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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 20/01/2020****Judgment Delivered on : 29/01/2020****Writ Appeal No. 11 of 2020***{Arising out of Order dated 09.12.2019 passed in Writ Petition (C) No. 4296 of 2019 passed by the learned Single Judge}*

State of Chhattisgarh, Through the Deputy Inspector General of Police,
Naxal Operation, Police Headquarters Atal Nagar, Nawa Raipur,
Chhattisgarh.

---- Appellant**Versus**

The Special Judicial Enquiry Commission to enquire the Jheeram Ghati
incident, Headquarter at Jagdalpur (Bastar) Camp at Bilaspur.

---- Respondent

For Appellant/State	: Shri Satish Chandra Verma, Advocate General with Shri Chandresh Shrivastava, Deputy Advocate General.
For Respondent/Commission	: None

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****C.A.V. Judgment****Per P.R. Ramachandra Menon, Chief Justice**

1. Alleged abrupt closure of the proceedings of the Special Judicial Enquiry Commission constituted for enquiry of 'Jhiram Ghati incident' (*for short 'the Commission'*) occurred on 25.05.2013 which commenced on 06.07.2013 and finalised after six years as per Annexure P/1 order dated 11.10.2019 was questioned by the State/Appellant in Writ Petition (C) No.4296 of 2019, contending that the opportunity denied to examine more witnesses is not correct and hence to be set aside. The prayer was declined by the learned Single Judge referring to the sequence of events and holding

that the process and procedure pursued by the Commission was quite in order and no haste was shown at any point of time, besides referring to the scope of such enquiry and the outcome. This, in turn is under challenge in this appeal preferred by the State.

2. A brief history as to the factual context will be useful to appreciate the challenge raised by the State/Appellant as put forth by the learned Advocate General. In connection with the Lok Sabha Elections, 2014 political campaigning was going on. A 'Parivartan Yatra' was being conducted by the State Congress Committee with involvement of prominent leaders as part of the said campaigning exercise. On 25.05.2013, after concluding the Yatra at Bastar, the leaders of the Congress Party were returning from Bastar in vehicles, on convoy. When they reached the place 'Jhiram Ghati', there was a brutal attack by a group of Maoist/Naxalites using improvised explosive device (IED). This was followed by sudden outburst of gun firing by the Naxalites on the persons and vehicles of the Congress leaders in the convoy, in the course of which, 11 senior Congress party leaders including the State Congress Chief and such others were shot down to death. Several Security Officers/Police personnel also succumbed to the bullet injuries.

3. In connection with the above massacre, an FIR was registered by the local Police, Darbha as Crime No. 25/2013 in respect of the offences under Sections 341, 347, 148, 149, 302, 307, 427, 396 and Section 120B of the Indian Penal Code read with Section 25 and 27 of the Arms Act and Sections 3 and 5 of the Explosive Substances Act, besides Section 38(2) and 39(2) of the Unlawful Activities (Prevention) Act, 1967. It is borne out from the records that the investigation subsequently was handed over to the National Investigation Agency (NIA) who completed the investigation and a charge sheet was submitted before the NIA Special Court, Bilaspur on 25.09.2014.

4. Shortly after the shocking incident, the State Government, vide notification dated 28.05.2013 constituted a Special Judicial Enquiry Commission to enquire into the incident (popularly known as 'Jhiram Ghati incident') and a sitting Judge of this Court was appointed as the Chairman of the Commission, in consultation with the then Chief Justice of this Court. The terms of reference were formulated under 9 separate heads, as given below:

- "i) Under what circumstances did the incident on 25.05.2013 at Jheeram Ghati occurred?
- ii) Whether the incident could have been avoided from occurrence?
- iii) Whether there was adequate security arrangement or there was any lapse in the security arrangement?
- iv) Whether the security agencies had followed all the required standard operating procedures in the course of providing security arrangement?
- v) Whether the organizers of the Rally had followed the standard protocol and necessary arrangements? If yes, how it was complied with and if not then who are responsible for it?
- vi) Whether there was sufficient coordination between the State Police and other armed forces?
- vii) Factual report regarding any other issues related to the incident which occurred before, during or after the occurrence of the incidence.
- viii) Necessary Security administrative steps and remedial measures to be taken up in order to avoid such incidence to occur in future.
- ix) Any other significant relevant points related to the incident."

