

Vijay Mehta Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-14-1979

Reported in : AIR1980Raj207; 1980()WLN288

Judge : S.K. Mal Lodha, J.

Acts : [Constitution of India](#) - Articles 51A and 226; [Commissions of Inquiry Act, 1952](#) - Sections 3

Appeal No. : Civil Writ Petn. No. 1107 of 1979

Appellant : Vijay Mehta

Respondent : State of Rajasthan

Advocate for Def. : D.S. Shisodia, Govt. Adv.

Advocate for Pet/Ap. : M. Mridul, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

S.K. Mal Lodha, J.

1. This writ petition under Article 226 of the Constitution raises a short but interesting question regarding locus standi of the petitioner to maintain the petition

in which he has sought issuance of appropriate writ, direction or order against the respondent (State of Rajasthan) to appoint a Commission of Inquiry headed by a Judge of this Court for the purpose of making inquiry into the following:--

1. Whether there has been a change in the cycle of climate so that heavy rains will continue to come to this area?
2. Has there been any failure on the part of any government agency in taking steps to prevent the breach of dam?
3. Was it possible for the government officials to have conveyed information of the incoming flood to all or any parts of the flood affected areas?
4. Did any government official fail to convey information even though it was possible so to do and what were the reasons therefor?
5. What is the extent of damage caused to human life and to property?
6. What measures are to be taken to rehabilitate those who have been affected by these flood waters both from the point of view of immediate steps and long term steps?
7. What steps should be taken to prevent recurrence of flood, and
8. What machinery be devised whereby people can be informed well in advance of the incoming flood so that they may shift to safe areas?

2. The writ petition came up for admission on August 7, 1979 when I ordered issuance of a notice to the respondent to show cause as to why it be not admitted? Reply to show cause notice was filed on behalf of the respondent on Sept. 21, 1979. When it came up for admission on Nov. 12, 1979, learned Government Advocate urged on behalf of the respondent that the petitioner has no locus standi to file this petition. As the question related to the maintainability of the writ petition, I heard it at considerable length and now I proceed to decide it.

3. In para A/2 of the writ petition, the petitioner has stated that he is at present Secretary of the Jodhpur City Committee of the Communist Party of India and a

member of the Rajasthan State Communist Party. In para E, he has stated that he is entitled to invoke jurisdiction of this Court for enforcement of fundamental duties cast upon him by Clauses (g), (i) and (j) of Article 51A of the Constitution and that this Court may exercise its jurisdiction under Article 226 for enforcement of his fundamental duties which he has not been able to do on account of failure on the part of the Executive Government to help him so to do. In reply to the show cause notice, the respondent has stated that having regard to the scheme and purport of the [Commissions of Inquiry Act, 1952](#) (No. LX of 1952) (for short, 'the Act' hereafter), the petitioner has no locus standi to maintain the petition, for, the inquiry under the Act is not a judicial inquiry and the object of constituting a Commission of Inquiry is simply to enable the Government to make up its mind as to what legislative and administrative measures should be adopted to eradicate the evil found or to implement the beneficial object it has in view, and that it is merely a fact finding body for the benefit of the Government. According to the respondent, there is no statutory or other obligation upon the State Government to appoint a Commission of Inquiry even if there is a definite matter of public importance. It has also been stated that the petitioner is not entitled to ask for the reliefs mentioned above as there vests no right in him which he seeks to enforce. TO quote from the reply, the case of the respondent in this regard further is,--

'That the petitioner being a resident of Jodhpur was not at all personally or otherwise affected by the aforesaid floods. Even otherwise, the petitioner has suffered no legal grievances so as to be entitled him to ask for a mandamus. The petitioner's legal right has not been infringed and hence, this writ petition is not maintainable.'

