

**IN THE HIGH COURT OF PUNJAB & HARYANA HIGH COURT
CHANDIGARH**

**CWP No. 23285 of 2018
Date of Decision: 25.01.2019**

Charanjit Singh & ors.

..... Petitioners

Vs.

State of Punjab & ors.

..... Respondents

BEFORE: HON'BLE Mr. JUSTICE RAJAN GUPTA

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. A.S. Talwar, Advocate for the petitioners.

Mr. P. Chidabamram, Sr. Advocate with
Ms. Anusha Nagraj, DAG Punjab.

Mr. Atul Nanda, Advocate General, Punjab with
Mrs. Rameeza Hakim, Addl. A.G. Punjab &
Mr. Sahil Sharma, DAG Punjab in CWP-27015 of 2018 &
CWP-28001 of 2018.

Mr. Sumeet Goel, Standing Counsel for the CBI.

Mr. P.S. Hundal, Sr. Advocate with
Mr. PJS Hundal, Advocate for the victim-Sandhu Singh.

Mr. G.S. Bal, Advocate for the Intervener.

RAJAN GUPTA (J)

This order will dispose of CWP Nos.23285 of 2018, 25837 of 2018, 25838 of 2018, 27015 of 2018 and 28001 of 2018 pertaining to certain incidents of sacrilege of religious scriptures and violence that ensued as a result thereof.

In CWP No.23285 of 2018 the petitioners have posed a challenge to recommendations of Zora Singh Commission report dated 29.6.2016 (P-11) set

up on 16.10.2015 and the Ranjit Singh Commission report dated 30.6.2018 (P-19) set up on 14.10.2017 to conduct an inquiry into the incidents of sacrilege and alleged role played therein by various persons; as also the incidents of firing on 14.10.2015 at Kotkapura and Behbalkalan in which two persons died. It was also entrusted the task of enquiring into role of police officials who allegedly did not investigate properly and dilly-dallied.

The police officials have challenged proceedings initiated against them pursuant to the Commission reports. In CWP No.25837 of 2018 a similar prayer has been made as in CWP No.23285 of 2018 wherein quashing of reports dated 29.6.2016 and 30.6.2018 of Zora Singh Commission and Ranjit Singh Commission, respectively has been sought. Additionally, Action Taken Report (ATR) dated 24.8.2018 and order dated 17.9.2018 initiating Departmental Enquiry against the petitioner has also been challenged.

CWP No.25838 of 2018 inter alia contains the same prayer seeking quashing of reports in question with a further prayer for quashing zimini order dated 11.8.2018 (P-16) vide which petitioner Bikramjit Singh was arrayed as an accused in FIR No.130 of 21.10.2015 on the basis of Ranjit Singh Commission report and initiation of departmental enquiry vide notice dated 23.8.2018.

CWP No.27015 of 2018 has again been preferred by police officials seeking a mandamus to entrust investigation of FIRs mentioned in the prayer clause to an independent agency such as Central Bureau of Investigation to ensure fair and impartial investigation.

CWP No.28001 of 2018 has been preferred for seeking a writ in the nature of certiorari to quash resolution dated 28.8.2018 (P-19) passed by the Legislative Assembly seeking to withdraw investigation already entrusted to the Central Bureau of Investigation in FIR No.63 dated 2.6.2015 u/s 295-A, 380 IPC, FIR No.117 dated 25.9.2015 u/s 295A IPC and FIR No.128 dated 12.10.2015 u/s 295, 120-B IPC, PS Baja Khana, Distt. Faridkot vide notification dated 2.11.2015, as also other FIRs entrusted to CBI by a notification issued in the year 2018.

First incident of alleged sacrilege relating to one *sarup* (set) of Guru Granth Sahib is alleged to have taken place on 1.6.2015 regarding which FIR No.63 dated 2.6.2015 u/s 295A and 380 IPC was registered at PS Bajakhana, Distt. Faridkot. Second incident of alleged sacrilege took place on 25.9.2015 wherein two hand-written posters containing sacrilegious content were pasted near a Gurudwara. In this respect FIR No.117 dated 25.9.2015 u/s 295A IPC was registered at PS Baja Khana, Distt. Faridkot. Third incident of sacrilege related to alleged dismantling of parts of Guru Granth Sahib. Same were discovered in a street opposite to a Gurudwara in village Barghari. In this respect FIR No.128 dated 12.10.2015 u/s 295 and 120B IPC was registered at PS Bajakhana, Distt. Faridkot. Between 12.10.2015 and 14.10.2015 there were mass protests at Kotkapura and Behbal Kalan due to the incidents of sacrilege and perceived inaction of the police. The protests allegedly snow-balled into a major agitation on 14.10.2015. This led to firing by police causing injuries to certain protesters and death of two of them. As a result, FIR Nos. 129 was registered on 14.10.2015 at Baja Khana u/s 307 etc. IPC, Arms Act and

offences relating to destruction of public property. On the same day FIR No.192 was registered at PS Kotkapura for commission of similar offences.

On 16.10.2015, Govt. of Punjab appointed Justice (retd.) Zora Singh to enquire into the incidents of sacrilege and police firing on 14.10.2015 at Kotkapura and Behbalkalan. Powers were conferred on the Commission under the Commission of Inquiry Act of 1952 (hereinafter referred to 1952 Act) in order to inquire into cases of death and injuries caused to certain protesters, allegedly due to police firing. FIR No.130 dated 21.10.2015 was registered at the instance of Special Investigation Team which had been constituted by that time. No police officers were named in the FIR. Vide order dated 12.4.2016 the term of Zora Singh Commission was extended upto 30.6.2016. The Commission, however, submitted its report a day prior to expiry of its term i.e. on 29.6.2016. There is nothing on record to show that said report was accepted by the Government.

