

RAJASTHAN HIGH COURT

Mahila Atyachaar Virodhi Jan Andolan

Vs.

State of Rajasthan

Civil Writ Petn. No. 1244 of 2001

(H.R. Panwar, J.)

03.07.2001

JUDGEMENT

H.R. Panwar, J.

The petitioner who is a participant before the Justice Kokje Commission of Enquiry (Bhinmal Incident), (hereinafter to be referred as 'the Commission') has filed this writ petition aggrieved by the decision taken by the Commission not to examine certain witnesses on the ground of expediency.

2. It is contended that the Commission had earlier held that the witnesses were important as they were present with the deceased Muni Lokendra Vijay in the circumstances leading to whose death, the Commission has been enquiring into but the Commission has decided not to examine them because they were in Tamil Nadu and being Jain Munis (Sadhus) normally do not use conveyance and, therefore, cannot reach Rajasthan before the year 2002. According to the learned counsel for the petitioner, this cannot be a valid reason for not examining the witnesses whose testimony would throw sufficient light on the circumstances leading to the death of Muni Lokendra Vijay.

3. Notices were issued to the State of Rajasthan and the Commission.

4. Sri Sandeep Mehta, learned counsel for the Commission appeared and placed the record of the Commission for perusal of the Court. On behalf of the respondent-State Sri Ramesh Purohit and Sri I.S. Pareek, both Additional Government Advocates

appeared on notice and Sri R. R. Vyas appeared voluntarily for respondent No. 5.

5. I have heard the learned counsel for the parties present and perused the record of the Commission.

6. A perusal of the record shows that the term of the reference of the Commission was to enquire into the totality of circumstances leading to the death of the Jain Muni Sri Lokendra Vijay at Bhinmal, District Jalore on 10-9-1997. It is also an admitted fact that Acharya Hemendra Surishwarj., Shri Lekhendra Vijaji, Shri Labhesh Vijaji and Sadhwi Anant Guna Shriji were present in the Achalgach Upasara at Bhinmal during the night in which Jain Muni Lokendra Vijay is said to have consumed acid to end his life.

7. On 14-5-1999, the Commission directed that the intimation be also given to Acharya Hemendra Surishwarji, Sri Lekhendra Vijaji, Shri Labhesh Vijaji and Sadhwi Anant Guna Shriji that the Commission intended to examine them, if they themselves do not want to depose before the Commission. They were called upon to convey to the Commission the dates and place in Rajasthan convenient to them for their examination. It is also borne out from the record that on 28-7-2000, an application was moved on behalf of the Local Administration representing the State of Rajasthan impressing upon the Commission the importance of examining Acharya Hemendra Surishwarji, Sri Lekhendra Vijaji and Jayant Sen Surishwarji and praying for taking steps for implementing the decision of the Commission to examine these witnesses.

8. In response to the communication sent to these witnesses through their counsel, Acharya Hemendra Surishwarji, Shri Lekhendra Vijaji, Shri Labhesh Vijaji and Sadhwi Anant Guna Shriji sent the written letters through their counsel expressing their desire to depose before the Commission but expressing their inability to reach Rajasthan before the year 2002. Their letters show that not only they are not opposed to depose before the Commission but also wanted to depose before the Commission but because of religious practice and because of religious bar on use of any conveyance that they cannot travel from Tamil Nadu to Rajasthan and be available to depose before the Commission before the year 2002.

9. The Commission in its order dated 24-10-2000 has observed that the Commission intended to examine them if they themselves did not want to depose before the

Commission. However, the commission has observed that in the prevailing circumstances, it was not possible for the Commission also to examine them as Commission's witnesses. The reasons given by the Commission are that the witnesses are far away in Tamil Nadu, they travel on foot and are prohibited by religious practice for using any conveyance and the Commission cannot wait till the year 2002 when the witnesses are expected to come to Rajasthan. The Commission has further observed that it was true that the witnesses were present throughout the incident of death of Jain Muni Lokendra Vijay and they were in a position to throw sufficient light on the circumstances leading to his death but it was also true that none of the parties including the State Government through its Local Administration had offered to examine them as witnesses. The Commission, therefore, observed that in the circumstances, it was not considered necessary for the commission to go to the extent of going to Tamil Nadu to examine these witnesses and no useful purpose will be served by issuing a Commission for examination of these witnesses also because the Commission would not get a first hand impression of the testimony of the witnesses. Observing this, the earlier decision of the Commission to examine those witnesses as Commission witnesses was revoked.

10. It will be clear from the above facts that there is no dispute that the aforesaid witnesses are most relevant and important witnesses and can surely throw sufficient light on the circumstances leading to the death of Jain Muni Lokendra Vijayji. It is also clear that these witnesses themselves have stated in writing that they want to depose before the Commission. The only difficulty was that the witnesses would not be available before the Commission for deposition prior to the year 2002 as presently they are in Tamil Nadu and they travel on foot.

11. The logical solution of the problem was for the Commission to go to the place where the witnesses are available to examine them or to appoint Commissioner to record their statements on commission. The second alternative of appointing Commissioner was rightly rejected by the Commission as the witnesses being important one the Commission should have first hand impression of their testimony but there are no cogent reasons for rejection of the alternative of going to the place where the witnesses are presently camping and examine them by Commission itself.

12. The Commission has observed that none of the parties including the State Government through its Local Administration had offered to examine these witnesses.

This cannot be a cogent reason for revoking the earlier order because of the fact that the witnesses desired and were willing to depose before the Commission and when the Commission itself was taking steps to examine them no other party was obliged to examine the witnesses specially when the witnesses were not likely to support them and that they were represented by lawyers before the Commission. Moreover, the Commission has deferred the question of drawing adverse inference which will become more complicated if these witnesses claim that they were ready and willing to depose before the Commission and, therefore, no adverse inference can be drawn against them.

13. In the aforesaid circumstances, what transpires is that the witnesses are desirous of and willing to get themselves examined, the State Government also expressed through their representative before the Commission that it was essential to examine these witnesses, the petitioner is also pressing for examination of these witnesses but the Commission has expressed that it was not necessary for the Commission to go to the extent of going to Tamil Nadu to examine those witnesses. During the course of arguments, it was informed that presently the aforesaid witnesses have come from Tamil Nadu to Bangalore. Be that as it may, examination of these witnesses to find out the true circumstances leading to the death of the Jain Muni Lokendra Vijay appears to be essential.

14. In the circumstances of the case, the decision of the Commission to revoke the earlier order for examining these witnesses is not based on sound ground and reasoning's and appears to be only for saving costs and time. It should be remembered that when the State Government sets up a Commission to enquire into an incident, it is its responsibility to provide required expenses for the Commission especially when the State Government itself considers the witnesses to be important and relevant. It cannot object to the expenditure involved in examining these witnesses by the Commission even by going to Tamil Nadu or the place where they are. The anxiety of the Commission to save time will also be taken care of by the Commission itself by going to the place where the witnesses are and the Commission will not have to wait till the year 2002 for availability of the witnesses in Rajasthan.

15. Accordingly, this petition is disposed of by directing the Commission to reconsider the matter of examining these witnesses in the light of observations made hereinabove.

Order accordingly.