

MANU/BH/0061/1970

Equivalent Citation: AIR1970Pat334, 1969(2)PLJR601

**IN THE HIGH COURT OF PATNA
FULL BENCH**

Civil Writ Jurisdiction Case No. 106 of 1969

Decided On: 13.08.1969

Appellants: **Md. Anis Khan**
Vs.

Respondent: **T.L.V. Aiyar and Ors.**

Hon'ble Judges/Coram:

Udai Sinha , N.L. Untwalia and S.N.P. Singh , JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Basudeva Prasad, Ravinandan Sahay, Narendra Prasad and Sudha Rani Jaiswal, Advs.

For Respondents/Defendant: K.D. Chatterji, Adv. and Tara Kant Jha, Standing Counsel No. II

JUDGMENT

Udai Sinha, J.

1. The application has been filed by the petitioner under Articles 226 and 227 of the Constitution of India, praying that a direction, order or writ in the nature of a writ of certiorari may issue quashing order No. 69, dated the 16th December, 1968, passed by Sri T. L. Venkatarama Aiyar, constituting a Commission of Inquiry appointed under the Commissions of Inquiry Act, 1952 (Act 60 of 1952) by the State Government. The impugned order arose under the following circumstances: On the 1st October, 1967, the State Government had issued a notification appointing a commission of Inquiry for inquiring into various matters and reporting about them. The first four paragraphs of the notification are relevant and they are quoted below.

1. Whereas allegations have been made that each of the following persons namely:

1. Shri Krishna Ballabha Sahay. who held the office of Minister during the periods from the 16th April, 1946 to the 5th May, 1957, and the 29th June, 1962 to the 2nd October, 1963 (afternoon) and the office of Chief Minister during the period from 2nd October, 1963 (afternoon) to the 5th March, 1967 (afternoon).

2. Shri Mahesh Prasad Sinha, who held the office of Minister during the periods from the 29th April, 1952 to the 5th May, 1957 and the 18th March, 1962 to the 5th March, 1967 (forenoon),

3. Sri Satyendra Narain Sinha, who held the office of Minister during the period from the 18th February, 1961 to the 5th March, 1967 (forenoon).

4. Shri Ram Lakhan Singh Yadav, who held the office of Minister during the period from the 2nd October, 1961 (afternoon) to the 5th March, 1967 (forenoon).

5. Shri R'aghavendra Narain Singh, who held the office of Minister of State during the period from the 2nd October, 1963 (afternoon) to the 5th March, 1967 (forenoon) and

6. Shri Ambika Sharan Singh, who held the office of Deputy Minister during the period from the 6th May, 1957 to the 2nd October 1963 (afternoon) and Minister of State during the period from the 2nd October, 1963 (afternoon) to the 5th March, 1967 (forenoon)

by abusing and exploiting the official position or positions held by him as aforesaid, obtained pecuniary and other benefits for himself, either in his own name or benami, and for his family, relatives and other persons in whom he was interested, and allowed them to obtain, or connived at their obtaining, pecuniary and other benefits and thereby he, his family, relatives and other persons in whom he was interested acquired vast properties and made illegal gains;

2. And whereas allegations have also been made that each of the persons abovenamed, during the tenure or tenures of their respective office or offices as aforesaid, otherwise indulged in corruption, favouritism, abuse of power and other malpractices;

3. And whereas the Governor of Bihar is of opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making an inquiry into the definite matters of public importance herein stated;

4. Now, therefore, the Governor of Bihar, in exercise of the powers conferred upon him by Section 3 of the Commissions of Inquiry Act, 1952 (LX of 1952), is hereby pleased to appoint a commission of Inquiry to enquire into and report on the following matters, namely.

(a) What was the extent of the assets and pecuniary resources owned and possessed by each of the persons abovenamed, his family, relatives and other persons in whom he was interested (i) at the beginning and (ii) at the end of the tenure of office of each of the offices held by him as foresaid;

(b) Whether, besides the persons above-named, during the tenure of office or offices held by him, obtained any assets, pecuniary resources or advantages or other benefits by abusing and exploiting his official position or positions and whether during the said period or periods his family, relatives and other persons in whom he was interested obtained, with his knowledge, consent or connivance, any assets, pecuniary resources, advantages or other benefits;

(c) Whether, and if so to what extent, each of the persons abovenamed otherwise indulged in corruption, favouritism, abuse of power and other, malpractices and

(d) Whether, besides the persons above-named, any other person or

persons or persons holding official position, either as a member of the Council of Ministers or otherwise, during any of the aforesaid periods, made illegal gains or indulged in corruption, favouritism, abuse of power or other malpractices in like manner as aforesaid."

