IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-24139-2016 (O&M)
Reserved on: 25.04.2024
Date of decision: 09.05.2024

Bhupinder Singh Hooda

..Petitioner

Versus

State of Haryana and others

.Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Narender Hooda, Sr. Advocate with
Mr. Pardeep Singh Poonia, Advocate
Mr. Pulkit Dhanda, Advocate
Mr. Shivendra Dwivedi, Advocate
Ms. Rashi Chaudhary, Advocate
Mr. Karan Hooda, Advocate
for the petitioner

Mr. B.R.Mahajan, Advocate General, Haryana with
Mr. Samarth Sagar, Addl. AG, Haryana and
Mr. J.S.Pannu, AAG, Haryana

ANIL KSHETARPAL, J

1. Brief facts of the case:-

1.1 Although there was unanimous opinion of the esteemed members of the Division Bench on the substantive issues, however, there was difference of opinion on a small issue, which has resulted in reference to this Bench as third Judge. In substance, one esteemed brother Judge has held that it shall be open to the Commission to proceed further from the stage when notice under Section 8B of the Commissions of Inquiry Act, 1952 (hereinafter referred to as '1952 Act') was required to be issued whereas the other respected brother Judge granted liberty to the Government to appoint a Commission of Inquiry.

The difference has been summarized in the short order passed by the Bench on 10.01.2019 which reads as under:-

> *"Anupinder Singh Grewal,J. has authored separate judgment, wherein the conclusion in respect of broad issues dealt in the judgment written by Ajay Kumar Mittal,J. has been concurred. However, there is difference in the operative portion of the respective judgments. Ajay Kumar Mittal,J. has concluded as under:*
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> > *"69.Having perused the report, we find that it touches and opines on the conduct of the petitioner and affects the reputation thereof. In such circumstances, it was essential to have issued the notice under Section 8B of the Act which has not been done as the notice which was issued did not fulfil the conditions essentially required thereunder. Accordingly, the report submitted by the Commission is held to be non est and the same shall not be published. However, it shall be open for the Commission to proceed further from the stage when notice under Section 8B of the Act was required to be issued and submit fresh report in accordance with law. The writ petition is disposed of in the manner indicated hereinbefore."*
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> *According to Anupinder Singh Grewal,J., the following conclusion has been arrived:*
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> > *"In the case at hand, the Commission of Inquiry was appointed on 14.5.2015 and its term was for a period of 6 months. The term was extended by period of 6 months vide notification dated 7.12.2015 and further extended till 31.8.2016 by notification dated 1.7.2016. The Commission submitted its report on 31.8.2016. The Commission is no longer in*

existence and thus, it would not be possible for it to issue afresh notice under Section 8-B of the Act.

It is in those cases where the Commission is functioning that a direction could be issued for it to proceed afresh from the stage of issuing notice under Section 8-B. As the tenure of the Commission has come to an end, it has submitted the report and ceased to exist only a fresh Commission can be appointed under the Act. In such circumstances, it would be in the interest of justice if the respondent is granted liberty to appoint a Commission of Inquiry on the same subject matter.

Resultantly, I would partly allow the petition. The report of the Commission is not sustainable and is hereby quashed. It shall not be published as it cannot be read against the petitioner and no action on the basis thereof be taken against the petitioner. The respondent No.1 would, however, be at liberty to appoint a Commission of Inquiry on the same subject matter."

In view of the difference in the operative portion of the judgments of Ajay Kumar Mittal,J. and Anupinder Singh Grewal,J., the matter be placed before Hon'ble the Chief Justice for appropriate orders.

In the meantime, the original record and the report of the Commission in sealed cover be returned to the Advocate General, Haryana, with the direction to produce the same as and when required by the Court."

