

(2014) 07 AHC CK 0324

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 5584 (MB) of 2014

Hindu Front for Justice

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: July 14, 2014

Acts Referred:

- Commissions of Inquiry Act, 1952 - Section 3, 3(1), 7

Hon'ble Judges: Imtiyaz Murtaza, J; Ashwani Kumar Singh, J

Bench: Division Bench

Advocate: H.S. Jain, Learned Counsel, Advocate for the Appellant; Bulbul Godiyal, Learned Additional Advocate General, Advocate for the Respondent

Final Decision: Dismissed

Judgement

1. This petition, purportedly filed in public interest, seeks to challenge the notification dated 9.9.2013 issued by the State Government whereby a single member Commission of Enquiry to enquire into certain incidents which took place during the period from 27.8.2013 to 9.9.2013 in district Muzaffarnagar, was appointed comprising of Hon"ble Justice (Retd.) Vishnu Sahai.

2. Submission of the learned counsel for the petitioners, Sri H.S. Jain is that the Commission of Enquiry has been appointed hurriedly so as to restrain the members of a particular community from narrating their grievances and further that establishment of the Commission of Enquiry is nothing but an eye-wash.

3. It has further been submitted by Sri Jain that the State Government appointed the Commission of Enquiry in violation of the provisions of Section 3(1) of the Commissions of Enquiry Act, 1952 (hereinafter referred to as the Act), so that the matter relating to appointment of Commission may not be discussed in the State Legislature. Contention of the petitioners further is that the State Legislature has neither discussed nor passed any resolution for appointment of the Commission of Enquiry for the purposes mentioned in the impugned notification dated 9.9.2013,

Referring to the provisions contained in Section 3 of the Act, it has also been submitted that for appointing a Commission of Enquiry, a resolution to the said effect must be passed by the State Legislature and since in the instant case State Legislature has not passed any resolution for appointing the Commission, the impugned notification is ultra vires and without jurisdiction.

4. It has also been argued that since Section 3 of the Act requires resolution to be passed by the State Legislature for appointment of a Commission of Enquiry and in the instant case there is no such resolution, hence the established principle of law that if a law requires something to be done in a particular manner, the same has to be done by adopting the manner prescribed and not otherwise, has been violated.

5. Opposing the writ petition, learned Additional Advocate General has submitted that the impugned notification dated 9.9.2013 has been issued by strictly adhering to the provisions of Section 3 of the Act and further that for appointment of a Commission of Enquiry under the Act, in every matter a resolution for the said purpose is not necessarily to be passed by the Legislature of the State.

6. We have given our anxious consideration to the arguments advanced by the learned counsel appearing for respective parties and perused the impugned notification dated 9.9.2013.

7. The Commissions of Enquiry Act, 1952 has been enacted to provide for appointment of Commissions of Enquiry and for vesting such Commissions with certain powers. Section 3 of the Act provides two modes of appointment of a Commission of Enquiry. As per the provisions contained in Section 3, the first mode of appointment rests with the appropriate government. Section 3 envisages that if in the opinion of the appropriate government, it is necessary to appoint a Commission of Enquiry for the purposes of making an enquiry into any definite matter of public importance, the government shall be vested with the discretion to appoint the Commission of Enquiry, provided it forms an opinion that it is necessary so to do.

8. The other mode of appointment of Commission of Enquiry u/s 3 of the Act is that in case a resolution for appointment of a Commission of Enquiry is passed by the Legislature of the State, it will be incumbent upon the appropriate government to appoint such a Commission of Enquiry for enquiring into any matter of public importance.

9. Thus, in case a resolution for appointment of Commission of Enquiry by the State Legislature is passed, it becomes incumbent and mandatory on the part of the appropriate government to appoint the Commission.

10. However, even in absence of any such resolution to be passed by the State Legislature, the appropriate government (in the instant case the State Government) is vested with statutory power and authority to appoint a Commission of Enquiry for

conducting an enquiry into any matter of public importance, provided, the government is of the opinion that it is necessary to do so. Thus, the authority/power of the State Government to appoint a Commission of Enquiry is not at all dependent on the resolution which may be passed by the State Legislature for the said purpose.

11. The provisions of Section 3 though mandate the State Government to appoint a Commission of Enquiry in case any resolution is passed by the State Legislature but the same provisions also vest the authority with the State Government to appoint a Commission of Enquiry independent of the resolution of the State Legislature.

12. Thus, as observed above, the power of the State Government to appoint a Commission of Enquiry is not dependent on the resolution of the State Legislature.

13. The provisions of Section 3 of Commissions of Enquiry Act, 1952 are quoted below:

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) The Commission may consist of one or more members appointed by the appropriate Government, and where the Commission consists of more than one member, one of them may be appointed as the Chairman thereof.

(3) The appropriate Government may, at any stage of an inquiry by the Commission fill any vacancy which may have arisen in the office of a member of the Commission (whether consisting of one or more than one member).

(4) The appropriate Government shall cause to be laid before each House of Parliament or, as the case may be, the Legislature of the State, the report, if any, of the Commission on the inquiry made by the Commission under sub-section (1) together with a memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government.

14. From a bare perusal of the provisions of Section 3 quoted above, it is amply clear that the interpretation which is being sought to be given to the said provisions by the learned counsel for the petitioners is absolutely erroneous and is highly misconceived. The language of Section 3 is plain and simple and hence the plain and simple meaning to the language applied in Section 3 has to be given according to which the State Government is well within its authority and power to appoint a Commission of Enquiry with the only caveat that it will have to form an opinion that it is necessary to do so. The resolution of the State Legislature is not a condition precedent for appointment of the Commission of Enquiry by the State Government in every case. The sine qua non for appointment of a Commission of Enquiry by the State Government is that the State Government should be of the opinion that it is necessary to hold an enquiry into any definite matter of public importance.

15. The aforesaid interpretation of Section 3 of the Act finds support from the provisions of Section 7 according to which a Commission of Enquiry appointed by the State Government, other than a Commission appointed pursuant to a resolution passed by the State Legislature, ceases to exist if the appropriate government by a notification in the official gazette, declares that it is of opinion that the existence of Commission is not necessary.

16. So far as the term of Commission of Enquiry appointed pursuant to a resolution passed by the State Legislature is concerned, the same shall cease to exist only on a resolution for discontinuance of the Commission being passed by the Legislature. Thus, as in the case of appointment of Commission of Enquiry u/s 3, two different modes of discontinuance of the Commission of Enquiry have been provided u/s 7 of the Act.

17. In view of aforesaid discussion, the submission advanced by the learned counsel for the petitioners that the impugned notification could not have been issued except on a resolution passed by the State Legislature, is not tenable.

18. What needs to be examined is as to whether at the time of appointment of Commission of Enquiry by issuing the impugned notification dated 9.9.2013, the Government formed its opinion that it is necessary to hold an enquiry or not.

19. From the opening paragraph of the impugned notification dated 9.9.2013, it is clear that the Commission of Enquiry was appointed by the State Government only on the basis of an opinion formed by the State Government that it is necessary to do so.

20. In the light of the discussions made and reasons given above, we are of the definite opinion that the impugned notification dated 9.9.2013 does not suffer from any illegality so as to call for any interference by this Court in the instant writ petition.

21. Accordingly the writ petition, being devoid of merit, is hereby dismissed.