The original notification was amended by omitting paragraph 4(d), by a notification dated the 31st October, 1967. Thereafter, by another notification dated the 14th September, 1968 the second notification was cancelled. The parties have proceeded on the footing, that, original paragraph 4(d) was thereby restored. Thereafter, a notice was published in the Bihar Gazette on the 26th September, 1968, Stating that the Government of Bihar, members of the public and organisations might make their representations as to the matters mentioned in paragraph 4(d). Certain time limit was given, which was subsequently extended. Pursuant to this notice, seventeen members of the public filed fifty one representations on affidavits. The matter was posted for argument on a preliminary question as to the scope of paragraph 4(d) and that is the subject-matter of the order impugned in this case.

2. Two contentions were advanced before Sri Venkatarama Aiyar on the interpretation of paragraph 4(d). The contention put forward on behalf of some of the deponents of the affidavit was that the Commission was to inquire into and report as to all matters of corruption, favouritism, abuse of power etc. of all persons holding official position in the State during the periods mentioned in paragraph 1 of the notification. As against this, the contention raised on behalf of the State was that, to quote the words of the learned Member, "in the context of the Notification, Clause (d) must be construed as applicable only if the charges, besides satisfying the conditions laid down therein, also involve one or more of the six persons mentioned therein and that unless there is such a linking the charge would fall outside the purview of the clause." On the question as to which of the contentions was to be adopted, Sri Venkatarama Aiyar has given his opinion as follows:--

"Clauses (a) and (b) are no doubt concerned with not merely the six persons named but also their relations, friends, and persons in whom they are interested. But those clauses are limited to assets and pecuniary and other benefits and the enquiry is as to the assets as on specified dates and acquisition of assets during the period when they held office. It is only Clause (c) that deals generally with charges of corruption and the like, and that takes in only the six persons named. The purpose of Clause (d) is to rope in with respect to charges in (c), all persons who were associated with the six persons named. It should also be noted that while (a) and (b) take in relations friends and persons in whom the six persons are interested there may be other persons besides the above who might also be involved in those charges and they will be covered by Clause (d).

In the result I am of opinion that in order to invoke Clause (d) it is not merely necessary that the charge is made against a person who held a public office and the act charged took place during the periods specified, but that further it is necessary that one or more of the six persons named in para 1 should be involved in that act."

3. It appears from Annexure B of the counter affidavit filed by the State of Bihar, that, thereafter, the affidavits filed under paragraph 4(d) were taken up by Sri Venkatarama Aiyar for consideration on the 8th January, 1969, in the light of the conclusion arrived at by him on the 16th December, 1968. The hearing of affidavit

No. 28 was adjourned and all other affidavits, except affidavits Nos. 1, 3 and 5 were rejected, including all the twenty affidavits filed by the petitioner of this case. In the case of affidavits Nos. 1, 3 and 5 orders were reserved.

4. On behalf of the State of Bihar preliminary objection has been raised by Sri K. D. Chatterji. The substance of his contention is that if the petitioner wishes this court to give a wider interpretation of Clause (d) of paragraph 4, as was urged before Sri Venkatarama Aiyar, then the writ application suffers from the absence of necessary parties. It is argued that according to the order impugned in this court, the commission has refused to inquire about the allegations made against number of persons mentioned by the petitioner of this court in his twenty affidavits, and these persons should have been impleaded in this court by the petitioner for asking this court to reverse the order of the commission and to direct it to inquire about the allegations made against them. In reply to this argument, Sri Basudeva Prasad has argued on behalf of the petitioner, that, it was not at all necessary for his client to implead those persons in this writ application. According to learned counsel for the petitioner, at the stage at which Sri Venkatarama Aiyar was considering the matter, it was not necessary to hear the various persons named by the petitioner in his affidavits and, therefore, it was also not necessary to implead them in this application. Sri Basudeva Prasad has urged, in continuation of his argument, that, the persons against whom his client has desired the commission to proceed are not necessary parties in this court, and if by any stretch of argument it is considered that they are proper parties, the petitioner may be permitted to implead them.

Having heard the learned counsel for the contending parties on this matter, I am of the opinion, that, the preliminary objection taken by Sri K. D. Chatterji is valid. At the stage at which the commission was considering the various affidavits filed under Clause (d) of Paragraph 4, it may not have been necessary to hear the parties affected, but after the impugned order was passed by the Commission, the persons who will be affected by the reversal of the order ought to have been impleaded in this Court, so that they would have had an opportunity of supporting the order. In effect, Sri Venkatarama Aiyar has conclusively refused to conduct an inquiry against a number of persons and before this court can pass a contrary order, the parties who had been benefited by the impugned order should have been impleaded in this court. It is difficult to appreciate the stand taken by Sri. Basudeva Prasad when he argues that the concerned persons who are not before this Court. Yet, may be allowed to be impleaded at this stage. During the course of the argument on the preliminary point, it was put to Sri Basudeva Prasad, more than once, that if the preliminary objection taken by Sri K. D. Chatterji succeeds, the writ petition may fail on that ground and Sri Basudeva Prasad went on repeating that in such circumstances his client may be permitted to implead the persons named in the petitioner's affidavits filed before the Commission. But, at no stage Sri Basudeva Prasad indicated the details of the names and the addresses of the persons whom he wanted to implead, and of course, no application has been filed making this prayer and giving the names and addresses of those persons. In these circumstances, it is not possible to pass an effective order for im-pleading any persons at the instance of the petitioner of this writ case.