1.2 The detailed facts, submissions of the learned counsel representing the parties and their respective opinions have elaborately been noticed and dealt with by the Court in the concurrent opinions except difference on a short but interesting issue. Hence, it is not considered necessary to narrate the detailed facts. However, in order to

comprehend the controversy involved in the present case, the relevant facts are discussed briefly:-

1.3 The Chief Minister of Haryana ordered the appointment of a 'Commission of Inquiry' under the 1952 Act on 14.05.2015. On 18.08.2015, another notification was issued clarifying the scope and ambit of the aforesaid 'Commission of Inquiry'. Vide notification dated 07.12.2015, the term of commission was extended by another six months i.e June, 2016, which was further extended upto 31.08.2018 vide notification dated 01.07.2016. The Commission of Inquiry on completion of its inquiry submitted its report to the State Government. On 02.09.2016 the Governor of Haryana issued a notification on 31.08.2016, while ending the term of the the Commission of Inquiry. The said notification reads as under:-

> *"No. 44/1/2015-5 Pol.- The Governor of Haryana hereby orders that the term of Commission of Enquiry headed by Mr. Justice S. N. Dhingra (Retd.) Judge of Delhi High Court constituted vide Notification No. 44/1/2015-5 Pol, dated 14.5.2015 and further amended vide Notificiation No. 44/1/2015-5 Pol, dated 18.8.2015 for the purpose of making an Inquiry into the issues concerning the grant of license for developing colonies by the Department of Town & Country Planning, Government of Haryana, to some entities in villages Sihi, Shikohpur, Kherki Daula and Sikandarpur Bada in district Gurgaon, Gurgaon and their subsequent transfer/disposal, allegations of private enrichment, ineligibility of the beneficiaries under the rules and/or other matters incidental thereto or connected therewith; shall come to an end with immediate effect from 31.08.2016.*
>
> *Chandigarh* *D.S.Dhesi*
> *The 1st September, 2016* *Chief Secretary to the Government of Haryana"*

1.4 The first Judge identified the following two issues in the paragraph 10 of judgment:-

> "*10. Broadly, from the contentions of the learned counsel for the parties, the following issues emerge for consideration:-*
> *I) Whether the action of the respondent-State Government in setting up Commission of Inquiry against the petitioner is legal and valid as per the provisions of Section 3 of the Act?*
> *II) Whether proper notice under Section 8B of the Act was issued to the petitioner? If not, its effect?"*

1.5 In para 11, the Court identified the following facets of the matter, which require adjudication:-

> "*11. Taking up first broad issue noticed above, the following facets of the matter require to be answered:-*
> *I) Whether there was relevant, cogent or objective material before the State Government to form an opinion under Section 3 of the Act for constituting a Commission of Inquiry involving "definite matter of public importance"?*
> *II) Whether ex post facto approval granted by the Council of Ministers was valid and constitution of the Commission of Inquiry was not vitiated.*
> *III) Whether amendment to the terms of the reference at the instance of Justice Dhingra Commission is permissible under the Act?*
> *IV) Whether the action of the Government in setting up Commission of Inquiry is malafide?"*

1.6 Both respected members of the Division Bench unanimously agree on all four questions. However, as already noticed, there is a small difference, which has resulted in reference being made to this Court, after soliciting orders from the Hon'ble Chief Justice.

2. Arguments put forth by the learned counsel representing the parties:-

2.1 Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

2.2 Considering the legal issue on which the opinion of this Bench has been sought, it was not considered necessary to requisition the record from the Government or the report submitted by the Commission.

2.3 On 05.04.2024, the learned counsel representing the parties were requested to file their convenience notes containing the gist of their arguments well before the next date of hearing. The learned counsel representing the petitioner has filed a detailed convenience note. Para 6 of the note containing the substance of submissions of the learned counsel representing the petitioner is extracted as under:-

> *(a) That as has been pointed out by the Respondent- State of Haryana,the Commission of Inquiry Act, 1952 is a complete code in itself. In the exercise of power under Section 3 of the Act, the government can appoint a Commission of Inquiry if it thinks that it is necessary to do so to make an inquiry into any definite matter of public importance and perform such functions within a stipulated period as may be specified in the notification. After the inquiry by the Commission of the Inquiry so appointed and the submission of its report, the Commission of Inquiry becomes functus officio. In the instant case, the time limit for the Commission of Inquiry for submission of its report was extended only up to 31.08.2016. It is on the last date i.e. on 31.08.2016 that the Commission submitted its report and thereby ceased to be in existence. Even otherwise, a statutory order had already been passed by the government bringing term of the Inquiry Commission to an end. Therefore, no*

proceedings can be taken up by or before the Commission of Inquiry ceased to be in existence.

