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(1976) 04 MAD CK 0040

Madras High Court

Case No: Writ Petition No. 1542 of 1976

M. Karunnanidhi		APPELLANT
	Vs	
The Union of India and Another		RESPONDENT

Date of Decision: April 29, 1976

Acts Referred:

- Commissions of Inquiry Act, 1952 - Section 3
- Constitution of India, 1950 - Article 245, 246, 246(4), 247, 248

Citation: AIR 1977 Mad 192 : (1977) ILR (Mad) 1 : (1977) 90 LW 223

Hon'ble Judges: P.S. Kailasam, C.J; Balasubrahmanyan, J

Bench: Division Bench

Judgement

P.S. Kailasam, C. J.

1. This petition is filed by Mr. Karunanidhi, former Chief Minister of Tamil Nadu, under Art. 226 of the Constitution for the issue of a writ of

certiorari calling for the records relating to Notification No. SO-74(E) dated 3-2-1976, issued by the Department of Personnel Administrative

Reforms, Government of India, under S. 3 of the Commissions of Enquiry Act 1952, and quash the same. The affidavit filed in support of this

petition, after setting out the history of the Government of Tamil Nadu and the Dravida Munnetra Kazhagam, which was running the Government

from 1967 upto 31st January 1976, refers to the proclamation issued by the President of India on 31-1-1976 under Art. 356 of the Constitution of

India assuming to himself the functions of the Government of the State of Tamil Nadu and the powers of the Government of the State, suspending

the provisions of the Constitution relating to the Council of Ministers in the State and dissolving the Legislative Assembly. The Proclamation

imposing President''s rule was based on a report of the Governor of the State made on 29-1-1976. In his report, the Government also

recommended the appointment of a commission of inquiry to enquire into the allegations made against the D. M. K. Government. On 3-2-1976

the Central Government notified the appointment of a Commission of Inquiry under S. 3 of the Commission of Inquiry Act, 1952, to enquire into

the allegations made by four persons who are named in the notification. In challenging the validity of the Notification the main grounds are stated in

paragraph 9 of the affidavit of the petitioner. The first and foremost ground is stated as follows--

The Constitution of India has set up a federal system of Government in which the Union and the States derive their respective powers from the

Constitution and exercise those powers from the Constitution in their own right. According to the scheme of the Constitution, the States are not

subordinate to the Union, Moreover, the Constitution has established a Parliamentary system of executive in the States, according to which the

Council of Ministers is responsible to the elected representatives of the people in the Legislative Assembly for the good Government of the State"".

According to the petitioner, the duty referred to in Art. 355 does not extend to the Central Government laying down standards of good

Government, for the State Governments and enforcement of such standards by threat of exposing recalcitrant State Ministers to an inquiry under

the commissions of inquiry Act for what in the opinion of the Central Government might constitute maladministration. The other grounds were

summarised by the learned counsel for the petitioner thus--

1. The Commission of Inquiry should be appointed to enquire into a definite matter of public importance;

2. Satisfaction of the requirements of S. 3 of the Commissions of Inquiry Act is vitiated by the notification not disclosing the names of persons, who

are to be subjected to the enquiry, and the purpose;

3. The power under S. 3 of the act has not been used for the purpose for which it is conferred, but it has been abused;

4. Opinion is not of the Central Government in so far as it is not expressed to be taken in the name of the President, but has been taken by a

department to which the particular subject has not been allotted by the Central Government by the Government of India (Allocation of Business)

Rules, 1961; and

5. The Tamil Nadu Public Men (Criminal Misconduct) Act, 1973, (Act 2 of 1974) precludes recourse to the Commissions of Inquiry Act for the

purpose of enquiry into the misconduct of former Ministers of the State of Tamil Nadu.

2. We will, first of all, take up the question which was stressed at great length before us, that is the federal nature of the Constitution does not

empower the Central Government to lay down standard of good Government for the State Governments and to initiate an inquiry under the

Commissions of Inquiry Act for what, in the opinion of the Central Government might constitute maladministration. It is stated that taking into

account the federal character as the basic structure of the Constitution, S. 3 cannot be construed in such a way as to militate against the basic

principles of federalism. According to the learned counsel for the petitioner, S. 3 of the Act was construed by the Central Government so as to

empower it to order an enquiry so as to empower it to order an enquiry into State Ministers also, subordinating the State Ministers to the control

of the Union Government, which is not at all warranted by the Constitution. The contention of the learned counsel is that the Constitution is a

federal one and that the States are autonomous having definite powers. The basis of the argument is that states being autonomous in a federal

structure, they have got independent rights to govern and that so far as their executive actions are concerned, the Central Government has no right

to interfere. The learned counsel was at great pains to state what a federation is, what autonomous States are and what are the rights and functions

of the federating States. We feel that the words ''federation'', ''autonomy'' and ''federating States'' have varying meanings and what a particular

word means will depend upon the context. For example, there may be a federation of independent States, as it is into he case of United States of

America. As the name itself denotes, it is a union of States, either by treaty or by legislation by the concerned States. In those cases, the federating

units gave certain powers to the federal Government and retained some. To apply the meaning of the Word ''federation'' or ''autonomy'' used in the

context of the American Constitution, to our Constitution will be totally misleading. Taking the history of the Indian Government under the 1919

Act is was principally a unitary Government. In 1935 there was some attempt at federation in the context of presence of Indian States. As it is

well-known, Indian States were governed by the Rulers of the States subject to paramountcy and when they were proposed to be drawn into a

federation consisting of what was known as British India, and the Indian States, 1935 Constitution was framed in order to achieve this object.

Ultimately, the present Constitution came to be framed. The feature of the Indian Constitution is the establishment of a Government for governing

the entire country. In doing so, the Constitution prescribes the powers of the Central Government and the power of the State Governments and the

relations between the two. In a sense, if the word ''federation'' can be used at all, it is a federation of various States which were designated under

the Constitution for the purpose of efficient administration and governance of the country. The powers of the Centre and the States are demarcated

under the Constitution. It is futile to suggest that the States are independent, sovereign or autonomous units which had joined the federation under

certain conditions. No such State ever existed or acceded to the Union. When the Constitution was framed in Part XI of the Constitution he

relations between the Union and the States are set out. Arts. 245 to 248 of the Constitution demarcate the powers between the Centre and the

States. In Art. 246(4) it is provided that the Parliament has power to make laws with respect to any matter for any part of the territory of India not

included in a State notwithstanding that such matter is a matter enumerated in the State List. Three Lists are drawn up in the Seventh Schedule. List

I is Union List, List II is State List and List III is concurrent List. It is significant that in List I Entry 97 it is provided that any other matter not

enumerated in List II or List III including any tax not mentioned in either of those Lists would fall within the purview of the Union List. This will

have to be read along with Art 248, which provides that the Parliament has exclusive power to make any law with respect to any matter no

enumerated in the Concurrent List or State List and that such power shall include the power of making any law imposing a tax not mentioned in any

of those lists. That the power of the Parliament extends to legislate in all matters not covered by Lists II and III cannot be questioned for, it ahs

been so laid down in Union of India v. Harbhajan Singh Dhillon, (1972) 83 ITR 582 (SC) . of the report, Chief Justice Sikri has Stated the

position thus--

At any rate, whatever doubt that may be on the interpretation of Entry 97, List I is removed by the wide terms of Art. 248, it is framed in the

widest possible terms. On its terms the only question to be asked is; Is the matter sought to be legislated included in List II or in List III or is the

tax sought to be levied mentioned in List II or in List III. No question has to be asked about List I. If the answer is in the negative, then it follows

that Parliament has power to make laws with respect to that matter of tax."" According to the Constitution, as construed by the Supreme Court,

there could be no difficulty in concluding that the States as such has no inherent power or autonomous power which cannot be encroached upon

by the Centre. The power of the Centre and the States will have to be looked for in the Lists and other Articles in the Constitution.

3. The theory of federation and the States having some powers apart from the Constitution is without any basis, for, it will be seen that under Art. 3

of the Constitution, the Parliament may by law form a new State by separation of territory from any State or by uniting two or more State or Parts

of States or by uniting any territory to a part of any State, increase the area of any State, diminish the area of any State, alter the boundaries of any

State and alter the name of any State. This has in fact been done. With a view to form linguistic States for the better administration, the boundaries

of the States were realigned in some States and new States were formed. If the words ''federation'' and ''autonomy'' have to be given any meaning,

certainly it would not mean that the States have any existence apart from that provided under the Constitution. The very fact that the President has

powers to take over the administration of the States, which is not disputed, would demolish the theory of nay independent or autonomous

existence of a State. These undeniable facts can give no room for the contention of the learned counsel for the petitioner that the Central

Government is no empowered to order an enquiry against State Ministers to the control of the Union Government. On the other hand, the proper

thing to do is to determine whether S. 3 of the Commissions of Inquiry Act, 1952 is intra vires the powers of the Central Government, and whether

the notification issued by the Central Government under S. 3 constituting what is known as Sarkaria Commission is valid. The learned counsel for

the petitioner did not question the competence of the Parliament to enact the Commissions of Inquiry Act, and it s validity was not questioned. But

what the learned counsel contended was that under S. 3 of the Act the notification should not only appoint a Commission of Inquiry for the

purpose of making an enquiry, but also specify the definite matter of public importance for the purpose of making the enquiry and that the persons

against whom the enquiry is directed also should be mentioned. In other words, according to the learned counsel, the notification is invalid, as it

fails to comply with the requirements of S. 3 of the Act. Referring to the actual notification, the learned counsel submitted that the purpose of

appointing the Commission of Inquiry is to enquire into the allegations namely.

1. the allegations contained in the memorandum dated 1-12-1975 received from Sarvshri K. Manoharan and G. Viswanathan, addressed to the

President; and

2. such of the allegations contained in the memorandum dated 4-11-1972, received from Sri M.G. Ramachandran and Memorandum dated 6-11-

1972, and 20-12-1972, received from Sri M. Kalayanasundaram M. P. as are specified in the Annexure to the notification.

The annexure refers to 27 allegations.

4. The contention of the learned counsel that the terms of reference do not refer to any definite matter of public importance with regard to the

memoranda submitted by K. Manoharan and G. Viswanathan, and that the absence of such a mention vitiates the notification is unaccepable for,

what S. 3 requires is that the Commission of Inquiry should be appointed for making an enquiry into any definite matter of public importance. That

the allegations contained in the memoranda are definite matters of public importance cannot be questioned. In State of Jammu and Kashmir Vs.

Bakshi Ghulam Mohammad, , the Supreme Court had occasion to deal with a Commission of Inquiry that was ordered against a Chief Minister,

who ceased to be the Chief Minister at the time when the Commission of Inquiry was ordered. The Court held that the fact that a person is no

longer in office does not affect the question whether his acts already done constitute matter of public importance and that if once it is admitted that

if he had been in office his acts would have been matters of public importance, that would be acknowledging that his acts were of that character. A

Minister, of course, holds a public office and his acts are necessarily public acts if they arise out of his office. If they are grave enough, they would

be matters of public importance. When it is alleged that a Minister has acquired vast wealth for himself, his relations and friends as was done here,

by abuse of his official position, there can be no question that the matter is of public importance. The court proceeded to observe--

It is of public importance that public men failing in their duty should be called upon to face the consequences. It is certainly a matter of importance

to the public that lapses on the part of the Ministers should be exposed. The cleanliness of public life in which the public should be vitally interested,

must be a matter of public importance. The people are entitled to know whether they have entrusted their affairs to an unworthy man"".

It is, therefore, clear that the subject-matter of the enquiry in this case is a matter of public importance. The learned counsel for the petitioner

attempted to show that it may be matter of public importance, but not a definite matter of public importance. We do not see any substance in this

contention, for the matters that are referred to the Commission of Inquiry are matters that are contained in the memoranda given by named person

and these allegations relate to definite matters. We have no doubt in coming to the conclusion that the requirements of S. 3 of the Act are complied

with.

5. It was next contended that it is necessary that the persons against whom the enquiry is sought to be proceeded should have been mentioned.

We do not see any warrant for this. Under S. 3 of the Act, the inquiry may relate to anything covered under the Act and it may not relate to any

person, as far instance, bomb explosion in a public place.

6. It is next contended that while the second item of allegations in the notification refers to the dates, and particulars are given in the annexure, so

far as the allegations contained in the memorandum dated 1-12-1975 are concerned on particulars are given. At this stage, when the enquiry was

ordered, the name and other particulars need not be mentioned. It is an enquiry into a matter of public importance relating to the allegation made

by particular persons. As to who are the persons that are to be proceeded against will be decided at a later stage and if any person is aggrieved,

he will have ample opportunity to defend himself before the Commission. The absence of mention of the names or the particulars of persons against

whom the enquiry is to be proceeded in the memo of 1-12-1975 will not vitiate the notification made under S. 3.

7. It was next contended that the notification on the face of it, is vitiated for it has not fulfilled the requirements of Art. 77 of the Constitution of

India. The notification is stated to be made by the Cabinet Secretariat. Department of Personnel and Administrative Reforms. In the preamble it is

stated as follows--

Whereas the Central Government is of opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making an inquiry into a

definite matter of public importance hereinafter specified.

Now, therefore, in exercise of the powers conferred by S. 3 of the Commissions of Inquiry Act, 1952 (60 of 1952), the Central Government

hereby consisting of a single member, namely, Shri Justice R. S. Sarkaria, Judge, Supreme Court of India.

The notification is made by the Cabinet Secretariat in its department of Personnel and Administrative Reforms. The notification is singed by Shri R.

K. Trivedi, Secretary to Government. The submission that was made by the learned counsel for the petitioner was that under Art. 77 all executive

action of the Government of India shall be expressed to be taken in the name of the President, that the present notification is not expressed to be

made in the name of the pressed to be made in the name of the President, and that therefore, it is bad. Art. 77(2) provides that orders and other

instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the

President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or

instrument made or executed by the President. Art 77(3) enables the President to make rules for the more convenient transaction of the business of

the Government of India, and for the allocation among Ministers for the said business. The learned counsel is rights when he says that the

notification is not expressed to have been taken by the President of India. Neither the requirements of Art. 77(2) is compile with as it is no

authenticated in the manner specified by the rules made by the President. But it has been held consistently by courts that the requirements of Art.

77 (10 and (2) are merely directory and not mandatory. The Government, if necessary, can lead evidence to prove that the proceedings were

taken according to the requirements of the Constitution and the rules. Apart from this, Art. 77(3) enables the President to make rules for the

convenient transaction of the business of the Government of India and for the allocation among Ministers of the said business. The Courts are

entitled to presume that the official acts are done in a proper manner. The present notification is signed by a Secretary to the Central Government.

In State of Uttar Pradesh Vs. Om Prakash Gupta, the Supreme Court in dealing with an order made by the Government of United Provinces,

signed by the Chief Secretary, held that the provisions of Art. 166(1)(2) are directory and substantial compliance with those provisions is sufficient.

The court further held that the impugned order in that case was made in the name of the State Government and it was singed by the Chief

Secretary and that, therefore, prima facie it is a valid order, and that the court need not go further. When the contention was raised that the

requirements of Art. 77 were not complied with, we called upon the learned Additional Solicitor General to inform us as to how the order came to

be passed. The learned Additional Solicitor General submitted that the decision was taken by the Cabinet as a whole and that the matter falls

within the provisions of Cabinet Secretariat under Items 20(a) and 20(d) under the heading ''Cabinet Secretaries-B Department of Personnel and

Administrative Reforms'' of the Government of India (Allocation of Business) Rules 1961. Item 20(a) relates to Prevention of Corruption

Act,1947, among other Acts. Item 20(d) relates to policy matters pertaining to vigilance and discipline among public servants. The learned

Solicitor General submitted that by virtue of the allocation of subjects to the Cabinet Secretariat, it has issued the notification in the present case

and that it is valid. It is not denied that the Minister is a public servant. In the writ petition the complaint that was made by the petitioner is found in

paragraph 9-F where it is alleged as follows:---

I submit that under these Rules, the matter coming under Entry 94 of List I or Entry 45 of List III have not been allocated to the Cabinet

Secretariat Department of Personnel and Administrative Reforms.

Entry 94 of List I is ''Inquiries, surveys and statistics of the purpose of any of the matter in this List'', and this includes Entry 97. The allocation of

the work is no the basis of any of the items in List I. The Government of India (allocation of Business) Rules, 1961 show that the Prevention of

Corruption Act and all policy matter pertaining to vigilance and discipline among public servants fall within the jurisdiction of the Cabinet

Secretariat. It was stated by the learned Additional Solicitor General that the decision to initiate proceedings was taken by the entire Cabinet. The

learned counsel for the petitioner submitted that without issuing a rule nisi, the counsel for the Central Government should not be heard. We are not

aware of any such rule. In order to verify the facts, it has been the practice of this court to ask the Government Pleader or the Central Government

counsel to state that facts or refer to relevant documents so that the court would be able to know whether the allegations made in the petition are

true or not, even before admitting the petition. The court is not precluded from getting facts from the opposite side at the time of admission stage.

Though the procedure as to entering caveat is not followed in this court, hearing the other side before admission is not unusual.

8. It was next contended that as the Tamil Nadu Public Men (Criminal Misconduct) Act 1973 (Act 2 of 1974) is in the statute book, no enquiry

could be ordered in respect of the misconduct of a Minister of a State under any other enactment. This submission is untenable in view of the

amended provision in S. 29 of the Act, which runs as follows---

The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein

shall exempt any public man from any proceeding by was of investigation or otherwise which might, apart from this Act, be instituted against him.

This provision, which was introduced by Tamil Nadu Act 16 of 1974, would make the contention of the learned counsel as one without any

substance. The learned counsel sought to get over the effect of the amended S. 29 by contending that that provisions is ultra vires the Legislative

powers of the State Government. Apart from stating so, he did not attempt to substantiate his contention. We see o reason to doubt the

competence of the State Legislature to enact the amended provision in S. 29 by Act 16 of 1974. It is, therefore, clear that an inquiry under the

Commissions of Inquiry Act, 1952 (Act 60 of 1952) is not barred by the existence of the Tamil Nadu Public Men (Criminal Misconduct) Act,

1973.

9. It was submitted that the various allegations listed in the annexure to the notification are stale and are included in the notification on political

grounds. It was further submitted that after the allegations were made in 1972, a bye-election intervened and the party came out successful with

huge majority. We do not see any relevance between the party being returned with a huge majority and the enquiry being proceeded with

regarding the allegations made about the misconduct of the Ministers before the bye-election.

10. The contention that over two years had elapsed between the date when the allegations were made originally and the date of the ordering of the

enquiry would not affect the validity of the notification. There might have been several reasons for the enquiry being postponed and it is not

necessary for us to go into it. It is sufficient to say that the delay by itself would not make an enquiry illegal.

11. On a consideration of all the contentions made by the learned counsel for the petitioner, we feel that there is no substance in this petition which

has to be dismissed in limine, It is accordingly dismissed.

12. Petition dismissed.