

(2005) 08 P&H CK 0048

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 5066 of 2005 (Public Interest Petition)

Sukhdev Singh Dhindsa and

Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Aug. 5, 2005

Acts Referred:

- Commissions of Inquiry Act, 1952 - Section 3, 3(1), 3(4), 5(2), 5(3)

Citation: (2005) 141 PLR 257 : (2005) 4 RCR(Civil) 46

Hon'ble Judges: D.K. Jain, C.J; Hemant Gupta, J

Bench: Division Bench

Advocate: R.N. Trivedi and H.S. Sidhu, for the Appellant; Nemo, for the Respondent

Final Decision: Dismissed

Judgement

D.K. Jain, C.J.

By this writ petition, filed ostensibly in public interest, eight members of Parliament (seven Lok Sabha and one Rajya Sabha), question the legality and propriety of report, dated 17.12.2004, submitted by Justice B.S. Nehra, Commission of Inquiry. They pray that the report be quashed with a direction to respondent No.1, namely, the Union of India to get the allegations of commission of offences of Hawala transactions and foreign exchange violations investigated through the Directorate of Revenue Intelligence or any other independent agency.

2. Briefly stated, the facts emanating from the writ petition and germane to the issue involved in the petition are as follows:

One Leonard A. Freeke, a resident of Amsterdam, Netherlands (hereinafter referred to as "Freeke") and stated to be a close friend of the son of the Chief Minister, respondent No. 7 herein, conceived of a project by the name of Punjab Intranet Company. To discuss the proposal, a meeting was held between Freeke, respondent No.7, and the officers of the Punjab Government on 2.2.2003. A draft proposal was

sent by Freeke's Company, namely, Esquare Communications B.V. Ltd. (for short, "Esquare") to respondent No.7 and to a former Scientific Advisor to the Punjab Government, respondent No. 10 herein. As per the proposal, Esquare was to prepare the business plan and was to implement the Project. The initial cost of setting up the Punjab Intranet Exchange, which was to allow business parks to connect to the national and international fibre-optic cable network, was estimated at Euro 2 million (Rs.11.34 Crores). Out of that, Euro one million (Rs. 5.67 crores) was to be paid by the Punjab Government to Esquare for preparing the business plan and executing the project. It is averred that at the time when the Dutch firm was getting ready to implement the project, respondent No.7, in an e-mail message to Freeke, directed him to involve one Chetan Gupta, who was introduced as an old family associate, as Indian partner in the project. He is also alleged to have written that Euro 2.5 million (Rs. 14.18 crores), instead of agreed Euro one million, would be sent to that firm by the Indian partner instead of the Punjab Government. This e-mail was published by "Hindustan Times", Chandigarh Edition, on 16.10.2004. The report has been reproduced in the petition.

3. On 27.12.2005, Hindustan Times published an article under the caption "Curious transactions in the name of Punjab Intranet?", revealing that a Singapore firm had sent US\$1,00,000 to a company in Mauritius, which passed on half of that sum to Esquare. It is alleged that as per the newspaper report, respondent No.7 was engaged in foreign currency transactions under a scheme with the companies, which were yet to be formed.

4. The newspaper report seems to have created a political storm because of the alleged involvement of the son of the Chief Minister. As the demand for investigations by an independent agency had political overtones, the government seems to have decided to recommend appointment of a Commission of Inquiry under the Commissions of Inquiry Act, 1952 (for short, "the Act"). Accordingly, vide notification dated 2.1.2004, the Governor of Punjab appointed a retired Judge of the Punjab and Haryana High Court as a Commission of Inquiry u/s 3 of the Act. The Governor also ordered that the provisions of sub-sections (2), (3), (4) and (5) of Section 5 of the Act, conferring additional powers to the Commission, with regard to summoning of any person; search and seizure of any premises and deeming the Commission's proceedings as judicial proceedings, shall apply. Sub-sections (1) and (4) of Section 3 of the Act, read as follows:

"3. Appointment of Commission. - (1) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by each House of Parliament or, as the case may be, the Legislature of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions

accordingly:

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

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

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

(2)...