Meanwhile, elections to the State Assembly were held and a new Government came into existence on 16.3.2017. It appears, the new Govt. had a look into the Zora Singh report and formed an opinion that it had not answered certain key questions referred to it. As per stand of the State Government, the report of Zora Singh Commission could not be accepted being inconclusive. It was thus decided to set up another Commission of Enquiry to enquire into the incidents of sacrilege as well as police firing at Kotkapura and Behbal Kalan.

On 14.04.2017, State Govt. issued another notification constituting a Commission of Inquiry headed by Justice (retd.) Ranjit Singh. The said

Commission was entrusted with the task of inquiring into the entire matter.

Terms of reference thereof are as under:-

- a. Conduct an enquiry into the cases of sacrilege of Sri Guru Granth Sahib Ji, Srimad Bhagwad Gita and Holy Quran Sharif;*
- b. Enquire into the detailed facts and circumstances and chronology of events of what actually happened and to identify as a matter of fact the role played by various persons into what happened;*
- c. Enquire into the truth of what occurred in such incidents and factual role of the persons who may have been involved;*
- d. Enquire into the firing in Kotkapura on 14.10.2015 and village Behbalkalan, District Faridkot, in which two persons died; and,*
- e. Identify and enquire into the role of the Police officers/Officials in incomplete/inconclusive investigations into the earlier incidents of sacrileges so far.*

The second Commission completed the proceedings and submitted its report on 30.6.2018. The report dealt with circumstances leading to the Faridkot incidents of sacrilege as well as police firing at Kotkapura and Behbal Kalan. It also identified the role of certain police officials. Based on the recommendations of Commission, the Govt. took series of steps outlined in action taken report (ATR) dated 24.8.2018.

On 28.8.2018, it was resolved by the State Assembly to withdraw investigation of all matters entrusted to Central Bureau of Investigation. As per reply filed by State, two notifications dated 06.09.2018 were issued by the State Govt. withdrawing the investigation from CBI. Vidhan Sabha resolution dated 28.8.2018, (R-1 in reply to CWP No. 23285 of 2018) is reproduced as under:-

“that in regard to disrespect to Sh. Guru Granth Sahib at Kotkapur Bargari, Behbal Kalan etc. Police Firing and disrespect incidents related case which was given to CBI by Punjab Government should be taken back and the investigation be given to Special Investigation Team for action.”

Mr. Akshay Bhan, learned Senior Counsel appearing for petitioners in CWP Nos.23285 of 2018 and 25838 of 2018 argued that there was non-compliance of statutory provisions of the 1952 Act. According to him, the report of the Commission is unsustainable. He submitted that the Commission failed to serve notice on the petitioners in terms of Section 8-B of the 1952 Act due to which they remained oblivious of the allegations against them. They were not even made aware of the testimony of the witnesses who had deposed against them. As such they were not able to exercise their right of defence and cross examination of witnesses. He also contended that it was incumbent upon the State to issue notification under section 7 of the 1952 Act denotifying the Zora Singh Commission. Only thereafter second Commission could have been appointed. According to counsel this was the mandate of section 7 of the Act. He has relied upon judgments reported as *State of Madhya Pradesh v Ajay Singh & Ors (1993)1 SCC 302* and *Peela Pothi Naidu v. State of A.P. and others, 2005(16) SCT 832*.

Further contention of counsel is that there is no compliance of provisions of Sections 8-A and 8-B of the Act. Notice was also sent on the wrong address. He has placed reliance on decisions reported as *Sanjay Gupta and ors v. State of Uttar Pradesh and ors (2015)5 SCC 283*, *Kiran Bedi v.*

Committee of Inquiry, (1989)1 SCC 494 and State of Bihar v. Lal Krishna Advani & ors. (2003)8 SCC 361.

It is further submitted by Mr Bhan that it is implicit in Section 8-B that if Commission had collected any material in the nature of documents or statements of witnesses on the basis of which it was likely to form opinion which would affect the reputation of any person, reference to that material should have been made in the notice itself. In case of failure to do so, the purpose of the provision would be defeated as affected persons would have no opportunity to rebut such material. This would in turn violate the right of cross examination given under section 8-C of the Act. On this proposition, he has placed reliance on decisions reported as ***Sri K. Vijaya Bhaskar Reddy v. Govt. of A.P. & Ors 1995 SCC AP 356, Jai Prakash Associates Ltd, Lucknow v. State of U.P. & Anr. 2004 SCC All 1891 and Krishna Chandra Dubey v. State of Bihar (Patna) (DB), 1997(1) B.L.Jud. 586.***

Another limb of arguments of Mr Bhan was that the Commission exceeded its scope in adjudicating upon the issues and recommending action which could only be in the realm of a court of law. In support of this plea he has relied upon judgments reported as ***S.Ram Krishan Dalmia & Ors. v. Sh Justice S.R.Tandolkar & Ors. AIR 1958 SC 538 and T.T.Antony v. State of Kerala & Ors. (2001)6 SCC 181.***