5. Pursuant to the Notification issued by the State Government in this regard, the Special Judicial Enquiry Commission commenced the proceedings on 06.07.2013 with intent to have the proceedings concluded and to submit a report within 'three months' as notified by the Government. But it is seen from the proceedings that the Government had extended the tenure of the Commission by various notifications issued at different points of time and as per the Notification dated 24.08.2018, it was extended upto 27.02.2019. During the said period of more than six years, 45 witnesses were examined on behest of the Congress Party, while 22 witnesses were

produced and examined from the part of the State as revealed from the order sheets of the Commission. The proceedings were closed by the Commission on 07.01.2019 as the tenure of the Commission was coming to an end by the end of February, 2019. While so, general election to the Legislative Assembly was held in November, 2018, by virtue of which there was a change in the ruling front. As per the Notification dated 21.01.2019, the present Government (headed by the Congress party) extended the tenure of the Commission from 28.02.2019 to 31.12.2019 and referred 8 more terms of references in the following terms:

"i) Whether, after the attack made on late Shri Mahendra Karma on November, 2012, any review was conducted on the security so provided to late Karma by the Protection Review Group?

ii) What were the deliberation and decisions taken on the request made by late Mahendra Karma in November, 2012 after the attack so made upon him and wherein he had sought for additional security ?

iii) Whether after the attack on Shri Nand Kumar Patel in Gariyaband District in July, 2011, any additional security was provided to the late Nand Kumar Patel and whether the additional security standards were followed and ensured during the incident at Jheeram Ghati ?

iv) Taking into consideration the Naxalite attacks in the State in the past, whether there was any guidelines and directions issued for providing certain fixed number of Police Personnels or additional forces were issued while travelling on road. If yes, whether it was followed with? If not, whether any decisions were taken after the review of the previous big Naxalite attacks.

v) What was the role played by the uniformed command during anti Naxal operation particularly during TCOC period? What was the duties of the head of the uniformed command and whether the head of the command had discharged his duties properly?

vi) What was the total strength of police personnels present in Bastar District on 25.05.2013? Whether during the "Parivartan Yatra" the forces of district Bastar were deployed to different districts? If yes, for what reasons and on whose order? Whether proper sanction/approval was received for this ?

vii) The Naxalites after kidnapping big personalities bargained with some of their demands for the release of these personalities? Why was this not tried when late Nand Kumar Patel and his son were kidnapped?

Viii) What sort of agreement was made or entered into with the Naxals for the release of then Collector, District Sukma Shri Alex Paul Menon? Whether they had any connection to the security of late Mahendra Karma?"

6. In view of the turn of events, though the proceedings were closed in respect of the original terms of reference on 07.01.2019, the Commission decided to proceed with the second set of terms of reference and ordered for making necessary publication in the gazette in different dailies having wide circulation. On 27.07.2019, the State as well as the Pradesh Congress Committee who were already represented in the proceedings before the Commission were directed to file affidavits and to produce documents, if any, within 15 days. Despite the said order, no fresh evidence was adduced by any individual as revealed from the order/proceedings dated 31.08.2019. The matter was adjourned to 13.09.2019 when the Commission granted further time till 01.10.2019 for submitting the affidavits of the persons decided to be examined; making it clear that no further witnesses will be summoned or evidence will be taken after 01.10.2019. It is revealed from the proceedings that the Commission recorded the statement of one Shri Deepak Kumar Karma and Vivek Kumar Bajpai of the Congress Committee on 01.10.2019 with reference to the new terms of reference, based on their affidavits. Additional affidavits were filed by Shri Shailesh Nitin Trivedi and one Shri Devendra Kumar, both from the Pradesh Congress Committee. Based on the affidavits filed by Shri Sundar Raj P., Officer-in-Charge on behalf of the State and one Shri Narayan Dwivedi, the matter was adjourned to 10.10.2019 for conducting the cross examination. The cross-examination of Shri Shailesh Nitin Trivedi and Shiv Narayan Dwivedi was recorded on 10.10.2019 while the evidence of Shri Sunder Raj P., Deputy Inspector General of Police was recorded on the next day i.e. 11.10.2019. In the course of recording the evidence of Shri P. Sundar Raj, OIC, he requested for recording the evidence of five more witnesses mentioned in his affidavit

dated 13.09.2019 stating that they were relevant witnesses. The state had filed an application for summoning one Shri B.K.Ponwar, Director, Jungle Warefare Training School, Kanker for recording his evidence as an expert: Observing that these witnesses were not Government witnesses, that in what way their evidence was to be relevant in connection with the second terms of reference and that all these persons were aware of the proceedings going on for the past six years in the Commission, the prayer was turned down. It was also observed with regard to Shri Ponwar that he was having no field experience and there was no connection with the incident, the application preferred by the State in this regard was also turned down and the proceedings were closed as per Annexure P/1 order dated 11.10.2019 which was sought to be interdicted by filing the writ petition.