(3)...

(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."

5. The terms of reference made to the Commission were:

"...to inquire into the truthfulness or otherwise of the allegations contained in the news item published in the Chandigarh Edition of the Hindustan Times dated 28th December, 2003."

6. The Commission submitted its report on 17.12.2004 to the Punjab Government. The report is stated to have been laid in the Punjab Assembly on 21.3.2005.

7. The stand of the petitioners is that the material published in the newspaper left no doubt about the involvement of the Chief Minister and his son in Hawala transactions and violation of foreign exchange laws and that the unaccounted money acquired by them through corrupt means was being sent abroad through illegal channels. The grievance of the petitioners is that inspite of various representations, memoranda and the demands being raised in the Parliament, no steps have been taken so far to conduct a proper inquiry with regard to the acts of corruption etc. On the contrary, setting up of Commission of Inquiry under the Act is a calculated attempt by the Chief Minister to side track the issue. It is thus, pleaded that the report of the Commission of Inquiry is wholly unsustainable and liable to be quashed.

8. We have heard Mr. R.N. Trivedi, learned Senior Counsel appearing for the petitioners, at considerable length. It is strenuously urged by Mr. Trivedi that the notification itself was bad because the action of the government to announce the appointment of a Commission of Inquiry on its own was mala fide, inasmuch as, it was meant to save the kith and kin of the Chief Minister from a full-fledged enquiry by an independent agency. It is contended that even the Commission of Inquiry has exceeded its jurisdiction in reluming the finding that the news item published in "Hindustan Times" was totally defamatory and based on false and fabricated documents, as the term of the reference to the Commission of Inquiry was only to find out whether there was any truth in the allegations contained in the news item titled "Curious transactions in the name of Punjab Intranet". It is also urged that in the instant case, the allegations were such that the Commission, with limited jurisdiction, was ill-equipped to go into them without obtaining evidence from abroad for which it did not have any authority, like other investigating agencies have under the Code of Criminal Procedure, like issue of letter rogatory etc. Learned counsel submits that since the newspaper report had revealed the violation of the provisions of Foreign Exchange and Management Act, only the authorities under the Act were competent to investigate into the allegations. It is pleaded that non-examination of Freeke by the Commission, the man at the center of the controversy, not only knocks of the foundation of the report, the provisions of Section 8B of the Act have also been violated. In support, reliance is placed on the decisions of the Apex Court in Smt. Kiran Bedi Vs. Committee of Inquiry and Another, and State of Bihar Vs. Lal Krishna Advani and Others, wherein it was observed by their Lordships of the Supreme Court that it was incumbent upon the Commission to give an opportunity to a person, before any comment is made or opinion is expressed which is likely to prejudicially affect that person and failure to comply with this requirement renders the action honest as well as the consequences thereof. In so far as the tabling of the report of the Commission of Inquiry in the House is concerned, learned counsel submits that it is of no consequence because sub-section (4) of Section 3 is attracted only when a Commission is appointed by virtue of a resolution by the House and not otherwise. It is asserted that in any case, this Court is not bound by the findings of the Commission of Inquiry and therefore, having regard to the nature of the allegations, it is a fit case where the report of the Commission should be ignored and investigations by the Central Bureau of Investigation or the Directorate of Revenue Intelligence must be ordered. In support, reliance is placed on the decision of the Apex Court in Sham Kant Vs. State of Maharashtra.

9. We are of the considered view that the present petition, at this juncture, is misconceived. Section 3 of the Act provides that the appropriate Government may, if it is of opinion that it is necessary so to do and shall, if a resolution in this behalf is passed by each House of Parliament or, as the case may be, by the Legislature of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the

purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification and the Commission so appointed shall make an inquiry and perform the functions accordingly. Sub-Section (4) of Section stipulates that the appropriate government shall cause to be laid before 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 submissions of the report by the Commission to the appropriate government.