The grievance of petitioners is as regards the action of the State Govt. arraying them as accused in FIR No.130 of 2015 in view of zimni order recorded on 11.8.2018. They have assailed this action submitting that the report

of Commission would only be recommendatory in nature and would not enjoin upon to the State Govt. to array additional accused, if any investigation was pending qua the said incident. According to them, acceptance of report does not put a seal of approval on its findings as the Commission is only to instruct the mind of the Govt., its findings not being definitive in nature. At best, report of Commission could have been used by the Govt. to streamline its investigative procedures. Reliance has been placed on decision of *T.T.Antony (supra)*. Besides, statements made before the Commission are inadmissible in criminal proceedings, as they are not in the nature of statements under section 161 Cr.P.C. The action is thus in violation of Section 6 of Act of 1952 and law as laid down in *Ashok Shankarrao Chavan vs. Vidyasagar Rao 2017 SCC online Bom 9434*.

Mr Chopra appearing for petitioner in CWP No.25837 of 2018 made submissions on similar lines.

Mr S.P.S. Sidhu appearing in CWPs No.27015 of 2018 and 28001 of 2018 highlighted that while investigation of FIR No.128 dated 12.10.2015 u/s 295, 120-B IPC PS Baja Khana, FIR No.117 dated 25.9.2015 u/s 295-A IPC PS Baja Khana and FIR No.63 dated 2.6.2015 u/s 295-A, 380 IPC PS Baja Khana Distt. Faridkot, relating to sacrilege incidents was already entrusted to Central Bureau of Investigation pursuant to notification dated 2.11.2015 that relating to violence was pending with SIT. As both incidents are interconnected and a result of a deep-rooted conspiracy, same could not have been segregated and ought to be investigated by one independent agency. According to him, the role of Commission was very limited. It had far exceeded its terms

of reference and tried to impinge on the pending investigation. The recommendations of the Commission ought not to be such as to influence the mind of the investigating officers. The short span of time in which incidents of sacrilege and violence had taken place, carried national ramifications, thus investigation of all cases needed to be handed over to Central Bureau of Investigation. While impugning the action of the State Govt. in withdrawing the investigation from CBI, he contended that this action was mala fide in nature and was based on political considerations. He submitted that two notifications dated 06.09.2018 were issued withdrawing the investigation from CBI on the ground that same had not made any progress. This is despite the fact that neither the Commission nor the State Assembly was made aware of stage of investigation by the CBI as it never disclosed anything about status thereof. It was thus inexplicable how such conclusion could be drawn by the State Government. He also assailed the Vidhan Sabha resolution pursuant to which said notifications withdrawing the investigation were issued. According to him same was subject to judicial review in view of judgment in ***Raja Ram Pal's v. The Hon'ble Speaker, Lok Sabha and ors. 2007(3) SCC 184.*** During the course of arguments, he also questioned the manner of investigation by SIT. According to him, same was not only sluggish but lopsided. SIT was proceeding more on political considerations than on facts and evidence. He submitted that while accepting the report of Ranjit Singh Commission, one of the petitioner had been nominated as accused in a FIR registered way back in the year 2015 despite there being no evidence available against him. It was unknown to law that additional accused could be arrayed on the basis of

recommendations of a Commission. According to him, this could only be done if some other material or evidence had come before the investigating agency. As the investigation agency was acting with a pre-conceived mind, the investigation needed to be handed over to an independent agency. While referring to registration of fresh FIR No.129 dated 7.8.2018 u/s 307, 323, 341, 148, 149 IPC and Section 27 of Arms Act at PS Kotkapura, Distt. Faridkot, he submitted that it was unheard of that a fresh FIR could be registered after three years of the alleged occurrence merely because certain observations were made by the Commission in its report. According to him, complainant in the said FIR was planted. He was telephonically summoned to the police station and asked to give his statement to enable the police to register a fresh FIR. This exercise was undertaken merely to implement the recommendations of the Commission. This clearly goes to show that SIT constituted by the State Govt. could not be trusted for fair and impartial investigation. In support of his submissions, Mr Sidhu has relied upon decisions reported as *Kazi Lhendup Dorji v. Central Bureau of Investigation, (1994) Supp.2 SCC 116* to contend that investigation once handed over to CBI cannot be withdrawn in the absence of any statutory provision in Delhi Special Police Establishment Act.

Mr. Chidambaram, learned Senior Counsel who represented the State in CWP No. 23285 of 2018 at the outset submitted that the entire matter could be split into three parts; one, sacrilege regarding which three FIRs were registered, second, the consequent violence that occurred regarding which two FIRs were registered, and, third, nomination of one accused in FIR No.130 of 2015 after the report of Ranjit Singh Commission as well as registration of a

