

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2017

CORAM

The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND

The HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.25940 of 2017
and WMP.No.27500 of 2017

P.A.Joseph .. Petitioner

vs.

- 1.The State of Tamil Nadu,
rep. by the Principal Secretary,
Public Department,
Secretariat Buildings,
Fort St. George,
Chennai.
- 2.The State of Tamil Nadu,
rep. by its Home Secretary,
Secretariat Buildings,
Fort St. George,
Chennai.
- 3.The State of Tamil Nadu,
rep. by its Secretary,
Health and Family Welfare Department,
Secretariat Buildings,
Fort St. George,
Chennai.

- 4.The Tamil Nadu Legislative Assembly,
rep. by its Secretary,
Fort St. George,
Chennai - 9.
- .. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of declaration declaring that the G.O.Ms.No.817 dated 25.09.2017 and G.O.Ms.No.829 dated 27.09.2017 issued by the first respondent as illegal, malafide and against the provisions of Section 3 of the Commissions of Inquiry Act, 1952.

For Petitioner : Mr.K.M.Vijayan
Senior Counsel
for M/s.E.Vijay Anand

For Respondents : Mr.Vijay Narayan
Advocate General
assisted by
Mr.M.K.Subramanian
Government Pleader

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

This writ petition, by way of public interest litigation, has been filed seeking, inter alia, a declaration that G.O.Ms.No.817, dated 25.9.2017 and G.O.Ms.No.829, dated 27.9.2017 issued in exercise of the powers conferred by sub-section (1) of Section 3 of the Commissions of Inquiry Act, 1952 appointing a Commission of Inquiry consisting of a retired Judge of the High Court of Madras to inquire into the circumstances and situation leading to the hospitalization of the late Chief Minister on 22nd September 2016 and subsequent treatment provided till her unfortunate death on 5th December 2016, are illegal, malafide and against the provisions of Section 3 of the Commissions of Inquiry Act, 1952 (hereinafter referred to as "the said Act").

2. Section 3 of the said Act as amended, on which emphasis has been placed by Mr.K.M.Vijayan, learned Senior Counsel appearing on behalf of the petitioner, is extracted herein below for convenience:

"3. Appointment of Commission. - (1) [Save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014), the appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if 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 with 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 members, 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."

3. For the sake of convenience, two other Sections of the said Act relevant in the context of the arguments advanced by Mr.Vijayan and by the learned Advocate General appearing on behalf of the State are extracted herein 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, 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."

"11. Act to apply to other inquiring authorities in certain cases. - Where any authority (by whatever name called), other than a Commission appointed under section 3, has been or is set up under any resolution or order of the appropriate Government for the purpose of making an inquiry into any definite matter of public importance and that Government is of opinion that all or any of the provisions of this Act should be made applicable to that authority, that Government may, subject to the prohibition contained in the proviso to sub section (1) of section 3, by notification in the Official Gazette, direct that the said provisions of this Act shall apply to that authority, and on the issue of such a notification that authority shall be deemed to be a Commission appointed under Section 3 for the purposes of this Act."

4. The impugned Government Orders have been challenged as contrary to the mandatory requisites of Section 3(1) of the said Act. Mr.Vijayan emphatically argued that the conditions

precedent for appointment of a Commission of Inquiry were formation of an opinion of the appropriate Government of the necessity to appoint a Commission of Inquiry to enquire into any definite matter of public importance, a resolution of the State Legislature and notification in the official Gazette.

5. Mr.Vijayan emphatically argued that the use of the words "and shall" after the words "if it is of opinion that it is necessary so to do" makes the requirements of formation of opinion of the appropriate Government of the necessity to appoint a Commission of Inquiry to enquire into a matter of public importance and resolution(s) of Legislature and/or each Legislature in a bicameral system, conjunctive.

6. Relying on the judgment of the Supreme Court in Ramchandra Keshav Adke (Dead) by Lrs. and others v. Govind Joti Chavare and others, reported in (1973) 1 SCC 559, Mr.Vijayan argued, and in our view absolutely correctly, that when statute requires a thing to be done in a particular manner, it is to be done in that manner or not at all. Other methods of performance are necessarily forbidden. The aforesaid rule as enunciated a century ago in Taylor vs. Taylor, reported in (1876) 1 Ch D 426 and applied by the Privy Council in Nazir Ahmed v. Emperor, reported in AIR 1936 PC 253 has stood the test of time as observed by the Supreme Court in Ramchandra Keshav Adke (supra).