It was asserted that the petitioner has no vested right, constitutional or at common law, to compel the State Government to appoint a Commission of Inquiry, for, there is no question of any discrimination. In rejoinder, in para 2, the petitioner has averred that on account of what happened to the flood stricken areas, the economy and the life of the city of Jodhpur was seriously affected and it caused a great mental and emotional suffering to the citizens of Jodhpur including the petitioner. It may also be mentioned that the petitioner, in para C/2 of the writ petition, has stated that demand was made from all sides for appointment of a

Commission of Inquiry headed by a Judge of this Court; that such demand was made by various political parties including the Communist Party of India and by the Indian National Congress and by several other public bodies. He has referred to the demand made by Shri Mathuradas Mathur--a Congress M.L.A. and a leader of the Congress Legislative Party in Rajasthan Vidhan Sabha, and also to a demand made in a Press Conference held on July 28, 1979. It has been stated that demand for appointment of a Commission of Inquiry was also made when he met Shri Bhairon Singh Shekhawat, Chief Minister of the State on July 29, 1979 but nothing was done in the matter and the State Government did not find it convenient to institute an inquiry by appointment of a Commission. In this state of pleadings, I am called upon to determine the aforesaid question.

4. It will be pertinent here to read relevant part of Section 3 of the Act,--

'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 the House of the People or, as the case may be, the Legislative Assembly 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.....'

Ss. 4 and 5 of the Act deal with the powers of Commission and additional powers of Commission respectively. Then comes Section 11 which bestows on a Commission appointed otherwise than under Section 3 of the Act the status of a Commission appointed under the Act if a notification in that behalf is issued by the appropriate Government. According to Sub-section (1) of Section 3, it is incumbent upon an appropriate Government to appoint a Commission of Inquiry in a case where a resolution in that behalf is passed by the House of the People or, as the case may be, the Legislative Assembly of the State. In other words, there is a statutory obligation on the appropriate Government to appoint a Commission of Inquiry in case a resolution in that behalf is passed by the Legislative Assembly of

the State. In such circumstances, the appropriate Government has no option or discretion in the matter. However, in the absence of a resolution, the power to appoint a Commission is discretionary and optional even in a case of 'any definite matter of public importance'. In that case, a Commission can only be appointed by the appropriate Government, if in its opinion, it is necessary to do so. From the words 'it is of opinion', to my mind, it is abundantly clear that the opinion of the State Government in such a situation is subjective. There may be definite matter of public importance, but the appropriate Government may not feel inclined to appoint a Commission of Inquiry if it is of opinion that it is not necessary so to do. The matters, in regard to which the petitioner seeks for the appointment of Commission of Inquiry is undoubtedly a matter of public importance. Their Lordships of the Supreme Court, in *Ramkrishna Dalmia v. Justice Tendolkar*, AIR 1958 SC 538, ruled as under,--

".....We see no warrant for the proposition that a definite matter of public importance must necessarily mean only some matter involving the public benefit or advantage in the abstract, e. g. public health, sanitation or the like or some public: evil or prejudice, e.g., floods, famine or pestilence or the like. Quite conceivably, the conduct of an individual person or company or a group of individual persons or companies may assume such a dangerous proportion and may so prejudicially affect or threaten to affect the public well-being as to make such conduct a definite matter of public importance urgently calling for a full inquiry. Besides, Section 3 itself authorises the appropriate Government to appoint a Commission of Inquiry not only for the purpose of performing such functions as may be specified in the notification. Therefore, the notification is well within the powers conferred on the appropriate Government by Section 3 of the Act and it cannot be questioned on the ground of its going beyond the provisions of the Act.'

At the risk of repetition, it may be stated that the petitioner has sought appointment of Commission of Inquiry regarding floods in many parts of Pali, Jodhpur, Banner and other districts in the western part of the State, by flood waters of Looni and other rivers on July 16, 1979 and later. It was also observed by the Supreme Court in *Ramkrishna Dalmia's* case as under,--

'..... the only power that the Commission has is to inquire and make a report and embody therein its recommendations. The Commission has no power of adjudication in the sense of passing an order which can be enforced proprio vigore..... Therefore, as the Commission we are concerned with is merely to investigate and record its findings and recommendations without having any power to enforce them, the inquiry or report cannot be looked upon as a judicial inquiry in the sense of its being an exercise of judicial function properly so called..... In our view the recommendations of a Commission of Inquiry are of great importance to the Government in order to enable it to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or to implement the beneficial objects it has in view.....'