7. The case projected before the learned Single Judge was that the evidence to be tendered by the 5 witnesses cited and also the so-called expert by name Shri Ponwar was very much material and was to have relevance in connection with the incident, in terms of the reference. Rejection of the request made in this regard was stated as not correct or proper. It was also contended that the order passed by the Commission that the aforesaid witnesses had not filed any affidavits was rather a 'hyper technical' one and opportunity ought to have been given to collect all factual data in connection with the incident. Reliance was also sought to be placed on the verdict passed by the Apex Court in ***Manju Devi v. State of Rajasthan & Another***; {(2019) 6 SCC 203} and ***Union of India & others v. Prakash Kumar Tandon***; {(2009) 2 SCC 541}, to contend that the very purpose and object of constitution of the Enquiry Commission would stand defeated and that the age/pendency of a case is not a ground to deny opportunity to adduce evidence which is relevant.

8. The matter was heard elaborately. The learned Single Judge observed with reference to the entire materials on record that the only question to be considered was whether Annexure P/1 order dated 11.10.2019 passed by the Commission constituted to enquire into the 'Jhiram Ghati incident' occurred on 25.05.2013 was proper and justified or not.

9. The sequence of events commencing from the date of constitution of the Commission and the commencement of the proceedings on 06.07.2013, till closure of the matter as per Annexure P/1 dated 11.10.2019 was specifically taken note of. The specific orders passed by the Commission on 27.07.2019 i.e. pursuant to the second set of terms of reference directing the State as well as the Pradesh Congress Committee, who were already represented before the Commission, to cause their affidavits and documents to be filed within 15 days were also noted. From the order dated 31.08.2019, it was observed that pursuant to the earlier order dated 27.07.2019, three persons by name (a) Shri Awadhesh Singh Gautam (b) Shri Chandrabhan Jhadi and; (c) Shri Syed Sattar Ali had filed their affidavits and even at this stage, the Government did not think it fit for filing any further affidavit or calling any other witnesses. The matter was adjourned to 06.09.2019 and even on that day, there was no application, affidavit or list of witnesses filed/produced by the State and hence it was adjourned further to 13.09.2019 for recording the evidence of the three persons named above, who had given their affidavits as mentioned in the order sheet dated 31.08.2019. It was accordingly, that the evidence of the said three persons was recorded on 13.09.2019. That apart, it was noted on that day i.e. on 13.09.2019, that two more persons by name Shri Depak Kumar Verma and Shri Vivek Bajpai had also filed their affidavits; under which circumstance, the Commission accepted these affidavits and posted the matter on 01.10.2019 for their further evidence.

10. The learned Single Judge observed that, on 01.10.2019,, the Commission had recorded the evidence of Shri Deepak Kumar Verma and Shri Vivek Bajpai and thereafter, the evidence was to be closed. However, in the meanwhile, few more affidavits were received on 01.10.2019, as preferred by (a) Shri Shailesh Nitin Trivedi (b) Shri Devendra Yadav and; (c) Shri Shiv Narayan Dwivedi. The OIC of the State, Shri Sundar Raj P. also submitted his affidavit on behalf of the State. Taking note of the said proceedings, the Commission thought it proper to give one more chance and accordingly, the matter was posted on 10.10.2019 and 11.10.2019 for recording the evidence of these persons who had submitted their affidavits. The evidence of Shri Shailesh Nitin Trivedi, Shri Devendra Yadav and Shri Shiv Narayan Dwivedi was recorded on 10.10.2019 and the matter was listed on the next day i.e. on 11.10.2019 for recording the evidence of Shri Sundar Raj P., the OIC on behalf of the State. It was only on 10.10.2019 that the State chose to file an application for calling a witness by name Brigadier B.K.Ponwar, Director of Jungle Warfare School, Kanker. His evidence, if at all any, was held as not to have any relevance with the terms of reference and after taking the evidence of Shri Sundar Raj P., on 11.10.2019, the Commission closed it as per Annexure P/1 order, when started the heart-burn of the State for not summoning the above witnesses.