fresh case i.e. FIR No.129 of 2018 dated 7.8.2018 u/s 307, 323, 341, 148, 149 IPC and Section 27 of Arms Act at PS Kotkapura, Distt. Faridkot. He submitted that there was no force in the plea of the petitioners for setting aside report of the Ranjit Singh Commission as the investigating agency could have carried out the investigation *de hors* the report of the Commission. He emphasized that any new fact which comes to light during pendency of the investigation, can always be investigated and there is no fetter on power of the investigating agency to add an accused, if his role was suspect in a particular crime. According to him there is no violation of any provisions of 1952 Act as Ranjit Singh Commission was a separate and independent Commission and not a substitute for Zora Singh Commission. Referring to Section 3 of the 1952 Act, he submitted that a Commission of Inquiry can be set up to enquire into a matter of definitive public importance. Such enquiry has to be completed within the time specified in the notification. Zora Singh Commission was set up on 16.10.2015 and its term was extended vide order dated 12.4.2016. However, the Commission submitted its report a day prior to expiry of its term i.e. on 29.6.2016, whereafter it became *functus officio*. The report of Commission was neither accepted nor rejected. After nine months, however, a new notification was issued setting up another Commission known as Ranjit Singh Commission. Mr Chidambaram highlighted that there was no substance in the plea of the petitioners that a notification was required to be issued under section 7 of the 1952 Act to terminate Zora Singh Commission. According to him, said Commission automatically ceased to exist on expiry of its term. As it was not a case of a vacancy having arisen during subsistence of the earlier Commission,

section 8-A of the Act would not be attracted. Thus there was no question of substitution of Commission. There was no violation of any other statutory provisions of 1952 Act either. After submission of the Ranjit Singh Commission report, the Government took necessary steps and an ATR was submitted. It was open to the Government, thereafter, to act in terms of the report. As a result, further investigation was undertaken. Relying upon judgment in *Ram Krishna Dalmia v. Justice S.R.Tendolkar & ors., AIR 1958 SC 538*, he submitted that only power in the Commission is to enquire and make a report and embody therein its recommendations. The Commission has no power of adjudication in the sense of passing an order which can be enforced *proprio vigore*. As the commission has no powers to enforce its recommendations, the apprehension of the petitioners was misplaced. The report of Commission is meant only to inform the mind of the Government and does not have any binding legal force. He reiterated that investigating agency and disciplinary authority were free to draw information from the report of Commission and investigate as per law. Such investigation would, however, be carried out independently leaving it to the investigating agency to arrive at its own conclusions notwithstanding observations made in the report. In this regard, he referred to directions contained in judgment reported as *T.T.Antony vs. State of Kerala & ors., (2001)6 SCC 181*. As regards reference to sections 3(3) and 8-A of Act of 1952, Mr Chidambaram submitted that the provisions were not attracted as no occasion arose for filling up a vacancy as Zora Singh Commission ceased to exist much prior to setting up of new Commission. Reference to judgment in *State of Madhya Pradesh v. Ajay Singh & Ors.*

(1993) 1 SCC 302 by the petitioners was entirely misplaced as in said case sole member constituting the Commission was sought to be replaced by the Government. This apart, the grievance of the petitioner that they were not afforded opportunity as envisaged under section 8-A, had no basis as sufficient hearing was afforded to them. The petitioners have suppressed material facts. They were represented before the Commission and even appeared personally. As regards right to cross examination, neither petitioner no.1 nor petitioner no.2 requested the Commission to grant such a chance. As per section 8-C, it is upto the person whose reputation is likely to be prejudicially affected to assert and seek right of cross examination. He referred to the judgment in *State of J&K & ors. v. Bakshi Gulam Mohammed & anr.*, AIR 1967 SC 122 in support of this contention. Lastly, he emphasized that terms of reference of Commission were in consonance with 1952 Act inasmuch as it was permissible to enquire into role of specific individuals. There was no restriction under 1952 Act from vesting such power in the Commission provided inquiry is in respect of a matter of definite public importance.

Mr Nanda, Learned Advocate General, Punjab, appeared for the State in CWP Nos.27015 of 2018 and 28001 of 2018. He defended the decision of the State to withdraw the investigation of cases entrusted to CBI and opposed the plea for entrustment of investigation in remaining FIRs to said agency. According to him, prayer made for referring such cases to CBI was misplaced as it did not meet legal parameters laid down in *State of West Bengal & Ors. v. Committee for Protection of Democratic Rights, West Bengal & ors.* (2010)3 SCC 571. Besides no aspersion could be cast on the investigation already

carried out by the SIT. Relying on judgment in ***Romila Thapar v. UOI* 2018 SCC Online SC 1691** he submitted that there was no right vested in the accused to demand investigation by an agency of their choice. On the other hand Mr Nanda was in favour of court monitored investigation and referred to judgment in ***Babu Bhai Thiba v. Ashok Ravi Shankar Narval (2010)2 SCC 259*** in this regard. He, however, maintained that the court would not interfere with the investigation being carried out or direct it to act in a particular manner as held in ***Abhinandan Jha v Dinesh Mishra 1967 (3) SCR 668***. Mr Nanda addressed at length on the question of withdrawal of investigation from CBI. According to him, resolution in this regard by Vidhan Sabha was not amenable to review in writ jurisdiction. In Constitution Bench decision of Supreme Court in the case of ***Amarinder Singh vs. Special Committee Vidhan Sabha, 2010 (6) SCC 163*** the Supreme Court did not interfere in the investigation. In said case, resolution expelling the petitioner from Vidhan Sabha was set aside but the Apex Court did not impede the investigation. This apart, pursuant to resolution of Vidhan Sabha, State Govt. had issued two notifications dated 06.09.2018 withdrawing the consent under section 6 of 1952 Act. The rationale for withdrawal was that the purpose of expeditious investigation had not been achieved. The consent was thus withdrawn. According to him, judgment rendered by the Apex Court in ***Kazi Lhendup Dorji v CBI 1994 Supp 2 SCC 116*** was not attracted as the notification in said case related to a class of cases and not specific cases. It was open to the State Govt. to withdraw consent in respect of specific FIR and effect of same would be immediate and absolute.