(b)That revival of a commission of inquiry is not permissible in law as there is no provision under the Act authorizing the government to restore an Inquiry Commission which has already ceased to exist. It is respectfully submitted that when statute does not permit such revival, this Hon'ble Court cannot remand the matter back to already closed Commission of Inquiry thereby impliedly reviving it. Therefore, in any eventuality, proceedings from the stage of section 8-B of the Act cannot be initiated.

(c) That it is a settled proposition of law that higher courts can remand the matter for deciding it fresh only if the authority which passed the original order is in existence. In a situation like present one where the inquiry commission/ original authority, whose report has been quashed, is admittedly no more in existence and hence the matter cannot be remanded back. In a similar situation under the Arbitration and Conciliation Act of 1996, which again is a complete code in itself, the Hon'ble Supreme Court in the case of Kinnaria Mullick & Anr. Vs. Ghanshyam Das Damani (2018) 11 SCC 328 has held that the court cannot remand back the matter to the Arbitrator after the award is set aside for the reason that after the passing of the award, Arbitral Tribunal ceases to exist and there is no provision under the Arbitration Act permitting remand. A reference can also be made in this regard to a judgment of the Hon'ble Patna High Court in the case of Arthur Butler Workers' Union vs. The Management of the Arthur Butler & Co. (Muzaffarpur), Ltd.& Ors. reported as 1952 SCC Online Pat. 41.

(d) That the Hon'ble Apex Court in case of Sanjay Gupta & Ors. vs. State of Uttar Pradesh reported as 2022 (7) SCC 203 has held that "the Commission under the Inquiry Act, 1952 can be appointed either by the executive or by the legislature and not by the judiciary in

terms of the provisions of the Act". Therefore, remanding the case back to the author of quashed report, who has admittedly ceased to be in existence, tantamounts to appointing/ reviving the Commission of Inquiry which is not permissible in law.

(e) That a Division Bench of Hon'ble Gujarat High Court in the case JanSangharsh Manch vs. State of Gujarat & Anr reported as 1998 SCCOnline Guj. 65 after examining various provisions of the Act has conclusively held that the court has no power to direct the government to appoint the Commission under the Inquiry Act,1952. It was found in the case that on account of the efflux of time,the term of the Commission had expired and the same was not extended by the government in that situation, it was held that the court cannot compel the government to expand the term of the Commission. If the Commission of Inquiry cannot be ordered to be restored at the instance of a private individual, the same cannot be restored at the instance of the Government or by the Hon'ble Court on its own. It was also held that statutory order/ notification was required to be issued for cessation of a commission under section7 of the Act only in case of its continued existence and not otherwise as where its term has already come to an end or it has submitted its final report.

(f)That the Hon'ble Division Bench of Andhra Pradesh High Court at Hyderabad in case of Peela Pothi Naidu vs. State of Andhra Pradesh& Ors. reported as 2005 SCC Online AP 334 has conclusively held that the power under section 3 of the Inquiry Act, 1952 is only to appoint the Commission at the first instance and not for revival/re-constitution. Thus, even the government or the legislature do not have the power to reconstitute/ revive a Commission of Inquiry under the provisions of the Act. It is again a settled principle of law that if something cannot be done directly, the same cannot be done indirectly as well.

(g) That the Hon'ble Apex Court in case of State of Madhya Pradesh vs.Ajay Singh & Ors. reported as 1993 1 SCC 302 after surveying all the provisions of the Inquiry Act, 1952 as well as Section 21 of the General Clauses Act, 1897, authoritatively held that the scheme of the Act indicates that Section 21 of the General Clauses Act 1897cannot be invoked to enlarge the government's power to reconstitute Commission constituted under section 3 of the Act in a manner other than expressly provided in the Act. It has further been held that there is no express power given by the Inquiry Act,1952 to the appropriate government to re-constitute Commission of Inquiry under section 3 of the Act by a replacement. In the said judgment, the Hon'ble Apex Court emphasized that the Commission functions as an independent agency free from any governmental control after its constitution and that after appointment, the Commission should not be dependent on the will of the government to secure its independence.