5. On the merit of the application, Sri Basudeva Prasad has reiterated the argument that had been advanced before the Commission of Inquiry, contending that the widest interpretation should be put upon Clause (d) of paragraph 4, holding that the Commission must inquire and report about all persons holding official positions, during certain periods mentioned in the notification. Learned counsel for the State of Bihar has, on the other hand, supported the order of Sri Venkatarama Aiyar on the

grounds mentioned by him. After considering this question, on the arguments advanced by the learned counsel, I am of the opinion that this Court should refrain from giving the wide interpretation to Clause (d) of paragraph 4 as is contended for by Sri Basudeva Prasad. The clause may be analysed in the light of Section 3(1) of the Commissions of Inquiry Act. If it be held that under Clause (d) of paragraph 4 the Commission has to inquire and report about all illegal gains, all corruptions and favouritisms indulged, in all abuses of power and all other malpractices taken recourse to by all persons holding official positions during certain periods mentioned in the notification, then it may be difficult to hold that such a direction can be supported by the provision of Section 3(1) of the Act.

Section 3(1) of the Act envisages "an inquiry into any definite matter of public importance" and the interpretation sought for by Sri Basudeva Prasad would involve an inquiry into the conduct of persons unknown as yet, regarding incidents uncertain as yet, the only definite provision under Clause (d) of paragraph 4 being certain ascertained periods. It is hardly possible to hold that such a roving inquiry would come within the expression "An inquiry into any definite matter of public importance", mentioned in Section 3(1) of the Commissions of Inquiry Act. It is difficult to hold that only because certain allegations had been made against six persons named in paragraph 1 of the notification the State Government was of the opinion that it was necessary to make an inquiry into all illegal gains, all corruptions, all favouritisms, all abuses of power, all other malpractices of all persons holding official positions in the whole of the State during certain periods. Therefore in my opinion, the reasonable interpretation of Clause (d) of paragraph 4' should be that the Commission of Inquiry was directed to inquire and report about the matters mentioned in Clauses (a), (b) and (c) of paragraph 4, so far as the six persons named in paragraph 1 are concerned, and in that context, it was directed to find out incidentally, what other persons holding official positions were also involved. The interpretation contended for by Sri Basudeva Prasad would result in a situation, that in effect, the Commission of Inquiry will go on adding names of persons holding official positions during certain periods, in the list of persons named in paragraph 1 of the notification and then go on conducting full-fledged inquiries against them. As the main purpose of setting up the Commission of Inquiry was to proceed against the six persons actually named in the notification, it is hardly possible to approve of the construction put upon Clause (d) of paragraph 4 of the notification by Sri Basudeva Prasad.

6. In substance, therefore, the conclusion arrived at by Sri Venkatarama Aiyar should be upheld. But I would like to make some observation, as there is no indication in the impugned order or in the later order of the learned Member, dated the 8th January, 1969 (Annexure B of the counter affidavit) as to the nature of the inquiry which will be conducted with respect to the allegations made in affidavits 1, 3 and 5. If the nature of this inquiry is going to be merely incidental to the inquiry which is being conducted against the six persons named in paragraph of the notification, no objection can be taken to it. But, if a full and regular inquiry is being contemplated against the persons named in affidavits Nos. 1, 3 and 5, as if they are on the same footing as the six persons named in the notification, then, that kind of inquiry can hardly be held to be envisaged by Clause (d). It may be realised that under Clause (d) of paragraph 4 all that the Commission of Inquiry has been asked to inquire and report is whether certain persons holding official positions had indulged in certain kinds of malpractices, mentioned in that clause, within certain periods, in the manner mentioned in the other clauses of paragraph 4. With reference to Clause (d) it is noticeable that there is no such direction that the Commission of Inquiry should also

report whether, and if so, to what extent each of these persons holding official positions had indulged in corruption, favouritism, abuse of power and other malpractices as is mentioned in Clause (c) with respect to the six named persons. Therefore, the reasonable interpretation of Clause (d) of paragraph 4 of the notification should also be that just as the Commission of Inquiry has to inquire and report about the family relatives and other persons mentioned in Clause (b), in conducting the main inquiry against the six named persons, so also the Commission of Inquiry has to inquire and report about the persons holding official positions, keeping in view the fact that the main allegations had been made only against six named persons.

7. For the reason given above, I am of the opinion that the writ application must fail and it is dismissed. In the circumstances of the case, however, there will be no order for costs.

N.L. Untwalia, J.

8. I agree.

S.N.P. Singh, J.

9. I agree.

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