It is clear from the aforesaid decision that an inquiry under the Act is not at all a judicial inquiry. The object of appointing a Commission of Inquiry is to enable the Government to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or to implement the beneficial objects it has in view. In other words, the Commission of Inquiry is only a fact-finding body for the benefit of the Government when there is a definite matter of public importance. A Commission of Inquiry may be appointed if it is necessary in the opinion of the appropriate Government to do so. Under Section 3, the appropriate Government is not under a legal or statutory obligation to appoint a Commission of Inquiry even on a definite matter of public importance except in the case of a resolution by Parliament or the Legislature of the State in that behalf. It, therefore, necessarily follows that the petitioner has no legal or statutory right to compel the State Government to appoint a Commission of Inquiry even when there is a definite matter of public importance. A Division Bench of this Court, in *Kanhaiyalal v. The University of Rajasthan*, 1965 Raj LW 53: (AIR 1965 Raj 84) held that in order to maintain a writ for grant of mandamus, the petitioner must show that there exists a right in him to compel the opposite party to act in a particular manner and in the absence of any such right, the petition for the grant of mandamus cannot be allowed. In *Calcutta Gas Company v. State of West Bengal*, AIR 1962 SC 1044, it was laid down that the existence of the right is the foundation of the exercise of jurisdiction of the High Court under Article 226 and that the legal right that can be enforced under Article 226 like Article 32 must

ordinarily be the right of petitioner himself who complains of infraction of such right and approaches the Court for relief. It was further held that the right that can be enforced under Article 226 should ordinarily be the personal or individual right of the petitioner himself though in the cases of some of the writs like habeas corpus and quo warranto, this rule may have to be relaxed or modified. It is not necessary to multiply the authorities in this regard, for, there are catena of cases of the Supreme Court on the point. It is well settled that four pre-requisite conditions for issuance of a writ of mandamus are these:---

1. Whether the petitioner has a clear and specific right to relief demanded by him?
2. Whether there is a duty imposed by law on the respondent?
3. Whether such duty is of an imperative ministerial character involving no judgment or discretion on the part of respondent? and
4. Whether petitioner has any remedy other than by way of mandamus for the enforcement of right which has been denied to him?

In *Mani Subrai Jain v. State of Haryana*, AIR 1977 SC 276, it was observed as under:

'It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something.'

It follows, therefore, that existence of a right is sine qua non for the issuance of a writ of mandamus. Here, I may refer to *Padfield v. Minister of Agriculture, Fisheries and Food*, 1968 AC 997 on which considerable reliance was placed by the learned counsel for the petitioner. I may at once state that it does not support the contention of the learned counsel. The complainants, who were members of the South-East Regional Committee of the Milk Marketing Board, filed a complaint to the Minister of Agriculture, Fisheries and Food under Section 19 of the Agricultural

Marketing Act asking that their complaint be referred to the Committee of Investigation established under that Act. The Minister, however, declined to refer the matter to the Committee for, he did not consider the question suitable for investigation. In support of this, he gave reasons. The House of Lords found that the Minister had proceeded upon a misconstruction of the statute and remitted the case with a direction to consider the complaint of the appellants according to law. In that case, the complainants were interested in the price structure of milk. Section 19 (3) (b) of that Act contemplated the making of a complaint to the Minister by the Consumers Committee. It is correct that this judgment was referred in *Hochtief Gammon v. State of Orissa*, AIR 1975 SC 2226. Paras 12 and 13 of the decision are as under,--

'The principles deducible from the decisions of this Court and the above decision of the House of Lords which, though not binding on us, appeals to us on principle may be set out as follows:

The Executive have to reach their decisions by taking into account relevant considerations. They should not refuse to consider relevant matter nor should take into account wholly irrelevant or extraneous consideration. They should not misdirect themselves on a point of law. Only such a decision will be lawful. The courts have power to see (hat the Executive acts lawfully. It is no answer to the exercise of that power to say that the Executive acted bona fide nor that they have bestowed painstaking consideration. They cannot avoid scrutiny by courts by failing to give reasons. If they give reasons and they are not good reasons, the court can direct them to reconsider the matter in the light of relevant matters, though the propriety, adequacy or satisfactory character of those reasons may not be open to judicial scrutiny. Even if the Executive considers it inexpedient to exercise their powers they should state their reasons and there must be material to show that they have considered all the relevant facts.'

A somewhat similar question arose before a Division Bench of the Delhi High Court in *Bhagwat Dayal Sharma v. Union of India*, ILR (1974) 1 Delhi 847 under Section 3 of the Act. The High Court took the view that the petitioner in that case who stated himself to be a citizen, a tax-payer, a member of the Rajya Sabha and

a former Chief Minister of the State of Haryana had no right under the Act for the appointment of the Commission. It was observed,--

'..... In essence, his status is no better than of a member of the public.'

Mr. Mridul vehemently argued that the Government was asked to exercise discretion under Section 3 of the Act by the appointment of the Commission of Inquiry as it was a matter of public importance which it failed to do. A demand was made but the discretion was not exercised and that when a discretion is required to be exercised and it is not exercised as required by law, the Court has power to compel the authority or, for that matter, the State Government, to exercise it under Section 3 of the Act. In this connection, he referred to *Dwarka Nath v. I.T, Officer*, AIR 1966 SC 81 and *Ramana Dayaram Shetty v. L.A. Authority of India*, AIR 1979 SC 1628. It is not necessary to discuss the aforesaid decisions in detail for the reason that if the petitioner has no right to get the Commission appointed, then the demand for the appointment of Commission by the political parties or by the M.L.As. will not confer any right. There is no statutory duty on the appropriate government to be discharged towards the petitioner. In these circumstances, the contention of the learned counsel that discretion vested in the appropriate Government under Section 3 of the Act has not been exercised and, therefore, the petitioner has a right to maintain the writ petition, is devoid of force.

5. Learned counsel for the petitioner next argued that fundamental duties have been enumerated in Article 51A of the Constitution. Clauses (g), (i) and (j) of Article 51A are as under,--

'51-A. Fundamental Duties.-- It shall be the duty of every citizen of India.

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement.'

He also referred to Article 21 which lays down that no person shall be deprived of his life or personal liberty except according to procedure established by law and submitted that for the enforcement of the duties, the petitioner is entitled to invoke the extraordinary jurisdiction of this Court. The argument, in my humble opinion, is wholly misconceived. Article 51A, which occurs in Chapter IV-A of the Constitution, enumerates fundamental duties. It enjoins duties on every citizen of India in respect of the matters enumerated in Clauses (a) to (j). These duties are not to be enforced by law courts. I regret, I am unable to see how the appointment of a Commission of Inquiry to inquire into the matters enumerated in the foregoing part of the judgment, in connection with the floods, has any relation for the enforcement of the fundamental duties. It is, therefore, futile to contend that the petitioner can maintain this writ petition for the enforcement of fundamental duties.

6. The preliminary objection raised by the learned Government Advocate that the petitioner has no locus standi to move this writ petition, prevails and I hold that the petitioner has no right under the Act, and therefore, he cannot maintain this writ petition for compelling the State Government to appoint a Commission of Inquiry under the Act. i

7. It may be recorded that learned counsel for the petitioner as well as learned Government Advocate, during the course of arguments, referred to some more decisions of the Supreme Court, other than those which I have already noticed hereinabove, but in view of the well-settled propositions relating to issue of writ of mandamus under Article 226, I have thought fit not to encumber this judgment by entering into a detailed discussion in regard to them.

8. The result is that while upholding the preliminary objection, I dismiss this writ petition in limine. However, in the circumstances of the case, there will be no order as to costs.