(h) That remanding the matter back to the same commission of inquiry would also be against the principles of natural justice in the facts of the case at hand. Because by preparing and thereafter submitting its report to the government, commission of inquiry has already expressed its views on the merits of the case especially when such report has been quashed by this Hon'ble court on the ground that adverse observations had been made affecting reputation of the petitioner in violation of mandatory provisions of the Act. In this factual background, the exercise of sending the petitioner back to the same commission for completing the formality of giving the opportunity of hearing cannot be considered legal and will be a classic case of fait accompli.

(i)That it is respectfully submitted that opinion of Hon'ble second Judge granting liberty to respondent- state of Haryana to appoint a commission of inquiry on the same subject matter, may be interpreted to mean that the

Hon'ble court has directed the government to constitute a fresh commission of inquiry. To this extent, it cannot be said to be legal and in conformity with the provisions of section 3 of the Act as per which the appropriate government will have to form an opinion afresh before appointment of a commission of Inquiry that a definite matter of public importance still persists which requires an inquiry even after lapse of so many years and subsequent events. Otherwise also, no liberty is warranted for exercising a statutory power if it is otherwise permissible in law. It is further respectfully submitted that such course of action would be prejudicial to the interests of petitioner limiting his rights of laying challenge to constitution of commission of inquiry in terms of liberty granted by judicial order.

2.4 Per contra, the learned Advocate General, Haryana has also filed the synopsis containing the gist of the submissions, which reads as under:-

"*The opinion of J. Grewal is in ignorance of the relevant statutory provisions and based on a presumption of fact and law that is not supported by the specific language of the statute. Therefore, the said opinion ought not to be accepted as the correct position in law.*

Grewal's opinion is based on the following premise:

1. The term of the Commission of Inquiry was extended till 31.08.2016 to enable it to submit its report.

2. The Commission of Inquiry submitted its report on 31.08.2016.3. With the submission of its report on 31.08.2016, its term expired. As a result of the same, the Commission of Inquiry is no longer in existence.

The above premise is based on a presumption that the term of the Commission of Inquiry came to an end on 31.08.2016. Furthermore, the expiry of the term led to an automatic cessation of the Commission of Inquiry.

The above presumption is gravely and manifestly erroneous. In fact, it is totally contrary to and in the teeth of the provisions of the Commission of Inquiry Act,1952. Under the scheme of the Act, there is no automatic or implied termination/cessation of the Commission of Inquiry constituted under Section 3(1)of the 1952 Act. Section 7 provides a detailed procedure for bringing an end to the existence of a Commission of Inquiry. The mandatory and imperative language of Section 7 clearly indicates that a Commission of Inquiry can cease to exist only in accordance with the procedure laid therein, and on the issuance of a notification under Section 7(1)(a) where the Government specifies its intention and reasons for the discontinuation of the Commission and specifies the date from which the notification is to take effect.

The Petitioner may argue that the notification dated 02.09.2016 vide which the term of the Commission of Inquiry in the present case was brought to an end on31.08.2016 amounts to termination of the Commission of Inquiry. However, this fact cannot come to rescue of the petitioners. The notification dated 02.09.2016 is not a notification issued under Section 7(1) of the Act of 1952. It is merely notification regulating the term within which the Commission of Inquiry was to mandatorily finish its task. Its purpose and object was to declare the outer limit within which the Commission of Inquiry was to submit its report and signal the intention of the Government to deliberate on the report submitted by the Commission and take action in accordance with law. It did not amount to a declaration of cessation of the existence of the Commission of Inquiry, which can only be done in accordance with Section 7 of the Act of 1952.

Therefore, unless a notification is issued under Section 7, specifying the reasons for its discontinuance and the date on which the Commission of Inquiry shall cease to exist, there can be no implicit or implied termination of a Commission of Inquiry. Furthermore, the mere expiry of the time within which it has to submit its report also will not lead to an implied cessation of the Commission of Inquiry.

Ref:

I.Prafulla Kumar Mahanta v. State of Assam and ors., (2019) 1 Gau. LR 354

II. State of Madhya Pradesh v. Ajay Singh, AIR 1993 SC 825

In light of the above, it is humbly submitted that the opinion by J. Grewal is factually and legally erroneous and in ignorance of the explicit statutory scheme and judicial pronouncements on the issue.

