

to take the examination second time, when he has already once passed it in order to improve his class. If he is able to do so he will get the benefit of the higher class which he must secure without any grace marks given by the University. There is no point in giving a second opportunity to a candidate if he is still to be given grace marks by the University.

(3) For the reasons given above, there is no merit in this writ petition which is dismissed, but as the matter was *res integra*, I leave the parties to bear their own costs.

N.K.S.

CIVIL MISCELLANEOUS

Before D. K. Mahajan and S. S. Sandhawalia, JJ.

HOSHIAR SINGH,—Petitioner

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ No. 2102 of 1968.

February 4, 1970.

Commission of Enquiry Act (LX of 1952)—Section 3—Criminal trial pending regarding an occurrence—Appointment of commission of inquiry about the same matter during the pendency of such trial—Whether proper—Inquiry—Whether to be stayed till the completion of the trial.

Held, that during the pendency of a criminal trial regarding an occurrence a parallel enquiry cannot be conducted by Government under section 3 of the Commission of Enquiry Act, 1952, into the matter relating to incidents relating to that trial. If the matters which an Inquiry Officer is going to enquire into and that pending for trial before a Court are the same or more or less the same, the holding of inquiry, in face of the same matters being before the Court, would amount to contempt. Hence it is not proper that during the pendency of criminal trial, a commission of inquiry be appointed about the same matter. Such an inquiry has to be stayed till the completion of the trial (Paras 3 and 4)

Case referred by the Hon'ble Mr. Justice Shamsher Bahadur on 27th October, 1969 to a Division Bench for decision of an important question of law involved in the case. The case was finally decided by the Division Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice S. S. Sandhawalia on 4th February, 1970.

Hoshiar Singh v. The State of Haryana and others (Mahajan, J.)

Petition under Articles 226/227 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the Notification dated 12th June, 1968 No. 49(68)-2JJ-68/14465 issued by the Respondent No. 1 appointing the Inquiry Commission and also the proceedings taken by the Inquiry Commission thereunder and the respondent No. 2 be directed not to do anything by way of proceeding with the inquiry or anything else by which the free and fair trial of the criminal case is interfered with, until the criminal case is finally decided by competent courts.

HARBANS SINGH GUJRAL, AND V. M. JAIN, ADVOCATES, for the petitioner.

G. S. CHAWLA, ADVOCATE FOR A. G. (HARYANA). H. R. AGGARWAL, ADVOCATE, for respondent No. 3.

JUDGMENT

MAHAJAN, J.—This is a petition under Articles 226 and 227 of the Constitution of India and is directed against notification No. 49 (68)2-JJ-68/14465, dated the 12th June, 1968, issued by the Haryana Government Home (Judicial Department). This notification is in the following terms:—

“Whereas it has been reported that a police party had gone to village Tikla Police Station Bawal, district Gurgaon, on the 21st May, 1968, for the execution of a warrant under section 100 of the Code of Criminal Procedure, 1898, issued by the Chief Judicial Magistrate, Gurgaon, for the recovery of Mrs. Anchari and there took place a clash between the police party and the villagers, during which as a result of firing two persons died and a few others received injuries and Bus No. RJK-3187, which carried the police party was also set on fire;

And whereas the Governor of Haryana is of the opinion that the said incident of firing is a matter of public importance and it is necessary to hold an enquiry thereinto;

Now, therefore, in exercise of the powers conferred by section 3 of the Commissions of Inquiry Act, 1952, the Governor of Haryana hereby appoints Shri Ved Parkash Aggarwal, Additional District and Sessions Judge, Gurgaon, as the

Commission of Inquiry for the purpose of making an inquiry in respect of the following matters:—

- (i) to consider the sequences of events and the causes which led to the firing and setting on fire of Bus No. RJK-3187 at village Tikla, Police Station, Bawal,
- (ii) to determine whether the force used by the police was justified."

Earlier to that, on the 21st of May, 1968, the following first information report had been recorded : —

"This morning, I as a member of the guard accompanied Sardar Abnashi Singh, S.I., S.H.O. Police Station, Bawal, to village Tikla, for the recovery of Mst. Anchai, daughter of Mool Chand, Jat, resident of village Harsohi in execution of a warrant under section 100 of the Criminal Procedure Code. The S.H.O. duly recovered Mst. Anchai from the house of Jage Ram, son of Har Lal, Jat by caste, resident of village Tikla, this morning at about 5.00 a.m. in the presence of Bhagwan Singh and Hoshiar Singh, residents of Orhi. As soon as we along with the woman (Mst. Anchai) reached at a distance of about one furlong from the village, many persons of the village armed with *lathis*, *jellis*, *balams*, *pharras* and *bankaris* surrounded and attacked the police party. The mob included the mother-in-law of Mst. Anchai, Mata Din, Puran, Jage Ram, Bhaji and Hari Singh, residents of village Tikla and many other persons. Amar Singh, Jage and Mata Din said, "Catch hold of the police party, put them to death, take away the woman, send information to the inhabitants of the adjoining villages Puranpur and Shahpur, they should come to our help and that they would not allow Mst. Anchai to be taken away." At this the S.H.O. administered a warning to them saying that the (police) had come for the recovery of Mst. Anchai in execution of a warrant and that they (the mob) should not obstruct the police in the discharge of their duty. But they continued attacking the police party with stones and clods. As the police party proceeded a little ahead. Chandgi Ram, Shiv Karan and Hira Singh, residents of village Puranpur, Prabhu and Surat Singh, residents of village Shahpur and several other persons armed with *lathis* and *jellies*, came there and shouted saying, "What are you waiting for ? Catch hold of the police people, kill the S.H.O. (*thanedar*) and the constables. We would face the consequences. It is a question of prestige of our village

