SUPREME COURT OF INDIA

Krishna Ballabh Sahay

Vs.

Commission of Inquiry

C.A.No.150 of 1968

(M. Hidayatullah, C.J.I., J. C. Shah, V. Ramaswami, V. Bhargava and C. A. Vaidialingam, JJ.)

18.07.1968

ORDER:-

1. The Appeal shall stand dismissed, but there shall be no order as to costs. Reasons for our judgment will follow. Stay order is vacated.

2. The following Judgment of the Court was delivered by

HIDAYATULLAH, C.J.:

This appeal is brought against an order of the High Court at Patna, November 4, 1967, dismissing a petition under Arts. 226 and 227 of the Constitution. By that petition the appellants sought a declaration that a notification of the Governor of Bihar appointing a Commission of Inquiry under the Commissions of Inquiry Act, 1952, was 'ultra vires' illegal and inoperative' and for restraining the Commission from proceeding with the Inquiry. The High Court dismissed the petition without

issuing a rule but gave detailed reasons in its orders. The appellants now appeal by special leave granted by this Court. After the hearing of the appeal concluded we ordered the dismissal of the appeal but reserved the reasons which we now proceed to give.

3. As is common knowledge there was for a time no stable Government in Bihar. The Congress Ministry continued in office for some time under Mr. Binodanand Jha and then under the first appellant, Mr. K. B. Sahay. When the Congress Ministry was voted out of office, a Ministry was formed by the United Front Party headed by Mr. Mahamaya Prasad Sinha. The United Front Ministry also resigned on 25th January, 1968 and another Ministry was formed by the Shoshit Dal headed by Mr. B. P. Mandal. This Ministry also went out of office on March 22, 1968 to be succeeded by another headed by Mr. Bhola Paswan Shastri. During the continuance of the Congress Ministry Mr. Mahamaya Prasad Sinha helped by Mr. Kamakhya Narain Singh and his brother Mr. Basant Narain Singh and others were in opposition. When the United Front Ministry emerged these opponents became Ministers. The Ministry began to function from March 5,1967. On March 17, 1967, the Governor announced in his speech that an inquiry would be made against the conduct of some of the Ministers who had gone out of office including the present appellants. It appears that the Council of Ministers then constituted a Cabinet Sub-Committee on July 22, 1967 to make a preliminary examination of the allegations and the materials relating to them. The upshot was a notification issued by the Governor of Bihar under S. 3 of the Commissions of Inquiry Act on October 1, 1967 by which inquiry was ordered against the appellants and two others (Mr. Raghavendra Narain Singh and Mr. Ambika Sharan Singh). The commission was directed to inquire into and report on the following matters, namely:

"(a) What was the extent of the assets and pecuniary resources owned and possessed by each of the persons above-named, his family, relatives and other persons in whom he was interested, (i) at the beginning and (ii) at the end of the tenure of office or each of the offices held by him as aforesaid;

(b) Whether each of the persons abovenamed, during the tenure of office or offices held by him, obtained any assets, pecuniary resources or advantages or other benefits by abusing and exploiting his official position or positions and whether during the said period or periods his family, relatives and other persons in whom he was interested obtained, with his knowledge, consent or connivance, any assets, pecuniary resources, advantages or other benefits;

(c) Whether, and if so to what extent each of the persons above-named otherwise indulged in corruption, favouritism, abuse of power and other malpractices; and

(d) Whether, besides the persons abovenamed, any other person or persons holding official position either as a member of the Council of Ministers or otherwise, during the aforesaid period, made illegal gains or indulged in corruption, favouritism, abuse of power or other malpractices in like manner as aforesaid."

Later the Government of Bihar decided on October 31, 1967 that clause (d) should be deleted and it was so deleted. The notification went on to state further:

"Without prejudice to the scope of the inquiry, the Commission shall, in particular, inquire into and report on the mala fide and corrupt conduct of the persons above-named in relation to the following matters, viz-

(a) Contracts for works;

(b) Grant of mineral concessions and issue and renewal of leases, licenses, and permits, particularly with respect to mines, minerals, forests, forest-products, non-ferrous metals, mills, generation and distribution of electricity, ferries, transport, etc.

(c) Purchase and supplies of stores and materials.

(d) Appointments, transfers, promotions etc. of officers.

(e) Institutions and withdrawals of cases.

(f) Protection to criminals and corrupt officers.