It is further submitted that the opinion by J. Mittal is the correct interpretation of the law and ought to be accepted as correct."

3. Discussion by this Court:-

3.1 Before this Court analyses, evaluates and considers the arguments put forth by the learned counsel representing the parties, it is important to have a brief look at the provisions of the Act. Sections 3, 7 and 8A of 'the 1952 Act' are extracted hereunder:-

"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 1 [each House of Parliament or, as the case may be, the Legislature 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 that where any such Commission has been appointed to inquire into any matter— (a) by the Central Government, no State Government shall, except with the approval of the Central Government, appoint another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government is functioning; (b) by a State Government, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States. (2) The Commission may consist of one or more members appointed by the appropriate Government, and where the Commission consists of more than one member, one of them may be appointed as the Chairman thereof. 2 [(3) The appropriate Government may, at any stage of an inquiry by the Commission fill any vacancy which may have arisen in the office of a member of the Commission (whether consisting of one or more than one member). (4) The appropriate Government shall cause to be laid before 2 [each House of Parliament or, as the case may be, the Legislature of the State], the report, if any, of the Commission on the inquiry made by the Commission under sub-section (1) together with a memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government.]

xxxx xxxx xxx xxx

[7. Commission to cease to exist when so notified.— (1) The appropriate Government may, by notification in the Official Gazette, declare that— (a) a Commission (other than a Commission appointed in pursuance of a resolution passed by 4 [each House of Parliament or, as the case may be, the Legislature of the State] shall cease to exist, if it is of opinion that the continued existence of the Commission is unnecessary; (b) a Commission appointed in pursuance of a resolution passed by 4 [each House of Parliament or, as the case may be, the Legislature of the State] shall cease to exist if a resolution for the discontinuance of the Commission is passed by 4 [each House of Parliament or, as the case may be, the Legislature of the State]. (2) Every notification issued

under sub-section (1) shall specify the date from which the Commission shall cease to exist and on the issue of such notification, the Commission shall cease to exist with effect from the date specified therein.]

[8A. Inquiry not to be interrupted by reason of vacancy or change in the constitution of the Commission.—(1) Where the Commission consists of two or more members, it may act notwithstanding the absence of the Chairman or any other member or any vacancy among its members. (2) Where during the course of an inquiry before a Commission, a change has taken place in the constitution of the Commission by reason of any vacancy having been filled or by any other reason, it shall not be necessary for the Commission to commence the inquiry a fresh and the inquiry may be continued from the stage at which the change took place."

3.2 The Commission can be established/ appointed by the Government in exercise of its executing powers under Section 3(1) of the '1952 Act' or on the resolution passed by each House of Parliament or as the case may be, Legislation of the State in this behalf. However, if resolution has been passed by the each house of Parliament or as the case may be, Legislation of the State, the Government shall constitute a Commission of Inquiry, whereas, in other eventuality, the Government has the discretionary power. Sub-section 3 of Section 3 of the 1952 Act enables the appropriate Government to fill any vacancy, which may arise in the office of the Commission whether consisting of one or more members. Section 7 lays down the procedure with respect to the cessation of the Commission. Sub-section (1) of Section 7 provides that appropriate Government may, by notification in the Gazette, declare that the Commission has ceased to exist. Sub-section (1) lays down two ways in which a Commission can be ceased, the first method says that

when its continued existence becomes unnecessary and second method says that if a resolution is passed by Legislature in this regard then it ceases to exist. Sub-section 2 of Section 7 requires the Government to specify the date from which the Commission shall cease to exist and issuance of notification under Section 7 is mandatory. Section 8A provides that Inquiry shall not be interrupted by the reason of vacancy or change in constitution of the Commission. In a multi member Commission, the proceedings will not be interrupted on account of absence of the Chairman or any other member. Sub-section 2 of Section 8A shall play a significant role in the decision of this case. The aforesaid Section provides that if a change takes place in the constitution of the Commission by the reason of any vacancy having been filled or by any other reason, it shall not be necessary for the Commission to commence the Inquiry afresh, and it may continue from the stage at which the change took place. From a careful reading of Section 8(2), it is evident that the Commission of Inquiry is considered as an institution of continued existence till it ceases to exist by a notification issued under Section 7 declaring that it has ceased to exist. The language articulated in sub-section 2 sheds light on the aforesaid aspect. In case of single member Commission, the Act envisages that by the reason of any vacancy having been filled or by any other reason, it shall not be necessary for the Commission to commence the new Inquiry, and the inquiry may proceed from the stage, it was left at.