11. Admittedly, the above persons had not filed any affidavits before the Commission, despite the fact that the proceedings were pending before the Commission for more than six years. The circumstances under which the enquiry was closed on 07.01.2019 in respect of the first set of terms of reference, is clearly discernible {by that time 67 witnesses had already been examined; 45 from the part of the Pradesh Congress Committee and 22 from the part of the State} from the said order. This Court finds it appropriate to extract the same for easy reference:

"07/01/2019
Bilaspur

ORDER

Heard Shri Sudiep Shrivastava, Advocate for the Pradesh Congress Committee (PCC) and Shri Rajeev Shrivastava, Advocate for the State Government.

This order shall govern disposal of I.A.No.21-A which has been moved by the PCC for summoning of Shri Sushilkumar Shinde, the then Minister of Home, Government of India, Shri R.P.N. Singh, the then Minister of State in the Department of Home Affairs, Government of India, Dr. Raman Singh, the then Chief Minister, Government of Chhattisgarh and Shri Nanki Ram Kanwar, the then Home Minister, Government of Chhattisgarh for recording their statement before the Commission.

Referring to the provisions contained under the Commission of Inquiry Act, the Evidence Act and the Constitution of India and to the document filed along with the application it was argued by the learned counsel appearing for the PCC that the persons sought to be summoned for recording of their statement had certain information being the executive heads in the State Government or in the Central Government, as the case may be, therefore, their statements are necessary for answering the reference.

Referring to the documents filed by witness Deepak Karma and the affidavit of the Nodal Officer it was argued that Mahendra Karma was not provided new Bulletproof vehicle as well as new Ambulance by replacing the old Bulletproof vehicle as well as old Ambulance, the reasons for which can only be answered by the Chief Minister.

It was also argued that the then Chief Minister did not regularly convene the meeting of unified command and similarly Shri Sushilkumar Shinde and Shri R.P.N. Singh being the Cabinet Minister and the Minister of State, Home Department at the Central level were privy to information, which needs to be scrutinized by the Commission.

It was next argued that before the Justice Nanavati Commission and Liberhan Ayodhya Commission even the Prime Minister and other Ministers were examined and, as such, it is in the domain of this Commission to summon the persons for recording their statement.

Learned counsel appearing for the State, *per contra*, argued that there is no assertion by the PCC that without examining the persons the Terms of Reference (ToR) cannot be answered, therefore, their examination is not necessary. Learned Counsel further argued that Shri Sushilkumar Shinde & Shri R.P.N. Singh have made press statements soon after the incident, therefore, it is not a case that they could not have filed affidavits before this Commission after ceasing to remain in the office.

Learned counsel next argued that the unified command is a strategic body not an operational body, therefore, the SIB Chief and other Senior Police Officers like the

Superintendent of Police, Deputy Inspector General of Police, Inspector General of Police and the Commandant, CRPF, having already been examined there is no necessity of calling any other witness.

While constituting this Commission, the following ToR has been referred for submission of report:

- 1) जीरमघाटी में दिनांक 25.05.2013 को किन परिस्थितियों में घटना घटित हुई?
- 2) क्या घटना को घटित होने से बचाया जा सकता था?
- 3) क्या सुरक्षा व्यवस्था पर्याप्त थी अथवा सुरक्षा व्यवस्था में किसी प्रकार की चूक हुई?
- 4) क्या सुरक्षा के लिये सभी निर्धारित प्रक्रियाओं, आवश्यक व्यवस्थाओं का पालन सुरक्षा तंत्रों द्वारा किया गया था ?
- 5) क्या सुरक्षा के लिये सभी निर्धारित व्यवस्थाओं एवं निर्धारित प्रक्रियाओं का पालन रैली के आयोजकों द्वारा किया गया था? और यदि हाँ तो उसे किस प्रकार सुनिश्चित किया गया था? और यदि नहीं तो इसके लिए कौन जिम्मेदार है?
- 6) क्या राज्य के पुलिसबलों एवं अन्य सशस्त्रबलों के बीच समुचित समन्वय रहा?
- 7) घटना के पूर्व, घटना के दौरान या घटना के उपरान्त ऐसे अन्य मुद्दे जो घटना से सम्बंधित हो, उस बाबत तथ्यात्मक प्रतिवेदन?
- 8) भविष्य में इस प्रकार की घटना से बचने के लिए सुरक्षा एवं प्रशासकिय कदम उठाये जाने के संबंध में सुझाव तथा उपाय?
- 9) अन्य ऐसे महत्वपूर्ण बिंदु जो घटना से संबंधित हो।