(g) Remissions of Government dues, loans and taxes.

(h) Misuse of Government money and property.

(i) Acquisition, deacquisition, settlement and lease of lands.

(j) Collection of money through checkposts.

(k) Any other matter which may be brought to the notice of the Commission in course of the inquiry."

The inquiry was entrusted to Mr. T. L. Venkatarama Aiyar, a retired Judge of this Court. The Commission was to enter upon its duties from November 6, 1967. On October 31, 1967 a petition was filed in the High Court at Patna. The High Court summarily dismissed the petition on November 4, 1967. This appeal arises from the order.

4. Since no rule was issued by the High Court the allegations in the petition were not controverted or admitted by the opposite parties. When the present appeal was filed reliance was placed upon the affidavits filed with the petition and fresh affidavits were also filed. Opportunity was afforded to the respondents to file affidavits in reply. An affidavit in reply was filed by Abraham, Vigilance Commissioner, on behalf of Government and respondent No. 5 on behalf of respondents 3-6. Separate affidavits were also filed by appellant 1 on April 4, and May 2, 1968. We have considered all the affidavits which find place on the record of the appeal.

5. The arguments or the appellants in this Court were substantially the same as were urged in the High Court. They are really two in number. Shortly stated, they are: firstly, that the appointment of the Commission is a campaign of vilification for political gain by a party in opposition and is based on personal animus against those who kept the members of that party out of office. The argument thus attributes malice and mala fides to the Governor's notification and abuse of the powers under the Commissions of Inquiry Act for an illegitimate purpose. Side by side there is the argument that a succeeding Ministry cannot inquire into the conduct of public and governmental affairs of the Ministry that goes out. The second argument is that the Governor's term having come to an end under the Constitution, he was functus officio and could not order the enquiry contemplated by the Government then in power.

6. The second argument goes to the root of the matter and may, therefore, be considered first. It was rejected by the High Court. Mr. M. A. Ayyangar, the Governor in whose regime the notification was issued, was sworn in as Governor of Bihar on May 6, 1962. Under Art. 156 (3) he could hold office for a term of five years from the date on which he entered upon the office, that is to say till May 5, 1967. Therefore, the contention is that his continuance in office was illegal. The respondents rely upon the proviso to Art. 156 (3), which says:

"Provided that Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon office,"

and point out that there cannot be an interregnum in view of the provision of Art. 153 that there shall be a Governor for each State. In reply Mr. A. K. Sen refers to the provisions of Art. 160 which makes provision for contingencies by laying down:

"160. Discharge of the functions of the Governor in certain contingencies.

The President may make such provision as be thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter."

His contention is that under the third clause of Art, 156 the Governor's term is a closed term and if the term comes to an end without the successor, being named, the provisions of Art. 160 must be used. The proviso, according to him, covers only the time lag before the successor enters office and not a case where no successor is appointed before the term of the holder is over. To hold otherwise, he submits, might enable the appointing authority to set at naught the provisions of the main clause through the proviso. By way of analogy he refers to Arts. 56 and 62 (1) in respect of the President and Arts. 67 and 68 (1) about the Vice-President which enjoin that the election to fill the vacancies has to be completed in each case before the term ceases. He contends that the same result is implicit in the scheme of things in relation to the Governor because of the distinction between 'appointment' and 'entering an office.'

7. We are unable to accept the contention. There is no provision such as Art 62 or 68 (1) in the scheme of the Governor's appointment. On the other hand, the proviso to Art. 156 (3) contemplates that the Governor is to continue to hold office 'notwithstanding the expiration of his term.' The effect of these words is to exclude all questions of the legality of the holding of office by a Governor after the expiry of his term. There must always be a Governor under Art. 153 and the interregnum is avoided by the proviso. It is, of course, to be expected that a new Governor will be nominated betimes but circumstances may come into being which may take the holder beyond his five years' term without a successor being named. It may not always be possible to appoint a Governor within the term of the incumbent. Suppose, for instance, a person is designate within the five years and be intends joining after a few days. Mr. Sen concedes that the former Governor may continue to hold office till the new Governor assumes charge and this may take the former Governor beyond his term of five years. Suppose after that term is over the Governor designate declines the office. There will immediately be an interregnum. No doubt the provisions of Art. 160 may be resorted to but even that may not be sufficient to prevent an interregnum. Therefore, it is legitimate to hold that a person once appointed a Governor continues to hold that office till his successor enters upon his office. This successor may be appointed under Art. 155 or an order may be made under Art. 160. Whatever the position the former Governor continues to hold office till the new Governor enters his office. For these reasons we hold that Mr. M. A. Ayyangar acted validly as Governor on October 1, 1967. We may however, say that there may be cases in which neglect to appoint a Governor soon may lead to an inference of failure to act under the Constitution and it may, require further examination as to the remedy in such cases. As we do not view this case as satisfying the

need for such examination we say nothing about it. No facts bearing upon the failure to designate a successor have been pleaded here.