This court now proceeds to decide the various issues raised before it. First questions raised before this Court primarily relates to the proceedings before the Commission; whether same are vitiated and need to be quashed. Before proceeding to decide the issue, it needs to be noticed that Commissions constituted under the 1952 Act do not have any teeth for their functioning and have to depend on State's assistance. They are more suited for enquiring into matters of public importance where purpose is to find out the truth so as to learn lessons for future and devise policies. Such commissions do not serve the purpose of punishing the guilty (*See Sanjiv Kumar v. State of Haryana (SC) : 2005(5) SCC 517*).

In case of specific allegations, any comments prejudicial to reputation of a person ought to be made after he is given an opportunity of hearing. If such opportunity is denied to him, it is open to him to challenge the same to seek deletion thereof from the report (*see State of Bihar v. Lal Krishna Advani, (SC) 2003(8) SCC 361*). It, however, cannot be lost sight of that all recommendations of such Commissions which are set up under the 1952 Act are recommendatory in nature. The Commission has no adjudicatory power and has no means to execute its recommendations. It is open to the Government to accept or reject such recommendations or simply ignore them. In the instant case, the primary question relates to inquiry/investigation into certain incidents of sacrilege and consequent protests, thus violence. Once investigation had been initiated pursuant to the unfortunate incidents, the necessity to set up parallel Commissions with more or less similar terms of reference is a matter of concern.

As the Govt. undoubtedly has the power under the 1952 Act to set up a Commission of Inquiry, it did so and appointed Justice (retd.) Zora Singh soon after the incidents of sacrilege and violence. Though said commission submitted its report within the time frame i.e. on 29.6.2016, it kept on gathering dust. On change of dispensation in the State, the Govt. in its wisdom thought it fit to constitute another Commission headed by Justice (retd.) Ranjit Singh. The terms of reference of Commission were specific in nature. It appears, the Govt. accepted the recommendations of the subsequent Commission and on that basis a zimini was recorded on 11.8.2018. It was decided to add one of the petitioners as accused in FIR No.130 of 2015. Another complainant is stated to have approached the police after submission of report of the Commission. On his statement, FIR No.129 was registered on 07.08.2018 under sections 307, 323, 341, 148, 149 IPC and section 27 of Arms Act at police station Kotkapura District Faridkot.

The issue of withdrawal of consent pursuant to resolution passed in Vidhan Sabha on 28.8.2018 and notifications issued pursuant thereto needs to be dealt with first. In the case of *Kazi Lehndup Dorji's case (supra)* a notification under section 6 of the DSPE Act, 1946 was issued conveying consent of the Govt. of Sikkim enabling members of DSPE to exercise powers and jurisdiction on whole of the State of Sikkim for investigation of offences punishable under various provisions of the Indian Penal Code specified in the notification as well as offences under the Prevention of Corruption Act. Similar consent in respect of offences under various other enactments was given by the Govt. of Sikkim vide notifications dated 20.10.1976, 10.07.1979, 24.12.1983,

28.6.1984 and 10.12.1984. Respondent No.4 therein, remained Chief Minister of Sikkim from the year 1979 till 11.5.1984. On 26.5.1984 a case was registered by the CBI under relevant provisions of Prevention of Corruption Act alleging that he had acquired assets disproportionate to his known sources of income. On 7.8.1984 another FIR was registered against him alleging that he alongwith P.K.Pardhan, Secretary, Rural Development, by corrupt and illegal means and by abusing their position as public servants had caused pecuniary advantage to private parties and corresponding loss to the Govt. They had awarded contracts to the tune of 1,62,31,630/- to private parties for implementing rural water supply scheme on higher rates ignoring recommendations of the Rural Development Department. The CBI commenced its investigation. However, respondent No.4 again became Chief Minister of Sikkim in March, 1985. A notification was issued on 7.1.1987 during his tenure, notifying that all consents given on behalf of State Govt. under various notifications issued from the year 1976 to 1984 under section 6 of the Act, were withdrawn. Despite requests made by Govt. of India, Govt. of Sikkim did not permit further investigation by CBI under Prevention of Corruption Act. As a consequence, CBI issued notification dated 7.1.1987 suspending further action in two cases under the Prevention of Corruption Act. Kazi Lehndum Dorji, who happened to be former Chief Minister of Sikkim challenged the withdrawal of investigation and notification dated 7.1.1987 in this respect, his plea being that there was no provision under the Act which empowered the State Govt. to withdraw the consent once accorded for investigation of cases by CBI. In the counter affidavit filed by the Govt. of India, a stand was taken that withdrawal

of consent by State Govt. had caused grave injustice to the investigation conducted by the CBI creating impediment in its way for filing report under section 173 of CrPC. Govt. of India also submitted that process once initiated ought not to be stalled and investigation must be allowed to reach its logical conclusion. Thus there was no scope of withdrawing the consent once granted. In other words, Govt. of India supported the plea of Kazi Lehndum Dorji, the petitioner therein. After consideration of the entire issue, Hon'ble Supreme Court allowed the writ petition holding that the notification withdrawing the consent would operate prospectively and not apply to cases which were pending, thus permitting the CBI to file its report under section 173 CrPC on the basis of investigation conducted by it.