The proceedings of the Commission commenced on 6-7-2013. Thereafter, the Commissioner's proceedings is continuing for more than five years. During this period, the following 67 witnesses have been examined by the Commission:

Witness produced by the Congress Party

PW-1	Anil Dubey
PW-2	K. Bala
PW-3	Doulat Rohda
PW-4	Ram Awatar Dewangan
PW-5	Dr. Chouleswar Chandrakar
PW-6	Manohar Lunia
PW-7	Narsingh Rath
PW-8	Malkid Singh Gaidu
PW-9	Syed Sattar Ali
PW-10	Kaushal Nagwanshi
PW-11	Somaru Ram Kashyap
PW-12	Ganesh Kawde
PW-13	Rekhchand Jain
PW-14	Satish Tiwari

PW-15	Rajiv Narang
PW-16	Rajman Benjam
PW-17	Dr. Pratap Narayan Agarawal
PW-18	Awadehsh Singh Goutam
PW-19	Lakheshwar Baghel
PW-20	Dinesh Yadu
PW-21	Deepak Baij
PW-22	Mahadev Nag
PW-23	Dalsai Nag
PW-24	Mannu Ram Kachh
PW-25	Narendra Singh Bhadouriya
PW-26	Omkar Jaiswal
PW-27	Ishwar Khambari
PW-28	Prabhat Kumar Jha
PW-29	Smt. Shanti Salam
PW-30	Shriniwas Joshi
PW-31	Rehan Khan
PW-32	Kawasi Lakhma
PW-33	Virendra Pandey
PW-34	Dr. Ajit Anad Degwekar
PW-35	Premshankar Shukla
PW-36	Chandrashekhar Yadav
PW-37	Vivek Bajpaye
PW-38	T.S. Singhdev
PW-39	Rajesh Tiwari
PW-40	Nikhil Dwivedi
PW-41	Balram Mourya
PW-42	Altaf-ulla Khan
PW-43	Smt. Phulodevi Netam
PW-44	Madan Dubey
PW-45	Deepak Karma

Witness Produced on behalf of the State

PW-1	S.R Salam	Addl. SP
PW-2	S.R. Bhagat	Addl.SP
PW-3	L.S Kashyap	T.I.
PW-4	U.K. Verma	T.I.
PW-5	Subhash Singh	Dy. SP
PW-6	Daman Deshmukh	Asstt. PC
PW-7	Alkesh Shukla	Head Constable,

PW-8	Deepanshu kabra	IG. SIB
PW-9	Raju Prakash Toppo	Constable
PW-10	Mangesh Mandavi	Constable
PW-11	Lavendra Naik	Constable
PW-12	Bhartendu Dwevedi	Dy. SP
PW-13	Kunwar Singh	PSO
PW-14	Ajay Yadav	SP
PW-15	V.S. Samant	Company Commander
PW-16	Peeru Mohan	SI
PW-17	Mayank Shrivastava	SP
PW-18	Abhishek Shandilya	SP
PW-19	Himanshu Gupta	IG
PW-20	R.K. Viz	ADG
PW-21	Mukesh Gupta	ADG
PW-22	P.S. Gabriyal	Commandant

It is apparent that many Congress Leaders, who were present on the spot including Shri Kawsu Lakhma, who is not a Minister in the present Government and Shri T.S. Singh Deo, who was also present near the place of occurrence on the date of incident and is also now a Minister in the present Government have been examined. Almost all senior officers who were at the helm of affairs at the time of incident have also been examined by this Commission.

Merely because some other Commissions have examined the former Prime Minister or other Central Ministers it would not mean that this Commission should also examine the Ministers even though they had no role to play at the field to make necessary security arrangements. Shri Sushilkumar Shinde and Shri R.P.N. Singh were stationed at Delhi at the relevant point of time. Their own party men have been martyred in the incident, therefore, if they would have any information in respect of the incident nothing prevented them from informing the same to the State Government or to the CRPF Headquarter at New Delhi.

It is also to note that the Head of Unified Command at the State level was only to oversee the law and order situation through the departmental Head i.e. the Director General of Police and other officers.

The necessity of examining a particular person as witness would depend on the ToR and other material, which were placed before the respective Commission like the Justice Nanavati Commission and Liberhan Ayodhya Commission. The subject matter before each Commission is different and has to be considered on stand alone basis.

