exist. The first of the situations is when the appropriate Government is of the opinion that the continued existence of the Commission is unnecessary. The second situation would arise if a Commission is appointed by the State Government pursuant to a resolution of

-13-

the State legislature and such legislature later resolves that the Commission appointed on the basis of its earlier resolution ought to be discontinued and adopts a resolution in that behalf. Upon any of these situations emerging, notification may be issued under sub-section (2) of section 7 specifying the date from which the Commission would cease to exist and on the issue of such notification the Commission shall cease to exist with effect from the date specified therein.

- vi) The facts leading to presentation of this writ petition reveal that the (Justice Deb) Commission was appointed not in terms of any resolution of the State legislature but by an executive order of the Government, expressed in the name of the Governor. The second situation does not, therefore, at all arise here.
- vii) Does the first situation arise here? It is the considered view of this Bench that although at first blush the argument of Mr. Bhattacharya may appear to be attractive but on close scrutiny, the same does not commend to be sound. If in a given case the Government during the continued existence (underlining for emphasis) of a Commission of Inquiry considers that it is unnecessary to be continued, such Government by notification must specify a date on and from when such Commission would cease to exist and upon the notification being published, it ceases to exist with effect from the date specified therein. On a plain reading of section 7(1)(a) of the Act, the legislative intent seems to be clear that the Government has been conferred the power not to continue a Commission, the term of which has not expired despite extensions, beyond the last date for submission of its report or even prior thereto, for the reason appearing therein.

- viii) The situation conceived in clause (a) of sub-section (1) of section 7 of the Act is not a situation with which the State Government was confronted. The words "appoint a Commission of Inquiry for the purpose of making an inquiry ... 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" appearing in section 3(1) of the Act, are considered significant. The mandate of section 3(1) cannot be taken lightly. A Commission cannot continue indefinitely and hence, once an opinion to appoint a Commission is formed, simultaneously the time within which the Commission would be required to make an inquiry and perform its functions has to be provided in the notification appointing the Commission. On expiry of its term, the Commission would have no authority to make inquiry/perform the function entrusted to it.
- ix) As it appears from the materials on record, after several extensions, finally the term of the (Justice Deb) Commission was extended till October 31, 1983. Without any extension of the term being granted, the (Justice Deb) Commission by necessary intendment ceased to exist in the eye of law on and from November 1, 1983. That was rightly pointed out by the Secretary to the (Justice Deb) Commission by his letter dated November 1, 1983, referred to above. Such letter while referring to 'residual works' remaining incomplete, did not specifically say that the final report prepared by the (Justice Deb) Commission had been submitted to the Government and that upon performance of the entrusted

function the Commission had become *functus officio*. An inference may legitimately be drawn that the report may not have been submitted.

- x) Be that as it may, once the State on affidavit has asserted that no report submitted by the (Justice Deb) Commission is available in the records or found to have been laid before the legislature, the onus shifted to the petitioner to establish the contrary. The petitioner has not been able to discharge such onus. On the basis of affidavit evidence, it must be concluded that the (Justice Deb) Commission ceased to exist on and from November 1, 1983. The relevant situation i.e. no report of the Commission is traceable in the record and its term having expired without there being any extension, is not what is conceived by clause (a) of sub-section (1) of section 7 and on facts and in the circumstances the necessity to issue a notification under sub-section (2) thereof did not arise. Had it been a case that the report of the (Justice Deb) Commission was placed before this Bench, the situation would definitely have been otherwise calling for an appropriate order.
- xi) The interim judgment dated December 21, 2012 in Durga Shivaprasad Roy (supra) does not aid the petitioner. There, the State Government had appointed a Commission of Inquiry during the seventies of the last decade to enquire into the incident which gained prominence as the 'Sainbari' incident. Hon'ble Justice T.P. Mukherjee had submitted a report. The same was neither accepted nor rejected by the State legislature and allowed to gather dust. Years later, after the Left-Front Government was voted out of power, a second Commission of Inquiry was appointed with Hon'ble Justice Arunava Basu as the head of the Commission to

inquire into the same definite matter of public importance, with slight modification in the terms of reference. It was in such facts and circumstances that this Bench had proceeded to make interim directions. The point of distinction in this case lies in non-availability of the report of the (Justice Deb) Commission and, therefore, the decision is of no avail.

- xii) The other decisions of the Supreme Court cited by Mr. Bhattacharya lay down propositions of law, which are well-settled and binding on this Bench. However, the first point arising here has been decided on the basis of the plain and unambiguous language of section 7 read with section 3 of the Act without adding or subtracting any word or part of it qua the evidence before the Bench. The State Government cannot be faulted for appointment of the (Justice Phaujdar) Commission and the (Justice Lala) Commission by the impugned notifications, in the absence of concrete evidence that the (Justice Deb) Commission had submitted its final report to the Government. Having regard to the factual aspect noticed above, this Bench unhesitatingly accepts the submission of Mr. Gupta and holds that no notification under section 7 was required to be issued before appointing the (Justice Phaujdar) Commission or the (Justice Lala) Commission.
- xiii) The first point is answered accordingly.

23. Point 2

- i) Insofar as the second point is concerned, the petitioner has been granted appropriate relief by the interim order dated June 27, 2016 and his grievance is partially redressed.

- ii) This Bench had the occasion to consider the provisions of the Act *in extenso* in its decision reported in Raj Kamal Johri (supra).
 - iii) For proceedings that might be conducted against him in future, it shall be open to the petitioner to cite such decision of this Bench, as modified only on one aspect by the decision of the Hon'ble Division Bench of this Court reported in AIR 2014 CAL 209 (Raj Kamal Johri vs. State of West Bengal & ors.), for the purpose of observance of the procedure regarding his obligation to answer the queries that are posed to him by the Commission and for disclosure of defence, at the appropriate stage, if at all the Commission seeks to inquire into his conduct or to make any recommendation that might prejudicially affect his reputation. Presently, the petitioner may not be cross-examined and it ought to be left to him to decide to what extent he desires his version to be placed on record.
 - iv) This point also stands answered.
24. Having regard to the above, this writ petition merits no order in furtherance of the interim order already passed. The same stands disposed of accordingly. There shall be no order as to costs.
- Urgent photostat certified copy of this judgment and order, if applied, may be furnished to the applicant at an early date.