10. The principles in regard to the position of the Commission of Inquiry, the report and the findings recorded by the Commission are too well-settled to admit of any elaborate discussion, in Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, a Constitution Bench of the Supreme Court observed that the recommendations of the Commission of Inquiry are not enforceable proprio vigore and that the inquiry or the report cannot be relied upon as judicial inquiry in the sense of its being an exercise of judicial function properly so-called. It is not an adjudication. Report of the Commission is merely an expression of opinion and it lacks both finality and authoritativeness.

11. In the instant case, admittedly the report of the Commission has been laid before the House, which is yet to take it up for discussion. Thus, the stage for any grievance would arrive when on consideration of the report, the government decides to take any action or otherwise. It will be open to the petitioners to have the report discussed on the floor of the House. What are going to be the deliberations on the report; what action the government actually takes on it or it decides not to take any action on the recommendations or on the final decision of the House, are the questions which are yet to be considered by the Legislature or the government. We feel that it will not be desirable for this Court to comment or adjudge on any of the observations or findings of the Commission at this juncture, to be bad or illegal, as is sought to be pleaded by learned Senior Counsel for the petitioners.

12. As regards the prayer for referring the matter for investigations to the Central Bureau of Investigation or the Directorate of Revenue Intelligence, we are of the view that since the allegations, which ultimately prompted the government to appoint the Commission, are going to be discussed when the report of the Commission is taken up for consideration, it would not be proper, at this juncture, to direct investigations on the same subject-matter by some other agency. In so far as the statutory authorities are concerned, the action to be taken by them under a statute has to be for reasons germane to the statute and conceived to serve the purpose of the statute. It needs little emphasis that in law, motives have no relevance to the question of legality of an action, which are being pressed into service by the petitioners. On the facts in hand, appointment of the Commission of Inquiry was a political decision, which in the first instance, has to be thrashed out at

the political forum and for this purpose, there cannot be a better place than the floor of the Legislature Assembly of the State. We are, therefore, convinced that at the present juncture, parallel investigations by the Central Bureau of Investigation or the Directorate of Revenue Intelligence and the discussion on the report of the Commission would lead to an avoidable conflict, which may even undermine the supremacy of the Legislature Assembly. We are of the opinion that such situations ought to be avoided. In this context, the following observations of Lord Reid in British Railways Board v. Pickin ILR 1974 765 would be quite apposite:

"For a century or more both Parliament and the Courts have been carefully not to act so as to cause conflict between them. Any such investigations as the respondent seeks could easily lead to such a conflict, and I would only support it if compelled to do so by clear authority. But it appears to me that the whole trend of authority for a over a century is clearly against permitting any such investigation."

13. Though, we are in agreement with learned senior counsel for the petitioners that the inquiry by the Commission does not amount to usurpation of the function of the Courts of law and for that matter, the scope of judicial review by this Court and the Commission of Inquiry are altogether different, particularly when, to borrow the expression adopted by the Apex Court, the Commission's report has no force proprio vigore, but we are of the considered view that having regard to the aforesaid factual scenario, the petition, at this stage, is premature. For the view we have taken, we deem it unnecessary to deal with the question whether the provisions contained in Section 8B of the Act have been complied with or not.

14. The upshot of the above discussion is that intervention of this court at the present stage is not warranted. Consequently, the writ petition is dismissed, Nevertheless, we are confident that the State Government shall examine the report as expeditiously as practicable and decide as to what follow-up action is required to be taken thereon, as it was pleaded by learned senior counsel for the petitioners that the action taken on the report has not been laid before the House along with the report. Otherwise, we feel the very purpose of the constitution of the Commission shall get frustrated and the allegation that the Commission was appointed only as an eye-wash shall acquire credibility.