The proceedings of this Commission was continued for more than five years, but the application under consideration

was filed at the fag end after examination of 67 witnesses, therefore, it appears to be an afterthought.

It needs special notice that at the time of constitution of the Commission the State Government desired that the Commission should submit its report within 3 months, however, considerable time was taken for examination of witnesses and many interlocutory applications were filed at regular intervals necessitating the State Government to extend the time limit by issuance of gazette notifications at least 8-10 times for submission of report. The proceedings of the Commission ought not to be conducted as if it is a civil suit trying any adversarial litigation therefore, since examination of witnesses is over the report of the Commission is required to be submitted at the earliest possible time.

Considering the material already placed before the Commission summoning of Shri Sushilkumar Shinde, the then Minister of Home, Government of India, Shri R.P.N. Singh, the then Minister of State in the Department of Home Affairs, Government of India, Dr. Raman Singh, the then Chief Minister, Government of Chhattisgarh and Shri Nanki Ram Kanwar, the then Home Minister, Government of Chhattisgarh is not considered necessary for answering the reference.

As a sequel, the application (I.A. No.21-A) is rejected.

The Commission has already examined 67 witnesses. No other witness is required to be examined by the Commission, therefore, the proceedings of the Commission is closed for submission of the report.

Written synopsis may be filed by the parties, if they so desire, within a period of two weeks.

Sd/-
(Justice Prashant Kumar Mishra)
Chairman
Special Judicial Enquiry
Commission to enquire
the Jheeram Ghati Incident
Headquarter at Jagdalpur (Bastar)
Camp at Bilaspur"

12. Pursuant to the second set of terms of reference, despite the closure ordered on 07.01.2019, the matter was revived and several opportunities were given to all concerned to file their statements/affidavits, if any and to produce evidence, alerting specifically that no evidence will be taken after 01.10.2019. Still, based on the subsequent affidavits filed on 01.10.2019, the Commission granted further chance to adduce evidence and it was accordingly, that the evidence of the persons who had already given

affidavits was recorded on 10.10.2019 and 11.10.2019 and thereafter the proceedings were closed as per Annexure P/1 order. The reasons for turning down the request to summon or examine further witnesses and to reject the application preferred by the State on 10.10.2019 are quite evident from the order itself. To have an easy appraisal, we find it appropriate to reproduce Annexure P/1 order dated 11.10.2019, which reads as under:

"11/10/2019
Bilaspur

Shri Sudiep Shrivastava, Advocate for the Pradesh Congress Committee (PCC) with Shri Vivek Bajpai, representative of the PCC and Shri Pravin Thakur, Advocate for the State Government

Shri Sundarraaj, P. Deputy Inspector General of Police, SIB/ANO and OIC of the case is also represent and his statement has been recorded

Shri Sundarraaj P. Deputy Inspector General of Police and a nodal officer of the State on 8 Additional Terms of Reference has filed list of 5 witnesses with his affidavit, however, perusal of the list would indicate that the listed persons are neither Government servants nor they have filed any affidavit before the Commission, as to the nature of information they desire to provided to the Commission on any specific terms of reference. On 13.9.2019, the Commission has directed that it shall not receive any further affidavit meaning thereby that no fresh witnesses shall be summoned for examination after 01.10.2019. In the list also, it is not clear as to on what particular aspect of the matter they desire to record their evidence. In the circumstances, persons mentioned in the list are not required to be summoned for examination.

On 10.10.2019, the State has moved another application for summoning one B.K. Ponwar, Director Jungle Warfare Training School, Kanker for recording his evidence as an expert. It is stated in the application that Shri Ponwar has special experience of Jungle Warfare and tactics, therefore, his statement may be necessary for better appreciation of terms of reference.

In the previously framed 9 terms of reference and additional 8 terms of reference, there is no issue which specifically deals with the jungle warfare. Shri Ponwar has never been posted on the field in any Naxal infested areas. He is only a Director in the Jungle Warfare Training School, having no practical experience of working on the field. Therefore, considering the terms of reference there is no necessity of summoning Shri Ponwar.

Even otherwise the Commission has been continuing its sitting for the last more than 6 years and the Commission takes judicial notice of the recent newspapers reports that

the State Government is of the opinion that there are several Commissions constituted in the State which are working for too long and their proceeding needs to be closed.