8. This brings us to the main question. As we pointed out above the first argument consists of two limbs. We shall examine them separately. The contention that the power cannot be exercised by the succeeding ministry has been answered already by this Court in two cases. The earlier of the two has been referred to by the High Court already. The more recent case is P. V. Jagannath Rao v. State of Orissa, (Civil Appeals Nos. 1148-l150 of 1968, D/- 30-4-1968)=(AIR 1969 SC 215). It hardly needs any authority to state that the inquiry will be ordered not by the Minister against himself but by some one else. When a Ministry goes out of office, its successor may consider any glaring charges and may, if justified, order an inquiry. Otherwise, each Ministry will become a law unto itself and the corrupt conduct of its Ministers will remain beyond scrutiny. The High Court has adequately dealt with this point and we see no error.

9. The next limb of the argument is that the inquiry is the result of malice and political vendetta and the grounds are false and scurrilous. In the affidavit of Abraham reference is made to the charges which have been drawn up against the appellants and 2 others (who were also heard by us). These charges number 74 against the ex-Chief Minister (Mr.K. B. Sahay) and 36, 19, 42, 10 and 11 against the others. Some of the charges are interconnected. Mr. Sahay in his affidavit of May 2, 1968 has attempted to establish that Abraham himself had given a different version in his report and had found nothing wrong where he now finds fault. A few of the charges are attempted to be controverted so. Request is made that the relevant files be summoned so that the falsity of the charges may be established.

10. We find ourselves unable to accede to the request for summoning the relevant files. The reason is fairly obvious. Once we have held that the inquiry is legal, it is manifest that the truth or otherwise of the allegations is for the Commission's consideration. If the disproof of the allegations is so simple, there should be no difficulty in bringing the facts to the notice of the Commission. We have no doubt that our former colleague, who heads the Commission, will be able to decide the issue as we are invited to do.

11. We have read the charges which are to be investigated. We do not wish to say anything about the merits of these charges since what we say is likely to have a bearing one way or another upon their truth. This matter is not in our hands, nor are we in possession of all the materials on which these charges will hereafter be attempted to be proved or disproved. We can only say at (as we see them) each charge refers in detail to events, with dates, names of persons concerned, particulars of the action taken and the conduct which is to be considered. The charges are such that we think an inquiry can be ordered. Whether they are true or false is another matter.

12. It cannot be stated sufficiently strongly that the public life of persons in authority must never

admit of such charges being even framed against them. If they can be made then an inquiry whether to establish them or to clear the name of the person charged is called for. If the charges were vague or speculative suggesting a fishing expedition we would have paused to consider whether such an inquiry should be allowed to proceed. A perusal of the grounds assures us that the charges are specific, and that records rather than oral testimony will be used to establish them. We agree with the High Court that the affidavit in opposition make out a sufficient case for inquiry.

13. It is contended that clause (d) was excluded from the notification so that the inquiry might not recoil upon those who had started it. Reference is made to the notification of March 12, 1968 to show that in the notification ordering inquiry against Mr. Mahamaya Prasad Sinha and his colleagues that clause is included. That should be a matter of satisfaction to the present appellants. It is unlikely that the Commission will overlook evidence which points to corruption or malpractice in others. Even if no direct finding is given there will be ample reference to these matters in the report.

14. Finally it is argued that the action is mala fide. This can only be decided if it can be held that the allegations were false. The Commission will first find the facts. Whether they lead to the conclusion that the inquiry was justified or it was malicious, cannot be said just now, when there are only allegations and recriminations but no evidence. If the charges have been made maliciously or falsely, we are sure the Commission will say so, where necessary. We cannot anticipate the inquiry and hold one ourselves.

15. These reasons impelled us to order the dismissal of the appeal which order we formally pronounced earlier.

Appeal dismissed.