It appears that the facts of instant case are on different footing. Firstly, section 6 notification issued in *Dorji's case* (supra) was in respect of class of cases extending jurisdiction of CBI in respect of certain offences all over the State of Sikkim. In view of vesting of this power in CBI, it registered FIRs on its own under the Prevention of Corruption Act against a former Chief Minister. This was by virtue of the amplitude of the general notifications issued under section 6 empowering the CBI to investigate certain offences in relation to crimes under IPC, Prevention of Corruption Act and some other enactments committed anywhere in State of Sikkim. These notifications were issued during the period from 1976 to 1984.

In the instant case, however, FIRs were registered by the State police prior to the notification(s) handing over the investigation of specific FIRs

to CBI. In other words, consent was accorded only in respect of investigation pertaining to FIRs, detail of which is as under:-

- i) FIR No.63 dated 2.6.2015 u/s 295-A, 380 IPC PS Baja Khana.
- ii) FIR No.117 dated 25.9.2015 u/s 295-A IPC PS Baja Khana.
- iii) FIR No.128 dated 12.10.2015 u/s 295, 120-B IPC PS Baja Khana.

During pendency of investigation pursuant to above FIRs, a decision was taken by the State Govt. to invoke provisions of section 6 of the DSPE Act and handover the same to CBI. As the entrustment was made to CBI at initial stage, it was expected that the same would proceed swiftly. However, this did not happen. Another notification was issued in the year 2018 to hand-over the investigation of two other FIRs to CBI. Before CBI could proceed further, impugned decision was taken by the Vidhan Sabha to take back investigation of all cases and two notifications of even date i.e. 06.09.2018 were issued.

On the other hand in *Dorji's case*, it appears the investigation was nearing culmination. For this reason, Hon'ble the Supreme Court permitted CBI to file its report under section 173 CrPC. It needs to be emphasized that in *Dorji's case*, FIRs were registered by the CBI suo motu by virtue of general power vested in it by various notifications. Relevant para of said judgment is as under:-

*“16. Coming to the contention urged by Shri Jethmalani on merits it may be mentioned that Section 21 of the General Clauses Act does not confer a power to issue an order having retrospective operation. [See : **Strawboard Manufacturing Co. Ltd. v. Gutta Mill Workers' Union**, 1953 SCR 439, at pages 447-448].*

Therefore, even if we proceed on the basis that Section 21 of the General Clauses Act is applicable to an order passed under Section 6 of the Act, an order revoking an order giving consent under Section 6 of the Act can have only prospective operation and would not affect matters in which action has been initiated prior to the issuance of the order of revocation. The impugned Notification dated January 7, 1987, has to be construed in this light. If thus construed it would mean that investigation which was commenced by C.B.I. prior to withdrawal of consent under the impugned Notification dated January 7, 1987, had to be completed and it was not affected by the said withdrawal of consent. In other words, the C.B.I. was competent to complete the investigation in the cases registered by it against respondent No. 4 and other persons and submit the report under Section 173 Criminal Procedure Code in the competent court. On that view of the matter, it is not necessary to go into the question whether the provisions of Section 21 of the General Clauses Act can be invoked in relation to consent given under Section 6 of the Act.”

As regards observations made in the aforesaid para regarding withdrawal of consent to operate prospectively, same were in context of entire class of offences mentioned in the notifications issued from time to time; meaning thereby, the cases which had been registered by the CBI of its own in view of the general power vested in it over entire State of Sikkim, investigation would continue with it. However, it would be prevented from registering any further FIRs in view of withdrawal of consent by notification dated 7.1.1987. It was thus held that the said notification dated 7.1.1987 would not preclude the CBI from submitting its report under section 173 CrPC before the competent court. So far as prospective operation of the notification was concerned, it

remained unaffected. In view this, the court did not feel it necessary to go into the question whether provisions of Section 21 of General Clauses Act could be invoked in relation to consent given under section 6 of the Act.

In the instant case, as FIRs had already been registered by the State police and notifications issued in the year 2015 did not give a general power to the CBI to register cases apart from the FIRs specified in the notifications, the question of prospective operation of notification withdrawing consent would not arise. A clear distinction can be drawn in this regard vis-à-vis the notifications issued in *Dorji's case*. In the instant case, consent of State of Punjab was in respect of specific FIRs and in fact amounted to transfer of investigation from one investigating agency to another. Present is not a case where this Court has been called upon to test a situation where State has granted consent to CBI to register cases on its own in respect of a class of offences. On the other hand, the notification withdrawing the consent is pursuant to resolution passed by the Vidhan Sabha which in clear terms states that the investigation of cases given to CBI needed to be taken back. Besides, during the course of hearing, this Court called for the case diary of the CBI and perused the same. It was evident that investigation in the cases had hardly made any headway. From the judgment in *Dorji's case*, however, it appears that the investigation was nearing culmination as CBI was permitted to file its final report under section 173 CrPC. Even during the course of hearing of said case, Govt. of India took a specific stand that withdrawal of investigation had seriously affected the case as CBI was unable to file its report under section 173 CrPC. It is evident that the CBI had already reached a conclusion that the

accused therein had acquired assets disproportionate to their known sources of income and that they had by corrupt means and abusing their position, caused pecuniary advantage to private parties and loss to the State exchequer.