All the witnesses from either side have already been examined, therefore, while rejecting the application, the proceeding of the Commission on 8 Additional Terms of Reference is closed.

At this stage, Shri Sudiep Shrivastava, learned counsel for the PCC would vehemently urge that he may be allowed to orally address the Commission to better appreciate the voluminous records to reach to a proper and just finding. He would refer to Section 8C (b) of the Commissions of Inquiry Act and would also submit two reports of Justice Nanavati Commission of Inquiry to argue that a legal practitioner can be permitted to address the Commission.

The proceeding before the Commission is not in the nature of *lis* involving adjudication of rights, liability or obligation of any contesting party. There is no burden of proof on any of the parties. The Commission is required to record a finding of fact and make recommendations on the terms of reference on the basis of materials placed before it. Here, it may be appropriate to refer Order 20 Rule 1 CPC which provides that the Court, after the case has been heard, shall pronounce judgment in an open Court, meaning thereby that occasion to hear final/oral argument in the case arises when the Court or authority is enjoined in law to pronounce the judgment over any particular issue. There is no judgment to be pronounced by the Commission whose proceedings are governed under the procedure prescribed under the Commissions of Inquiry (Central) Rules, 1972 which itself does not provide for any stage of final/oral argument.

Hence, I do not deem it appropriate that oral arguments are required to be heard in the matter. Therefore, prayer is rejected.

Prayer made by the State to the same effect in an earlier application is also rejected.

As directed while closing the first set of terms of reference written submissions may be submitted by the parties within 4 weeks.

Sd/-
(Justice Prashant Kumar Mishra)
Chairman
Special Judicial Enquiry
Commission to enquire
the Jheeram Ghati Incident
Headquarter at Jagdalpur (Bastar)
Camp at Bilaspur"

13. It is with reference to the above facts and figures that the learned Single Judge has analysed the matter in detail and held that the order sheets

clearly reflected that all the parties interested, including the State were granted sufficient opportunity to adduce evidence by way of affidavits and all those witnesses who had submitted their affidavits were examined, including the OIC/Nodal Officer. The learned Single Judge has rightly observed that the scope of the judicial enquiry and that of the report is only 'advisory' in nature and that it is only a 'fact finding enquiry' and not a proceeding involving 'decision making' on an adversarial litigation. The Commission functions strictly in terms of the procedure laid down under the Commissions of Inquiry Act, 1952 (*for short 'the Act, 1952'*) / the Commissions of Inquiry (Central) Rules, 1972 (*for short 'the Rules, 1972'*) which gives wide powers for conducting the enquiry including to decide as to what is relevant and what is not. The specific reasons given by the Commission for passing the orders for not calling upon certain persons as witnesses are also quite evident, showing the transparency in the proceedings. As rightly observed by the learned Single Judge, it is to be noted that no affidavit was filed by any of the persons whom the State wanted to examine as witnesses and all these persons were fully aware of the constitution and functioning of the Commission during the past six years, which was adequate enough to have all the relevant facts brought on record. It is also relevant to note that, as on the date of closure of the proceedings vide Annexure P/1 on 11.10.2019, the tenure of the Commission was remaining only for a short span more and it was to come to an end on 31.12.2019; though it was extended later. This being the position, it can never be stated that the Commission was acting in a haste or that the door of truth has been closed in any manner. The reliance sought to be placed on the verdicts passed by the Supreme Court in ***Manju Devi*** (supra) and ***Prakash Kumar Tandon*** (supra), with reference to criminal trial, does not have any application to the case in hand and this has been correctly appreciated and decided by the learned Single Judge.

14. Incidentally, it is to be noted that the statute clearly confers power upon the Commission to regulate its own procedure, subject to the rules that may be made in this behalf, as provided under 8 of the Act. Invoking the powers under Section 12 of the Act, 1952 to make the rules, the Central Government has notified the Rules, 1972. Rule 5 of the said Rules deals with the 'procedure of inquiry' which is to the following effect:

"5. Procedure of Inquiry.- (1) A commission may sit in public or in private as it thinks fit:

Provided that a Commission shall sit in private on a request being made by the Central Government in that behalf.

(2) A Commission shall, as soon as may be after its appointment -

(a) issue a notice to every person, who in its opinion should be given an opportunity of being heard in the inquiry, to furnish to the Commission a statement relating to such matters as may be specified in the notice;

(b) issue a notification, to be published in such manner as it may deem fit, inviting all persons acquainted with the subject matter of the inquiry to furnish to the Commission a statement relating to such matters as may be specified in the notification.