7. However, the question in this writ petition is, whether in passing the impugned Government Orders, any mandatory requisites of Section 3 of the said Act have been infringed. In other words, have the notifications been issued in any manner other than the manner prescribed in Section 3(1) of the said Act.

8. Section 3(1) of the said Act reads that the appropriate Government may, if it is of the 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 prescribed in the notification and the Commission so appointed shall make the inquiry and perform the functions accordingly.

9. The issue is whether the requirement of formation of opinion of the appropriate Government of the necessity to appoint a Commission of Inquiry to make an inquiry into a matter of public importance and the requirement of a resolution by each House of the Parliament or by the Legislature of the State or where there is a bicameral system, each House of the State Legislature, are to be read conjunctively or disjunctively.

10. In our view, a careful reading of Section 3 of the said Act makes it clear that the requirement of formation of opinion of the appropriate Government of the necessity to appoint a Commission of Inquiry into a matter of public importance, and the requirement of resolution(s) of each House of Parliament and/or the State Legislature or both Houses of the State Legislature in a bicameral system are disjunctive and not conjunctive. This is evident from the use of the word "may" in the opening part of Section 3(1) after the word "appropriate Government" and the use of the word "shall" before "if resolution in this behalf is passed....". The word "may" cannot be ignored.

11. The use of the expression "may" as well as the expression "shall" in Section 3(1) of the said Act makes it clear that the said Section empowers the Government to appoint a Commission in the manner indicated in the said Section. This power of the Government to appoint a Commission of Inquiry upon formation of its own opinion of the necessity to do so is discretionary.

12. On the other hand, if a resolution in this behalf is passed by each House of Parliament or by the Legislature of the State or each House of the Legislature in a bicameral system, the appropriate Government would be obliged to appoint a Commission of Inquiry by notification in the official Gazette.

13. In our view, the use of the word "may" in the first part of the sentence in Section 3(1) of the said Act and the use of the word "shall" in the second part of the sentence after the word "and" makes it clear that the first part of Section 3(1) of the said Act confers discretionary power, whereas the second part of the said Section casts a mandatory obligation.

14. Section 3(1) of the said Act is to be construed to mean that the appropriate Government might appoint a Commission of Inquiry, if it is of the opinion that it is necessary so to do to enquire into a matter of public importance. However, if a resolution in this behalf is passed by the each House of Parliament or the State Legislature, or each House of the State Legislature in a bicameral system, the appropriate Government has to appoint a Commission of Inquiry in the manner prescribed in the said Section. In other words, in the latter case the Government would be obliged to appoint a Commission of Inquiry.

15. Even otherwise, it is a well settled principle of interpretation that even though the word "or" is normally disjunctive and the word "and" is normally conjunctive in a statute, but, at times, they may be read and construed interchangeably, if the literal reading of the word produces an

unintelligible or absurd result or a result that was never intended by the Legislature.

16. If the requirement to appoint a Commission of Inquiry subject to formation of an opinion of the Government were to be read conjunctively with the requirement of a resolution passed by each House of Parliament or alternatively Legislature of the State, the Government could circumvent the mandate of the majority of a legislative body to constitute a Commission of Inquiry by purported formation of an opinion to the contrary. This possibly was never the intention of Section 3 of the said Act.

17. Learned Advocate General appearing on behalf of the State has cited the judgment of the Supreme Court in P.Janardhana Reddy v. State of A.P. and others, reported in (2001) 6 SCC 50. In the aforesaid case, the Supreme Court held thus:

"10. 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."

18. It is true as argued by Mr.Vijayan that a judgment is a precedent for the the issue of law which is raised and decided. The Supreme Court did not directly decide the question of

whether a Government Order appointing a Commission of Inquiry would be illegal in the absence of a resolution of both Houses of Parliament and/or the State Legislature. However, a perusal of the judgment indicates that in the aforesaid case, the Commission of Inquiry was appointed by the State Government. There was no resolution of the Legislature. The question in issue was whether there was requisite formation of an opinion.