Chaurasi". They got Mst. Anchai released from the police party, they had hardly gone up to a distance of about 10/11 paces when the police party recaptured the woman from them. Then many inhabitants of the village whose number had swelled to 300/350 persons, together attacked the police party with *lathis* and *jellies* and injured the S.H.O. and the police officials. At this the S.H.O. ordered the police party to start *lathi* charge and open fire in self-defence. The inhabitants of villages Tikla, Puranpur and Shahpur attacked the police party and broke the side glasspanes of bus bearing No. RJK-3187 which had carried the police party to the spot by throwing stones, clods and by giving *lathi* blows and thereafter burnt the bus by setting fire to it. Kanhiya, driver and Prahlad, conductor of the bus ran away. The S.H.O. feeling the gravity of the situation directed me to rush to the Police Station and report the matter there so that the police force could come."

(2) This petition came up for hearing before Shamsheer Bahadur, J., on the 27th October, 1969, and the learned Judge felt that the matter was of sufficient importance and should be decided by a Division Bench; that is how, the matter has been placed before us.

(3) The short question, that arises for determination is whether during the pendency of a criminal trial a parallel inquiry could be conducted by the Government into the matter relating to incidents leading to that trial. Mr. H.S. Gujral, learned counsel for the petitioner, has dropped his case so far as the question of notification ordering inquiry by the Additional District and Sessions Judge, Gurgaon, is concerned. His only contention is that the inquiry should take place after the trial is over because the Inquiry will interfere with the conduct of the trial. It will appear from the first information report as well as the terms of reference to the Inquiry Officer in the impugned notification that the Inquiry Officer as well as the Court are to determine practically the same matter. It was for that reason that I have specifically reproduced the notification and the first information report. The matter is not *res integra*. The direct decision bearing on the point is that of the Full Bench of the Patna High Court in *The King v. Parmanand and others* (1). It was held in this case that—

"Any enquiry with regard to a matter which is *subjudice* is bound to interfere with the even and ordinary course of

(1) A.I.R. 1949 Pat. 222.

justice. It is 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 dis-countenance any attempt on the part of any executive official, however high he may be, prejudice the merits of a case and to usurp the functions of the Court which has got seisin of the case."

This decision was followed by the Andhra Pradesh High Court in *D. Jones Shield v. N. Ramesam and others* (2). The rule in such cases is to be found in the decision of the House of Lords in *Arthur Reginald Perera and The King* (3). The noble Lords, while dealing with the question whether any act or writing published would be a contempt of Court, observed—

"There must be involved some 'act done or writing published, calculated to bring a Court or judge of the Court into contempt or to lower his authority, or something calculated to obstruct or interfere with the due course of justice or the lawful process of the courts."

These observations were adopted by their Lordships of the Supreme Court in *P. V. Jagannath Rao and others v. State of Orissa and others* (4). Therefore, what has in fact to be determined before a case can be said to fall within the ambit of this rule is as to whether the matter which an Inquiry Officer is going to enquire into and that pending for trial before a Court are the same or more or less the same. If that is so, the holding of inquiry, in face of the same matter being before the Court, would amount to contempt. So far as the present case is concerned, I have already observed that the scope of the inquiry as well as of the trial more or less is the same and, therefore, if the inquiry is allowed to proceed, it would be tantamount to contempt of Court.

(4) I, proceed, now deal with cases cited in the order of the learned Single Judge.

(2) A.I.R. 1955 A.P. 156.

(3) (1951) A.C. 482.

(4) A.I.R. 1969 S.C. 215.

Hoshiar Singh v. The State of Haryana and others (Mahajan, J.)

(5) The learned counsel for the petitioner relied on *Ram Krishna Dalmia v. Justice Tandonkar* (5). While dealing with this case in *P. V. Jagannath Rao's case* (4) (*supra*) their Lordships of the Supreme Court observed that 'the inquiry cannot be looked upon as a judicial inquiry and the order ultimately passed cannot be enforced *proprio vigore*. The inquiry and the investigation by the Commission do not, therefore, amount to usurpation of the function of the courts of law. The scope of the trial by the courts of law and the Commission of Inquiry is altogether different.' These observations clearly indicate that if the scope and ambit of the enquiry was usurpation of the powers of the Court, it would come within the mischief of the rule laid down in *Parmanand's case* (1), but if it was so, the case would be covered by the rule in *Ram Krishna Dalmia's case* (*supra*) (5). The decision in *P. V. Jagannath Rao and others' case* (4) was relied upon by the respondents for the proposition that the inquiry as well as trial could simultaneously proceed. There is no warrant for this contention inasmuch as in *Jagannath Rao's case* (4). Their Lordships came to a clear finding that the inquiry was not in relation to the very matters which were the subject-matter of the suit and of the first appeal. Thus this decision does not, in any manner, support the contention urged by the learned counsel for the respondents.

(6) After giving my careful consideration, I am of the view that the contention of the learned counsel for the petitioner that the inquiry should remain stayed till the trial is over must prevail. The learned counsel has given up his plea in the petition that the notification should be quashed and rightly so. There is nothing to prevent the Government from inquiring into the matters referred to in the notification so long as they do not lead to a result which by this order we are seeking to avoid.

(7) For the reasons recorded above, this petition is partially allowed and it is directed that the inquiry should proceed after the trial is over and it shall remain stayed till then. There will be no order as to costs.

S. S. SANDHAWALIA, J.—I agree.

R. N. M.