During the course of hearing a question arose regarding power of judicial review of this Court in respect of a resolution passed by Vidhan Sabha. There can hardly be any doubt in view of *Raja Ram Pal's case (supra)*, this court has the power to entertain such a plea and examine validity of such resolution if it is unsustainable and trespasses on fundamental rights. It has been held therein that Parliament is a coordinate organ and deserves due deference even while its acts are amenable to judicial scrutiny. The judiciary is not prevented from scrutinizing the validity of actions of the Legislature which infringe on the fundamental rights or the constitutional provisions. This issue, however, need not detain this court further as pursuant to resolution, two notifications were issued withdrawing the consent for investigation of cases by CBI and this Court has already examined the validity of the same.

In view of the observations made above, this Court does not find any infirmity with the decision taken by Punjab Govt. to withdraw the consent under section 6 of the Act pursuant to resolution of the Vidhan Sabha. In the instant case, the CBI did not seriously oppose the withdrawal of consent. Even in its reply, it meekly stated that the matter was under investigation and did not question the validity of notifications withdrawing the consent for investigation by it. On the other hand, it forwarded the notifications to Government of India

for further necessary action. Para 4 and prayer clause of the reply read as under:-

“4. That the Govt. of Punjab, vide another Notification No. 7/521/2013-2H4/4901 dated 06.09.2018 had also withdrawn its consent for the investigation of above mentioned 03 cases. The copy of said notification was sent to the Under Secretary, Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, New Delhi for further necessary action.

That in view of the submission made in the foregoing paragraphs, it is submitted that appropriate directions/orders as deemed appropriate by this Hon’ble Court may kindly be passed.”

On a specific query being put to CBI counsel about the status of investigations despite lapse of almost three years, no clear answer was forthcoming.

None of the learned counsel referred to any judgment in order to show that there was any fetter on power of State Govt. to withdraw consent in such cases where investigation was transferred from State police to CBI. Besides, due to withdrawal of consent, investigation would continue with one investigation agency and not partially with two separate agencies. The chain of events shows that same are inextricably linked, thus this court does not feel the necessity to interfere in the decision of the State Govt. to withdraw investigation from CBI or to set-aside consequent notifications.

In the eventuality, investigation had proceeded in right earnest, probably need for setting up of separate Commission would not have arisen. It

cannot be lost sight of that incidents of sacrilege and violence were primarily criminal offences, for probing into which right course of action would be investigation by an expert agency and not a roving enquiry by a Commission. The machinery which is at command of the investigating agency can only unravel the modus operandi and conspiracy, if any, behind such crimes. Any Commission would be seriously handicapped despite the powers vested in it by 1952 Act. It need not be over emphasized that once an FIR is registered, all powers vested in the investigating agency to summon, arrest, interrogate and use other forensic methods to arrive at correct conclusion, come into operation. The FIRs in the instant case were registered without much delay. Thus it was expected of the investigating agencies to proceed with required promptitude obviating the necessity of setting up a Commission for the purpose. Inordinate delay in conducting the investigation results in apprehension in the minds of general public and unnecessary politicization of the issues. As held in ***Abdul Rehman Antulay's case (supra)*** it is in the interest of all concerned that guilt or innocence of the accused is determined as quickly as possible, as Article 21 encompasses right to speedy investigation and trial and same is in public interest.

As regards the prayer for handing over the investigation to CBI, the same is not tenable at the behest of the accused in view of law laid down in ***Romila Thapar's case (supra)*** wherein it has been held that this would amount to accused seeking investigation by agency of his choice which he does not have. Besides, this court feels that a separate investigation by two different

investigating agencies would not be in public interest, the incidents being inextricably linked.

Much attack has been made to the zimini order dated 11.8.2018 (R-11) vide it was decided to array additional accused in FIR No.130 of 21.10.2015 in view of the report of the Commission, stand being that same was vitiated in view of observations of Hon'ble Supreme Court in *T.T.Antony's case (supra)* that recommendations of Commission were meant only to instruct the mind of the Govt. There can be no dispute with the proposition of law laid in the said case. However, this does not call for quashing of the zimini order in question as the investigating agency is always entitled to add other accused *de hors* the report of the Commission. In the eventuality a case is pending and the name of an accused surfaces either by way of information received under section 160 Cr.P.C. or a statement recorded under section 161 Cr.P.C., the investigating agency can always investigate role of said person. Thus this plea is hereby rejected.

The challenge posed by Mr Bhan to the report of the Commission on the issue that it substituted the Zora Singh Commission is misconceived. It is on record that the said Commission submitted its report on 29.6.2016 i.e. before the expiry of its term on 30.6.2016. The second Commission was set up more than nine months thereafter i.e. on 14.4.2017 by way of a separate notification. Stand of the State is that the terms of this Commission were much wider. The plea, therefore, that there was substitution of the first Commission is without any basis and the same is rejected. Reliance on decision reported as

State of Madhya Pradesh v. Ajay Singh & Ors. (1993)1 SCC 302 is also misconceived. In the said case, during the period the enquiry was continuing, sole member of the Commission was sought to be replaced by the Govt. The facts of the said case are clearly distinguishable as term of the earlier Commission had come to an end and after it submitted its report, it became *functus officio*. Instant is not a case where there was effort on the part of the Govt. to fill up an existing vacancy which had arisen during the continuance of term of the first Commission. It, however, needs to be reiterated that necessity to constitute the second Commission would not have arisen had the investigating agencies carried out the task entrusted to them promptly. The practice of constituting successive Commissions for enquiring into similar issues or enlarging scope of enquiry, can be no substitute for fair and transparent investigation. Besides, prolonged inquiries and investigation in sensitive issues and politicization of the same lead to neglect of focus on core issues of economic and social development as enshrined in Part IV of the Constitution of India containing Directive Principles of State Policy, it being primary duty of the State to provide succor to the citizens not having proper means of livelihood.