19. Mr.Vijayan argued that Section 7(a) of the said Act makes it categorically clear that a Commission might be appointed other than in pursuance of a resolution passed by each House of Parliament or, as the case may be, the Legislature of the State. However, Section 7(a) of the said Act does not pertain to a Commission of Inquiry under Section 3 of the said Act.

20. In *Hindu Front for Justice v. State of U.P.*, being W.P.No.5584 (MD) of 2014, a Division Bench of the Lucknow Bench of Allahabad High Court passed a judgment dated 14.7.2014 holding that the power of the State Government to appoint a Commission of Inquiry is not dependent on the resolution of the State Legislature. We are in respectful agreement with the view of the Lucknow Bench of Allahabad High Court, for the reasons discussed by us above.

21. Our attention has also been drawn by the learned Advocate General to the judgment of the Andhra Pradesh High Court in *P.Janardhan Reddy v. State of Andhra Pradesh* and another, reported in 2003 (2) Andhra Law Times 579. In the aforesaid judgment, the Andhra Pradesh High Court held as follows:

"7. Section 3 lays down that a Commission can be appointed by the Government either on its own or on a resolution by the Legislative Assembly and Section 7 lays down the power of the Government to wind up the Commission"

22. There can hardly be any doubt that the circumstances under which the former Chief Minister of Tamil Nadu died is a matter of public importance. In fact, the writ petitioner had himself earlier filed writ petition being W.P.No.44738 of 2016 seeking orders on the Central Government to appoint a Commission of Inquiry headed by three retired Supreme Court Judges under the provisions of the said Act to find out the truth and to inquire into the "mysterious death of the former Chief Minister of Tamil Nadu Ms.Dr.J.Jayalalitha" as was done in the case of *Netaji Subhash Chandra Bose* pursuant to the direction of the Division Bench of Calcutta High Court in *Rudra Jyoti Bhattacharjee and another v. Union of India and others*, reported in AIR 1999 Cal. 9, upon consideration of the petitioner's

representation dated 16th December 2016. In the case of National Leader Netaji Subhash Chandra Bose, a One Man Inquiry Commission had been constituted comprising a retired Judge of the Supreme Court, who had earlier also been a Judge of the Calcutta High Court.

23. In paragraph 8 of the affidavit in support of the writ petition, the petitioner has very fairly stated that the petitioner has no grievance about the appointment of retired High Court Judge. The petitioner has, however, contended that considering the fact that the entire State Government machinery was involved in the episode of hospitalization, treatment, death of the former Chief Minister of Tamil Nadu from the beginning till the end, it would be proper that the Centre should step in and constitute an independent Inquiry Commission as prayed for by the petitioner.

24. In paragraph 9, it is pleaded that there is every possibility of influence, pressure, bias when it comes to a Commission constituted by the State Government itself. It is also suggested that there is possibility of bias and likelihood of tampering of records.

25. The aforesaid pleadings are patently conjectural. A retired High Court Judge is in no way under the control of the State Government and there is no reason to suppose the plea of the petitioner that a retired High Court Judge will not be able to conduct an inquiry independently, impartially and free from bias. It is reiterated that there are no personal allegations in the writ petition against the concerned Judge.

26. In the aforesaid circumstances, the writ petition is not entertained and the same is dismissed. No costs. Consequently, WMP.No.27500 of 2017 is closed. By reason of this judgment, the earlier writ petition being W.P.No.44738 of 2016 pending before this Court has become infructuous and the same may be listed tomorrow for formal orders.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To:

1.The Principal Secretary,
Public Department,
Secretariat Buildings,
Fort St. George, Chennai.

2.The Home Secretary,
Secretariat Buildings,
Fort St. George, Chennai.

3.The Secretary,
Health and Family Welfare Department,
Secretariat Buildings,
Fort St. George, Chennai.

4.The Secretary,
Tamil Nadu Legislative Assembly,
Fort St. George,
Chennai - 9.

+1cc to Mr.E.Vijay Anand, Advocate sr.71304

+1cc to Government Pleader sr.71300

Copy to:
The Section Officer,
Writ Section,
High Court, Madras.

VGII(co)
ss(20/10/2017)

W.P.No.25940 of 2017

सत्यमेव जयते

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