(3) Every statement furnished under clause (a) of sub-rule (2) shall be accompanied by an affidavit in support of the facts set out in the statement sworn by the person furnishing the statement.

(4) Every person furnishing a statement under clause (a) of sub-rule (2) shall also furnish to the Commission along with the statement a list of the documents, if any, on which he proposes to rely and forward to the Commission, wherever practicable, the originals or true copies of such of the documents as may be in his possession or control and shall state the name and address of the person from whom the remaining documents may be obtained.

(5)(a) A commission shall examine all the statement furnished to it under clause (b) of sub-rule (2) and if, after such examination, the Commission considers it necessary to record evidence, it shall first record the evidence, if any, produced by the Central Government and may thereafter record evidence in such order as it may deem fit-

(i) the evidence of any person who has furnished a statement under clause (a) of sub-rule (2) and whose evidence the Commission having regard to the statement, considers relevant for the purpose of the inquiry; and

(ii) the evidence of any other person whose evidence, in the opinion of the Commission, is relevant to the inquiry:

Provided that the Commission may dispense with the attendance of any person for the purpose of giving evidence before it if in its opinion—

(i) such attendance cannot be enforced except by causing undue hardship or inconvenience to that person; or,

(ii) such attendance should be dispensed with for any other sufficient reason to be recorded by it in writing.

(b) If, after all the evidence is recorded under clause (a) of sub-rule (5), the Central Government applies to the Commission to recall any witness already examined or to examine any new witness, the Commission, if satisfied that it is necessary for the proper determination of any relevant fact to do so, it may recall any witness already examined or examine any new witness.

(6) The Commission may pay the traveling and other expenses to a person who is summoned to assist the Commission at the stage of preliminary investigation or to give evidence or to produce documents before a Commission, as prescribed from time to time by the Central Government;

(7) The Commission shall have the powers of a civil court to make local investigation, either personally or through any person, duly authorised by it into any matter falling within its terms of reference.

(8) A Commission shall have the power to regulate its own procedure in respect of any matter for which no provision is made in these rules."

15. A mere reading of the above Rule is sufficient to hold that issuance of notice to a person and granting of opportunity of being heard in the enquiry is subject to the satisfaction of the Commission and it is to whom, in its opinion, should be given such an opportunity as disclosed from sub-rule (5) to (8) of Rule 5 of the Rules, 1972. Under Rule 5(2)(b), pursuant to the notification published, inviting all persons acquainted with the subject matter to furnish the Commission, a statement relating to such matters, as may be specified under the notification, is to be given. It is clear from the proceedings that these requirements have been satisfied by the Commission without fail. Further, Sub-rule 5(a) of Rule 5 of the 1972 Rules stipulates that the Commission shall examine all statements furnished to it under clause (b) of sub-rule (2) and if after such examination, the Commission considers it necessary to record evidence, it shall first record the evidence, if any, produced by the Central Government, and thereafter record evidence in such order as it may deem fit. Sub-clause (i) of clause (5)(a) of Rule 5 of the 1972

Rules enables evidence of any person who has furnished a statement under clause (a) of sub-rule (2) and whose evidence the Commission, having regard to the statement, considers relevant for the purpose of enquiry to be recorded, while sub-clause (ii) enables the Commission to record the evidence of any person whose evidence, in the opinion of the Commission, is relevant to the enquiry. The proviso further stipulates that the Commission may dispense with the attendance of any person for the purpose of giving evidence before it, if in its opinion, the context mentioned under sub-clauses (i) and (ii) is made out. Power to recall a witness is also provided under sub-rule 5(b) of Rule 5 of the Rules, 1972, if the Commission is satisfied in this regard that it is necessary for the purpose of determination of any relevant fact. Sub-rule (8) of Rule 5 of the Rules, 1972 makes it clear that the Commission has the power to regulate its own procedure in respect of any matter, for which no provision is made in the Rules.

16. The course and proceedings pursued by the Commission, when examined in the light of the above provisions of the Act and the Rules, clearly reveal that no infringement of any provisions of law or any failure in the matter of discharging the duties as the Commission appointed under the Act, 1952 has taken place and no interference is warranted in respect of Annexure P/1. The verdict passed by the learned Single Judge is perfectly within the four walls of law and is not assailable under any circumstances. Interference is declined and the appeal stands dismissed.

Sd/-

(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE