Dwijendra Mohan Banerjee Vs State of West Bengal and Others

None

Court: Calcutta High Court

Date of Decision: Aug. 17, 1967

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Section 10, 9#Commissions of Inquiry Act, 1952 â€" Section 3, 4, 5#Penal Code, 1860 (IPC) â€" Section 147, 379, 461

Citation: 71 CWN 912

Hon'ble Judges: B.C. Mitra, J

Bench: Single Bench

Advocate: Nani Coomar Chakravarty, Anil Kumar Sen and Madhusudan Banerjee, for the Appellant;A.K. Dutta, Advocate-General, S.K. Acharya and Jogen Haldar, for the Respondent

Judgement

B.C. Mitra, J.
This application for injunction arises out of a writ petition, in which a rule nisi has been issued by this Court on June 19,

1967. The circumstances leading to the issue of the rule nisi and the present application are briefly set out hereunder.

2. The Petitioner is an Inspector of Police, Government of West Bengal, and was at the material time, Officer-in-Charge of the Howrah Police

Station. Some Muslim stall-holders claimed a right to say their prayers in a room at the Mimani Mongla Hat at Howrah. This claim was disowned

by the lessee of the ''Hat''. It is alleged that the room in which prayers used to be offered by the Muslim stall-holders was demolished by the lessee.

The "Hat" is held every Tuesday, when it becomes a public place, but it remains a private property for the rest of the week. On May 17, 1967, the

Petitioners submitted a report to the Sub-Divisional Officer, Howrah, praying for an order u/s 144 of the Code of Criminal Procedure, against the

lessee of the "Hat" and his employees restraining them from interfering with the right of the Muslim to say their prayers on "Hat" days. On the basis

of this report a proceeding was drawn up by the Sub-Divisional Officer, Howrah.

3. On May 22, 1967, the lessee submitted a petition before the Sub-Divisional Officer, complaining that some Muslims were trying to forcibly

enter into the ''Hat'' premises on that day, which was not a Hat day, by forming an unlawful assembly and that there was an apprehension of breach

of the peace. On the same day the Sub-Divisional Officer made an order directing the police to maintain peace. Later on the same day, one Md.

Ilias, who is alleged to be a member of the Communist Party, and several of his followers are alleged to have come to the Police Station and

demanded that the ''Hat'' gate should be broken open. He was informed that no action could be taken without an order from the Court. Thereafter,

one Amjed Ali lodged a First Information Report at the Howrah Police Station, that a cognizable offence of wrongful confinement inside the said

Hat, of his father Babar Ali since 11.30 a.m. of the same day had been committed. It is alleged that this complaint was false and was made with a

view to induce the police to force open the ''Hat'' in course of the investigation of the false complaint. Pursuant to this First Information Report, the

Howrah Police Station Case No. 62 was started and Sub-Inspector J. Banerjee was deputed to investigate and rescue the said Babar Ali. As

soon as the gate of the ''Hat'' was opened for the purpose of enquiry, a Muslim mob., it is alleged, made a forcible entry into the ''Hat'' which led to

a serious deterioration of the law and order situation. Thereupon, the Petitioner went to the place of occurrence and tried to persuade Md. Ilias

and his associates not to excite the mob to violence and increase communal tension. It is alleged that in spite of the Petitioner''s request the said

Md. Ilias continued to excite the Muslims and also threatened to commit riot and arson. It is further alleged that under these circumstances the

Petitioner put the said Md. Ilias under preventive arrest u/s 152 of the Code of Criminal Procedure.

4. Later, in the same day, the District Magistrate, Howrah, came to the Police Station, followed a little later by the Superintendent of Police,

Howarh. The District Magistrate ordered the release of the said Md. Ilias and others, although the Police Station Case No. 63 under Sections

147/461 and 379 of the Indian Penal Code was started against him on a formal first information report. The release of Md. Ilias was followed by

serious expression of mob fury at the Police Station itself, in the presence of the District Magistrate and the Superintendent of Police and this, it is

alleged, went on for five hours in course of which the Police Station was ransacked, valuable records burnt, and police personnel were beaten up.

It is alleged that the Petitioner''s residence was raided and his wife was subjected to abuse. The mob was incited to beat up the Petitioner, who to

protect his life, took shelter in the quarters of the Second Officer within the Police Station.

5. Shortly after the mob violence, Shri Hare Krishna Konar, Minister, Land and Land Revenue, Government of West Bengal, came to the Police

Station and is alleged to have directed that all the police staff should be put under arrest. At 8.30 p.m. on the same day, a Police Station Case No.

64 is alleged to have been started against the Petitioner on a blank first information form with a direction that the same should be filled up on the

following day and it is alleged that on May 23, 1967 the first information form was filled up on a complaint from Md. Ilias that the police officers

formed an unlawful assembly and had wrongfully confined him on May 22, 1967. The Petitioner was mentioned as an accused in this first

information report along with others. The Petitioner was thereafter arrested and released on bail and was also served with an order of suspension

dated May 22, 1967. It is this order of arrest and suspension which is the subject matter of the writ petition, on which a rule nisi has been issued

by this Court, on June 19, 1967.

6. By a Notification dated May 26, 1967 the Government of West Bengal appointed a Commission of Enquiry u/s 3 of the Commissions Enquiry

Act, 1952, consisting of the Hon"ble Mr. Justice Alak Chandra Gupta, a Judge of his Court to enquire into the disturbances which occurred in

Howrah town on May 22, 1967 with reference to the following matters:

(a) the nature, circumstances, causes and consequences of the disturbances;

(b) the manner in which the situation was dealt with;

(c) any other relevant factor having a bearing on the situation.

7. The Commission was required to submit its report to the State Government embodying its findings and recommendations, by August 19, 1967.

The present application is for an injunction restraining the Respondents from proceeding any further or taking any part or any further part in the

Commission of Enquiry.

8. The grounds on which this application is based are that it appears from the face of the record of the rule nisi issued by this Court, and the terms

of reference of the Commission of Enquiry that the subject matter awaiting adjudication by this Court in the said rule, is substantially the same as

the terms of reference of the Commission of Enquiry and also that the matters involved in the writ petition overlap the terms of reference of the

Commission of Enquiry. It is alleged that material evidence before the Commission of Enquiry will receive wide publicity as the enquiry is of great

public importance and publication of such materials will prejudice the Petitioner and would interfere with the course of justice, as a rule nisi issued

by this Court on the writ petition of the Petitioner is pending. It is next alleged that if the report of the Commission of Enquiry is completed and the

same is published pending disposal of the writ petition, the decision and the report of the Enquiry Commission would over some, if not all the issues

now awaiting adjudication in the writ petition. The next ground is that if the proceedings before the Enquiry Commission is allowed to be taken up

before the disposal of the writ petition by this Court, such proceedings, would affect the fair hearing of the writ petition and that the Petitioner has

reasonable grounds to apprehend that the enquiry and the public proceedings would affect the mind of this Court unconsciously, if not consciously,

and would thereby make it difficult for the Petitioner to have an unbiased decision on the merits of the rule itself. It is next alleged that the

Commission of Enquiry is a parallel Court of Enquiry and such enquiry is bound to result in unwarranted interference with the free flow of justice

and the due course thereof. The next contention of the applicant is that it may be necessary to have a rule heard on evidence, but if the proceedings

before the Enquiry Commission is allowed to commence and continue, with publication of the same, such proceedings are bound to prejudice the

public against the parties in the cause which is awaiting adjudication by this Court. It is further alleged that such proceedings and publication thereof

may make it impossible for the Petitioner and the other parties to the above rule to get unbiased or impartial evidence and the Petitioner would be

seriously prejudiced thereby.

9. It is on the grounds mentioned above that the Petitioner now prays for an order of injunction restraining the Respondents as mentioned above.

10. In support of the contentions mentioned above, Mr. Nani Coomar Chakravarty, learned Advocate for the Petitioner, firstly relied upon a Full

Bench decision of the Patna High Court reported in (1) The King Vs. Parmanand and Others, . In that case a first information was lodged relating

to the loss of 88 bags of rice. Upon investigation a charge-sheet was submitted against six persons, five of whom were the sent to the Sub-

Divisional Magistrate in custody and the sixth was absconding. Police conducted investigation and searched a coal depot of one of the accused

persons and recovered 24 bags of rice, two of which bore the identity marks which were the marks on the missing bags. One of the accused

persons was arrested while attempting to slip away and upon a statement made by him, 45 bags of rice, 7 of which bore identical marks were

recovered from a brick kiln. Summons were issued to the accused who had been released on bail. Two of the accused persons sent a petition to

the Prime Minster of the Province of Bihar praying for stay of criminal proceedings and for a hearing through Counsel. Thereafter the Chief

Secretary to the Government wrote a letter to the Additional Deputy Commissioner of Jamshedpur, asking the latter to submit a report to the

Government, on the petition made by the accused to the Prime Minister, and also requested the Additional Deputy Commissioner to get the case

adjourned until further orders. The Deputy Commissioner in his turn forwarded the letter to the Sub-Divisional Officer of Dhalbhum, for a report

and with a direction that the case should be adjourned until further orders. The Sub-Divisional Officer in his turn sent the letter of the Chief

Secretary to the City Magistrate of Jamshedpur with a request to prepare a report. The City Magistrate directed Bench Clerk of the trying

Magistrate to show the letter to the trying Magistrate for adjournment of the case. A report was prepared in which points in favour and against the

accused were noted by the City Magistrate, the Sub-Divisional Magistrate summing up the report with his own notes on the same. On this report,

Government decided not to proceed with the prosecution and there was a letter from the Deputy Commissioner that the case against two of the

accused should be withdrawn. The City Magistrate accordingly made an order discharging two of the accused persons. Upon this order being

made a rule was issued by the Criminal Bench of the Patna High Court calling upon the two accused persons, who were discharged, as well as the

Deputy Commissioner of Singhbhum to show cause why the Magistrate''s order should not be set aside and the prosecution proceeded with.

Reliance was strongly placed by Mr. Chakravarty upon the observations of Narayan, J. at page 229 of the report which are as follows:

But as from the arguments advanced by the learned Advocate-General and from the letter addressed to the Deputy Commissioner by the

Superintendent and Remembrancer of Legal Affairs, it appears that the legal advisers of Government were under the impression that the

Government could order a summary or full-dress enquiry for the purpose of satisfying themselves whether the prosecution was likely to end in

conviction or not, it must be pointed out that any enquiry with regard to a matter which is sub judice is bound to interfere with the even and

ordinary course of justice. It is a cardinal principle that when a matter is pending for decision before a Court of Justice nothing should be done

which might disturb the free course of justice and this Court will discountenance any attempt on the part of any executive official, however high he

may be, to prejudge the merits of a case and to usurp the functions of the Court which has got seisin of the case. Such a practice is fraught with

immense danger, and I was surprised to hear the learned Advocate contending that a parallel enquiry could be started by the Government. If we

accede to the argument of the learned Advocate-General that a parallel enquiry can be started, we will be opening the door for contempt and

impediment in the course of justice. Once the principle is accepted that the Government are free to hold a separate enquiry, it would be impossible

to impose any limit as to the nature and the scope of such an enquiry.

Relying upon these observations, it was argued that what the State Government was trying to do in this case was to hold a parallel enquiry on a

subject matter which was sub judice before this Court in the writ petition. It was submitted that such a parallel enquiry could not be held and must,

therefore, be restrained.

11. The next case relied upon by Mr. Chakravarty was a decision of the Andhra Pradesh High Court reported in (2) D. Jones Shield Vs. N.

Ramesam and Others, . That was an application for committal of the Respondents for contempt under Sections 3 and 4 of the Contempt of Courts

Act, 1952. The complaint was filed by a clerk in the Revenue Officer for breach of trust against a Stationery Sub-Magistrate. This complaint was

dismissed by an Additional First Class Magistrate and a criminal revision was preferred against the order of dismissal to the Sessions Judge,

Guntur. The contempt petition was filed on the ground that pending the revision case the Respondents did some acts which interfered with due

course of justice and they were, therefore, liable to be punished for contempt. At the trial of the criminal revision case, it was stated by the Public

Prosecutor, who was the Respondent No. 3 that the allegations in the revision petition against the Sub-Magistrate were false and that the

Respondents Nos. 1 and 2, namely, the District Collector and Magistrate and his Personal Assistant respectively had held a departmental enquiry

into the matter and came to the conclusion that they were false and that intimation was sent to the Government accordingly. It was alleged that the

District Magistrate and his Personal Assistant, with the knowledge that the matter was sub judice, communicated the result of the departmental

enquiry to the Government and to the Public Prosecutor and thereby prejudiced the mind of the Judge and obstructed the due course of justice.

Subba Rao, C.J., quoted with approval the observations of Narayan, J. in (1) The King Vs. Parmanand and Others, . It was, however, held on the

facts that the District Collector did not conduct any parallel enquiry during the crucial period.

12. The next case relied upon by Mr. Chakravarty is a Bench decision of the Orissa High Court reported in (3) AIR 1955 Ori 169 (The State v.

Biswanath Mohapatra). That was a rule on the editor and publisher of a weekly newspaper for contempt of Court on the ground that during the

pendency of a case before the Munsif-Magistrate, the editor published an article in this weekly newspaper which had a tendency to interfere with

the free course of justice. Narasimham, J. held that article had a tendency to interfere with the fair trial of the case then pending. Relying upon this

decision, it was argued, that if the enquiry before the Enquiry Commission was allowed to be proceeded with, reports of the proceedings before

the Enquiry Commission would be published from day to day and such publication, it was argued, was bound to interfere with the course of

justice.

13. The next case relied upon by Mr. Chakravarty is a decision of this Court reported in (4) In Re: P.C. Sen, Chief Minister of West Bengal, .

After referring to a Bench decision of the Madras High Court in a contempt petition against Prime Minister Nehru, Banerjee, J. held at page 600 of

the report:

Prejudicing mankind for or against a party, before his case has been heard out, is contempt. Prejudicial criticisms do not fall outside the ambit of

the law of contempt, only because the criticisms were bonafide made, or made in a public interest supposed or real.

Relying upon this decision it was argued that if the Enquiry Commission was allowed to proceed with the enquiry, the publication of the

proceedings before Enquiry Commission, as also of the report, was bound to prejudice the public at large either for or against the Petitioner and,

therefore, if the proceedings were allowed to be continued and concluded, there would be clear contempt of this Court which had seisin of the

matter relating to the arrest and order of suspension of the Petitioner. The order for arrest and suspension of the Petitioner, it was argued was

inextricably mixed up with the disturbances in the town of Howrah which was the subject matter of the enquiry. Therefore, it was argued, it could

not be said that the enquiry could be held without touching the matters which were sub judice in this Court.

14. The next case relied upon by Mr. Chakravarty was a decision of the Supreme Court in (5) Saibal Kumar Gupta and Others Vs. B.K. Sen and

Another, . In that case, during the pendency of a criminal proceeding in a Magistrate''s Court as well in this Court, the Calcutta Corporation set up

a special committee to enquiry into the conduct of certain employees of the Corporation, including the Commissioner, who were alleged to have

been taking advantage of their offices in carrying on business in their own name. The Enquiry Commission sent a questionnaire to the

Commissioner to find out if the latter appointed certain persons who were related to the prosecution witnesses in the criminal case, or were helping

him in conducting his defence in that case. One of the questions to be decided in the proceedings before this Court was whether a Commissioner

had suborned the prosecution witnesses in the criminal case. Reliance was placed on the dissenting judgment of Subba Rao, J. (as he then was)

and it was contended that although Subba Rao, J. came to a different conclusion the proposition of law stated by his Lordship was not different

from the majority view. After relying upon the observations of Lord Hardwicke, L.C. in (6) In re Read and Huggonson. (1742) 2 Atk. 469 as

follows:

There may also be a contempt of this Court, in prejudicing mankind against persons before the cause is heard. There cannot be anything of greater

consequence, than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their character.

Subba Rao, J. held that it was settled law that a person would be guilty of the contempt if the act done by him was intended or calculated or likely

to interfere with the course of justice. Relying upon these observations it was argued that there could be no doubt that if the Commission of Enquiry

was allowed to proceed with the enquiry and to make its report, the course of justice would be interfered with.

15. Reliance was also placed by Mr. Chakravarty on another decision of the Supreme Court in (7) Gurcharan Das Chadha Vs. State of

Rajasthan, . In that case while a petition u/s 527 of the Code of Criminal Procedure was pending in the Supreme Court, the State Government

served the Petitioner with a notice and a charge-sheet to show cause why he should not be proceeded against for breach of Rule No. 8 of the All

India Service (Conduct) Rules, 1954, as he had communicated official documents and information to Government servants and other persons to

whom he was not authorised to communicate such documents and information. It was held that serious view would have been taken, but for the

unconditional apology as the charge-sheet would have hampered the Petitioner in prosecuting his petition freely before the Supreme Court and

would have resulted in obstruction of administration of justice. It was further held that if the Petitioner was guilty of any lapse under the Service

Rules the action against him could wait till the proceedings before the Supreme Court had terminated and charge against the Petitioner, which

charge put him under duress of some kind. The points involved in this case, however, do not support the contentions of the Petitioner in this case

as the facts in this case are entirely different.

16. Relying upon the decisions mentioned above, Mr. Chakravarty submitted that there was no doubt that if the Commission of Enquiry was

allowed to continue and to make a report the parties responsible for conducting the enquiry would be guilty of contempt, as the subject matter of

enquiry was the same as the subject matter of the Petitioner"s case in the writ petition. It was also argued that this Court had jurisdiction to restrain

proceedings which would involve a contempt of Court and in support of this contention reliance was placed on Oswald on Contempt of Court, 3rd

Edition, page 16, where it has been stated that the Court has power to restrain by injunction threatened contempts. Reliance was placed on (8)

Lewis v. Janes, (1886) 3 TLR 527. In that case a material witness, a woman, was induced to conceal herself so that she might not give evidence

and it was held that the party responsible for such conduct was guilty of contempt and was made to pay the cost of the motion. This decision,

however, is not an authority for the proposition that the Court has power to restrain by injunction threatened contempts.

17. Reliance was also placed on another English decision in (9) J.P. Coats v. Chadwick, (1894) 1 Ch. 347. In that case the Plaintiff who were the

manufacturers of sewing cotton on a large scale, commenced an action against the Defendants who also manufactured sewing cotton, for an

injunction restraining them from infringing the Plaintiff"s trade mark and also for an injunction restraining them from representing by wrapper, labels

or otherwise that the goods made and sold by the Defendants were the goods of the Plaintiffs. On the day the Plaintiffs issued their writ they sent

out a circular to the retail dealers in which they complained that the Defendants had attempted to injure the Plaintiffs" trade by falsely representing

the Defendant"s goods to be that of the Plaintiff"s and also by imitating labels and other marks for that purpose. The Plaintiffs also stated in the

circular that they had commenced proceedings against the Defendants and also have been compelled to take proceedings against the retail dealers

for selling goods manufactured by the Defendants with labels which were an imitation of the Plaintiffs" goods. The Defendants moved the Court for

an injunction to restrain the Plaintiffs from issuing the circular or any other circular intended or circulated to prejudice or impede the fair trial of the

action. Chitty, J. held that it was competent for the Court where a contempt was threatened or had been committed to take the more lenient course

of granting an injunction in preference to making an order for committal or sequestration and also that the Plaintiffs were bound to refrain during the

pendency of the action from public discussion on merits or demerits of the case.

18. There is one other decision which has been relied upon by Mr. Chakravarty to which I should refer before proceeding to deal with the

contentions of the Respondents. That is the decision of this Court reported in (10) ILR 5 Cal. 86 (Dharanidhar Sen and Ors. v. The Agra Bank).

A passage from Druri on Injunction that it was immaterial where or what the Court was in which the proceedings were sought to be restrained

provided that the party sought to be restrained was amenable to the jurisdiction and was capable of being acted on by the process of contempt of

Court, was quoted with approval and the Defendants in that case were restrained by perpetual injunction from taking further proceedings against

the Plaintiffs.

19. I shall now proceed to deal with the contentions of the learned Advocate-General appearing for the Respondents. Before proceeding to deal

with these contentions, there is one matter to which I must refer at this stage. An affidavit-in-opposition has been affirmed on August 5, 1967 by

Krishna Govinda Basu, Joint Secretary, Home Department, Government of West Bengal. In paragraph 1 of this affidavit it was stated that the

deponent was authorised to affirm the affidavit on behalf of the Respondents/opposite parties and that the affidavit was affirmed on behalf of all the

Respondents/opposite parties. During the pendency of this application an oral application was made for filing a further affidavit-in-opposition as

some mistakes had been made in the said affidavit affirmed on August 5, 1967. Such leave was granted, and pursuant to such leave Krishna

Govinda Basu affirmed a supplementary affidavit-in-opposition on August 10, 1967, in paragraph 2 of which it was stated in that the affidavit

affirmed on August 5, 1967 was wrongly described to be an affidavit on behalf of the opposite parties Nos. 1 to 8 and that the said affidavit was

on behalf only of the State of West Bengal (Respondent No. 1), the District Magistrate, Howrah (Respondent No. 3) and Shri Hare Krishna

Konar (Respondent No. 8). In paragraph 3 of the said supplementary affidavit it has been stated that the affidavit-in-opposition affirmed on the 5th

August 1967 was drawn up on the basis of written instructions from the instructing police officer on August 3, 1967. It has been further stated that

on August 8, 1967, further instructions were received from Shri U. Mukherjee, Inspector General of Police, West Bengal, that he had strongly

advised the District Magistrate and the Superintendent of Police against the suspension order of the Officer-in-Charge, Howrah Police Station on

the basis of the materials that were at that time reported to the Inspector General of Police. Quite Plainly the Inspector General of Police

dissociated himself from the statements made in the affidavit-in-opposition affirmed on August 5, 1967, and also from the arrest and suspension of

the Petitioner. So far as this application is concerned, the divergence between the affidavit affirmed on August 5, 1967 and the further affidavit

affirmed on August 10, 1967, by the Joint Secretary to the Government of West Bengal, may not have much material bearing, but the facts

disclosed in the said two affidavits cannot be overlooked or ignored by this Court, even though the only question now is if an injunction ought to be

issued restraining the Respondents from proceeding with the enquiry before the Commission of Enquiry. Having regard to this state of affairs, when

statements made on oath had to be recalled or modified by further statements similarly made on oath, the learned Advocate General perhaps

wisely refrained from relying on the affidavit-in-opposition and also the supplementary affidavit-in-opposition and commenced his arguments by

submitting that he would proceed on the basis of the statements in the petition, assuming every word therein to be true and would contest this

application only on questions of law. So far as this application is concerned, I need say nothing more regarding the divergence between the two

affidavits mentioned above.

20. The first contention of the learned Advocate General was that suspension of an Inspector of Police by way of punishment could be made by

the Inspector General of Police alone and that suspension of an Inspector of Police pending enquiry, could be made by a Superintendent of Police.

In this case, it was argued, the suspension was not by way of punishment, but was a suspension pending investigation into the conduct of the

Petitioner and, therefore, the suspension order was valid and lawful. Reliance was placed in support this contention on sub-paragraph (2) of

Regulation 858 of the Police Regulations. I must at once point out that I am not concerned in this application with the legality, validity or propriety

of the order of suspension made against the Petitioner. That is a matter to be gone into at the hearing of the rule.

21. The next contention of the learned Advocate-General was that the Commissioner of Enquiry had been appointed u/s 3 of the Commissions

Enquiry Act, 1952. The Enquiry Commission, it was argued, was a statutory Tribunal and its powers have been defined and laid down in Sections

4 and 5 of the said Act. The Enquiry Commission, it was argued, had all the powers of a Civil Court under the CPC in respect of various matters

set out u/s 4 of the Act. It was argued that because the Enquiry Commission was a statutory Commission and because it had its powers defined by

the statute itself, there could be no question of contempt of Court, even if the enquiry before the Commission was a parallel enquiry and even if

such enquiry took into consideration matters which were the subject matter of the rule pending before this Court. It was, therefore, argued that as

there would be no contempt of Court if the Commission proceeded to enquiry into the matters, no injunction could be issued by this Court to

restrain the Enquiry Commission from proceeding to discharge its duties on the basis of the terms of reference.

22. The next contention of the learned Advocate-General was that nothing has been done by the Enquiry Commission yet, which would amount to

a contempt of Court. It was argued that prayer for injunction was based on the apprehension that something might be done by the Enquiry

Commission in future which would amount to a contempt of Court. It was submitted that merely because something might be done in future which

would amount to a contempt of Court, the injunction prayed for should not be granted.

23. The next contention of the learned Advocate-General was that the Petitioner had appeared before the Enquiry Commission and had applied to

the State Government for leave to file a separate statement. It was therefore clear, it was argued, that the Petitioner himself wanted to appear

before the Commission and proceed with the enquiry and therefore an injunction restraining the Respondents from proceeding with the enquiry

should not be granted on the prayer of Petitioner, who himself wanted to proceed with the enquiry. It was also submitted that besides the

Respondents, various other parties might appear before the Enquiry Commission, and even if the injunction prayed for was granted restraining the

Respondents from proceeding with the enquiry, the Enquiry Commission would be at liberty to proceed with the enquiry on the basis the

statements filed by various other parties. Therefore, it was submitted, the injunction even if granted by this Court, would be infructuous and

ineffective as it would not touch or restrain the various other parties who are not before this Court in this application.

24. The next contention of the learned Advocate-General was that the enquiry by the Commission of Enquiry could not be said to be a parallel

enquiry as it was done under the Commission of Enquiry Act, 1952. In support of this contention reliance was placed on a Bench decision of this

Court reported in (11) Jhulan Singh Vs. D.C. Ghatak and Another, . In that case the question was whether a departmental enquiry against an

employee on a charge of misdemeanour was contempt of Court when a criminal case was pending on the same subject matter. It was held that the

departmental proceedings or findings should not affect the mind of the Magistrate who was to deal with the case that arose from the charge-sheet

submitted against the employee. Reliance was also placed on a decision of the Supreme Court in (12) The Delhi Cloth and General Mills Ltd. Vs.

Kushal Bhan, . In that case it was held that it could not be said that principles of natural justice required that an employer must not proceed with

the enquiry into the misdemeanour of an employee pending a criminal trial. But it was added, however, that if the case was of a grave nature or

involved questions of fact or law which were not simple, it would be advisable for the employer to await the decision of the trial Court so that the

defence of the employee in the criminal case might not be prejudiced. These two decisions relied upon by the learned Advocate-General, to my

mind, do not support the contentions raised by him. In the Delhi Cloth and Jute Mills case (supra) the question was not one of contempt, but

whether rules of natural justice required that the domestic enquiry should be stayed during the pendency of the criminal case. In Jhulan Singh''s

case, this Court relied upon the decision of the Supreme Court for the proposition that the employer had the right to deal with the misdemeanour of

the employee even when a criminal case was pending on the same subject matter. The question discussed in both the cases related to the

employer''s right to proceed with the departmental enquiry pending a criminal case. The question whether a parallel and overlapping enquiry by a

Tribunal on a matter which was sub judice in a pending proceeding in a Court, would amount to a contempt of Court, was neither raised, nor

discussed.

25. I have dealt at length with the rival contentions of the parties in order to appreciate the issues involved in this application. On the facts, it is clear

that as the Commission of Enquiry has not proceed with the enquiry on the basis of the terms of reference yet beyond inviting statements it cannot

be said that any contempt of Court has been committed by the Respondents. The enquiry which is said to be overlapping in nature and parallel

with the matters now before this Court in the writ petition, has not commenced yet, although it appears that statements have been filed by the

various parties before the Commission of Enquiry. The question, therefore, is, should the Respondents be restrained by an injunction from

proceeding with the enquiry? The further question is has this Court the power to restrain an enquiry before it is commenced on the ground of a

threatened contempt? The next question is, should this Court restrain the proceedings before the Commission of Enquiry or should this Court wait

until the enquiry has been proceeded with or a report made and then proceeded to deal with the Respondents on the ground that a contempt of

Court has been committed?

26. To my mind, and I say this without any hesitation, this Court ought not to stay its hands and allow the proceedings before the Commission of

Enquiry to commence and then proceed to deal with the parties for contempt of Court. Since the attention of the Court has been drawn to the

terms of reference of the Commission of Enquiry, which to my mind, clearly involves a probe into matters which are directly and substantially the

matters in issue in the writ petition this Court must restrain the proceedings and not allow the same to be proceeded with, as I am satisfied that the

matters which would be investigated before the Commission of Enquiry, must of necessity include the matters which led to the arrest and the order

of suspension made against the Petitioner. A glance at the terms of the reference to the Commission of Enquiry will make it abundantly clear that

Clauses (a) and (b) of these terms would embrace and indeed they demand a probe into the questions which are the subject matter of the writ

petition now pending before this Court. To put it in the words of Lord Hardwicke, L.C. ""the streams of justice cannot be kept clear and pure"" if

the enquiry is allowed to be proceeded with, with all the glare of attendant publicity. The enquiry, it cannot be overlooked, would be a public

enquiry in which the public at large have a right to participate in such an enquiry, things are bound to be said or done, which would prejudice the

public at large either against the Petitioner or the State Government and its employees with regard to matters which are sub judice in this Court.

The authorities to which reference has been made earlier in this judgment make it quite clear that publicity with regard to matters pending before

the Court which would have the effect of prejudicing the public at large against the parties to the proceedings before a Court, must be stopped and

punished. If such publicity can be punished by this Court on the ground of contempt it can, in my view, be stopped as well and must be so

stopped, by restraining the parts from proceeding with the enquiry before the Commission of Enquiry.