For the reasons enumerated above, challenge on the ground of violation of section 7 of the Act is also misplaced. Said section would be attracted where a Commission of Inquiry is in existence and appropriate Govt. forms an opinion that continuance of such Commission is unnecessary. In the instant case, however, no necessity arose of forming such an opinion and disbanding the earlier Commission. Reliance on section 8-A of the 1952 Act is

equally misplaced as said provision concerns filling up of a vacancy that arises during subsistence of enquiry by a Commission. No such situation arises here.

Relying upon sections 8-B and 8-C of the 1952 Act, a serious challenged was posed to the findings of the Commission on the plea that sufficient opportunity had not been granted to the petitioners to defend themselves and to cross-examine the witnesses. In response, Mr Chidambaram referred extensively to the stand of the State as contained in its reply. According to same, notices were issued to the petitioners. They appeared before the Commission and their statements were recorded. They were given option to respond to the material available against them. It was open to the petitioners to seek cross examination of the witnesses who deposed against them which option they did not exercise. This court need not delve deep into this issue as it entails an enquiry into disputed questions of fact which is beyond the scope of writ jurisdiction. In any case, as per own averments of the petitioners, the recommendations have no binding force and are merely recommendatory, meant to instruct the mind of the Govt. In case the investigation is fair and impartial, it is unlikely that any prejudice will be caused to the petitioners by mere observations of the Commission which are not even in the nature of *obiter dicta* of the Court.

The proceedings before the Commission cannot be equated with a regular trial though rules of natural justice would be reasonably applicable in the proceedings before the Commission. Even failure to provide opportunity of cross examination would not vitiate the process as proceedings are purely fact

finding in nature (*see A.S.Motors (Pvt.)Ltd. v. Union Of India, (2013) 10 SCC 114*).

As regards case of petitioner no.3, it appears that report of Commission makes no specific reference to his role or observations adverse in nature. This apart, the provisions of section 8-B and 8-C postulate an opportunity to the person to defend himself whose reputation is likely to be prejudicially affected. As petitioners No.1 and 2 appeared before the Commission, there is no reason to presume that they were not afforded such opportunity. Rules of natural justice in broader terms need to be complied with by the Commission. Such principles cannot be encapsuled in a straight jacket formula (*see Competition Commission of India v Steel Authority of India, (2010) 10 SCC 744*). As this court finds it difficult to arrive at a conclusion that opportunity as envisaged under sections 8-B and 8-C was not granted to the petitioners, judgment reported as *Sanjay Gupta & ors. v. State of U.P. & Ors (2015)5 SCC 283* is not applicable to facts of the instant case.

The specific plea regarding right to cross-examination and representation by legal practitioner is again without substance and there is nothing on record that the petitioners made any request in this regard and same was ignored by the Commission. It needs to be borne in mind that proceedings before the Commission are not in the nature of a trial. It exercises neither judicial nor quasi-judicial powers and its recommendations are not effective *proprio vigore*. Besides, statement made by any person before Commission of Inquiry under section 6 of the Act is wholly inadmissible in evidence in any

future proceedings, civil or criminal. It is also not clothed with the power to secure redress or punishment for any wrong which it feels has been committed.

(See para 9 of Ram Krishan Dalmia v Sh Justice S.R.Tandolkar, AIR 1958 SC 538). As reports of both the Commissions are merely recommendatory and not binding on the Government, this court finds no necessity of quashing the same.

Out of the judgments on which reliance has been placed, relevant have been dealt with. However, reference has not been made to those which are not germane to the issues involved. The pleas raised in all the petitions are hereby rejected.

The suggestion of Mr. Nanda, learned Advocate General for court monitored investigation does not find favour with this court as it is not inclined to supervise the course or manner thereof. The investigating agency would proceed as per law and the established procedures and arrive at its own independent conclusions.

Keeping in view the above discussion, it is expected that SIT would not be swayed by the observations of the Commission(s) as the same are meant only to instruct the mind of the Government perhaps to prevent such unfortunate incidents in future. The SIT would conduct a fair, impartial and speedy investigation undaunted by pressure, if any, internal or external. It shall bear in mind that the recommendations of the Commission are not adjudicatory in nature and have no binding force, settled law, as laid down in Abhinandan Jha's case (supra), being that the court cannot substitute its opinion for that of

the investigating agency, muchless the opinions of two Commissions headed by Justice Zora & Justice Ranjit Singh would stand in its way in arriving at an independent conclusion. The grievance in the instant case is not only of complainant but of the general public which needs to be redressed overlooking the political overtones. Observations of Malimath Committee as regards improving efficiency and professionalism of the investigating agencies to restore faith of the public in them and to insulate them from external pressure, are relevant and need to be kept in mind. Any laxity or latitude in such an issue of public importance would be against the right guaranteed under Article 21 of the Constitution of India which is fountain-head of administration of criminal justice system. This court has no doubt that for the purpose of arriving at logical conclusion, the SIT shall employ all investigative skills and forensic methods at its command and conclude the investigation expeditiously.

With the aforesaid observations the writ petitions are hereby dismissed.

(RAJAN GUPTA)
JUDGE

25.01.2019

Ajay

To be referred to Reporter: Yes