27. The learned Advocate-General strenuously argued that since a parallel enquiry or investigation into the same mattes by another Court was not

contempt. The enquiry by the Commission of Enquiry into matters which were the subject matter of the writ petition, would also not amount to

contempt of Court.

There is, in my view, no substance in this contention. Proceedings in one Court, civil or criminal, which involve issues which are the subject matter

of a proceeding in another Court do not amount to contempt. Jurisdiction on Civil Court to try all suits of a civil nature has been conferred by

Section 9 of the Code of Civil Procedure. So far as Civil Courts are concerned, their jurisdiction to proceed with the trial of suits of a civil nature

cannot be assailed on the ground that the trial of the suit would lead to an investigation into matters which were the subject matter of another suit or

proceedings. But even then Section 10 of the CPC forbids of a Court to proceed with the trial of any suit in the matter in issue is directly and

substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim, where such

suit is pending in the same or in any other Court in India. Even in cases where a pending proceeding cannot be brought strictly within the terms of

Section 10 of the Code of Civil Procedure, this Court has the inherent power which it has exercised whenever occasion demanded to restrain

parties in another suit pending before another Court, from proceeding with the suit in the other Court. In a criminal proceeding the matter

investigated by the Criminal Court cannot, in my view, be said to be a parallel enquiry, as all that the criminal Court is concerned with is if the

offence with which the accused is charged has been proved to the satisfaction of the Court. In a criminal trial the Court is in no way concerned with

the claim or liability or satisfaction thereof, of one party to the other. For these reasons, the contention of the learned Advocate-General even if the

proceedings before the Commission of Enquiry overlap or involve an investigation into matters which are the subject matter of the writ petition now

pending before this Court, the proceedings before the Commission of Enquiry would not amount to a contempt of Court, must be rejected.

28. It was argued by the learned Advocate-General that the enquiry by the Commission of Enquiry was a statutory enquiry under the Commission

of Enquiry Act and that the Commission of Enquiry had all the powers of a Civil Court and therefore there was no question of contempt of Court.

this contention of the learned Advocate-General cannot be accepted. The Commission of Enquiry has been created by a notification published by

the Government of West Bengal and it cannot by any means be equated to a Court under the CPC or under the Code of Criminal Procedure. It

cannot be overlooked that the Government of West Bengal can by another Notification cancel or revoke the Notification by which the

Commission of Enquiry was created and thereupon the Commission of Enquiry will cease to exist. The powers conferred upon a Commission of

Enquiry u/s 4 of the Commission of Enquiry Act, 1952, wide though such powers are, do not make the Commission of Enquiry a Court under the

CPC or the Code of Criminal Procedure. The Enquiry Commission has been set in motion by a Notification published by the State Government

and it can be set at rest also by another Notification recalling or canceling the Notification by which the Commission of Enquiry was appointed.

29. The learned Advocate-General did not contend that the terms of reference of the Commission of Enquiry did not involved an investigation into

mattes which were the subject matter of the writ petition, nor it argued that the enquiry would not be a parallel enquiry into matters which were

pending adjudication by this Court. His argument was that even if the enquiry by the Commission of Enquiry was a parallel enquiry into matters

which were pending adjudication in the writ petition, it could not be stopped by this Court as such enquiry, even if allowed to be continued and

completed, would not amount to a contempt of Court. This contention of the learned Advocate-General cannot be accepted.

30. To turn now to the last contention of the learned Advocate-General that the injunction on the Respondents would leave all other parties, who

are not before this Court, free to proceed with the enquiry, I am not concerned in this application with what other parties might do in future. If

grounds exist as they do in my view, for restraining the Respondents from proceeding with the enquiry before the Commission of Enquiry, an

injunction ought to be issued as prayed for. But there should also be an injunction restraining the Petitioner from appearing before the Commission

of Enquiry and taking any part therein. The injunction, however, must be a limited one and should remain in force only until disposal of the writ

petition pending before this Court.

31. For the reasons mentioned above, there should be an injunction restraining the Petitioner and the Respondents from proceeding any further or

taking any further part in the Commission of Enquiry appointed by the Notification dated May 26, 1967. The injunction should remain in force until

disposal of the writ petition by this Court. Liberty is given to both parties to apply for early hearing of the writ petition. Costs of this application to

abide by the result of the Rule.