3.3 Now, this Court proceeds to examine the submissions is put forth by the learned counsel representing the parties.

3.4 Submission no.(a) put forth by the learned counsel representing the petitioner is correct to a certain extent. The term of Commission of Inquiry came to an end on issuance of notification dated 02.09.2016, which has already been reproduced above.

3.5 Per contra, the learned Advocate General submits that the notification under Section 7 of the 1952 Act has never been issued. The official notification that was issued was only to declare that the term of the Commission has come to end with immediate effect from 31.08.2016. However, this notification is not in terms of Section 7 of the 1952 Act. It appears to be the most appropriate interpretation of the provisions of the 1952 Act. Section 8A (2) helps the Court to come to a conclusion that the Inquiry Commission constituted under the Act as envisaged continues till it achieves the purpose for which it was constituted. The Commission ceases to exist when the Government forms opinion that the continued existence of the Commission is unnecessary and issues notification under Section 7 (1)(a) in this regard. In other words, Section 7 is divided into two clauses (a) and (b). If Commission has been appointed other than the Commission appointed in pursuance to resolution passed in each house of Parliament or as the case may be, the Legislature of the State, it ceases to exist only where the Government notifies its intention of doing so by issuing notification under Section 7 (1)(a) of the '1952 Act' or when resolution for the discontinuance is passed by each House of Parliament or as the case may be, by the Legislature. The only ground that has been enshrined in the aforementioned provision is that the Commission can be ceased by the

Government in case it's existence becomes unnecessary. Similar powers are conferred on the each House of the Parliament or the State Legislature, as the case may be. The attention of the Court has not been drawn to any provision which debars the Government from revival of the Commission in case of various contingencies. Undoubtedly, the argument put forth by the learned counsel representing the petitioner that the Court has no power to revive the Commission with changed/ new Commissioner if a conscious decision was already taken under Section 7 of the '1952 Act' declaring that its continuation is unnecessary seems meritorious. However, there is no restriction on the enabling power of the appropriate Government to take decision in the peculiar facts of the case once the previous tenure for which Commission was constituted came to an end. The purpose of establishing the Inquiry Commission is to inquire into any definite matter of public importance and performing such functions as specified. Hence, in the absence of a conscious decision by the Government to the effect that the purpose for which the Inquiry Commission was appointed became unnecessary, the Commission of Inquiry, subject to the decision of the Government, continues in suspended animation. The Division Bench has found no merit in the various submissions of the learned counsel representing the petitioner. However, the Court has found that the notice issued to the petitioner was illegal as it failed to disclose the sufficient details for which the petitioner was being summoned and the conditions laid down under Section 8B of the '1952 Act' have not been complied with. In these circumstances, it shall be open for the Government to take a

relevant decision. The aforesaid discussion elaborately covers submission no.(a) and (b) of the petitioner.

3.6 With regard to submission no. (c), it shall be noted that the judgment relied upon by the learned counsel representing the petitioner relates to the provisions of the Arbitration and Conciliation Act, 1996. This Court has already observed that the Court may not have the power to remit the matter back to the Commission for deciding afresh, however, the Government has the power to order continuation/revival of the Commission in the peculiar facts of the case. Similarly, the judgment in **Arthur Butler Worker's case (supra)** is also not applicable to the peculiar facts of the case because it arises from the Tribunal constituted under the Industrial Disputes Act, 1947.

3.7 Submission under clause (d), put forth by the learned counsel representing the petitioner is not disputed, however, as already noticed the enabling power of the Government to revive the Commission is not abridged or taken away. The judgment in **Sanjay Gupta's case (supra)** is in the context of the Court Commissioner, who was appointed to inquire into an unfortunate incident which resulted in loss of life of 65 persons and left 160 people injured. Initially the State of Uttar Pradesh appointed the Commission of Inquiry under the provisions of 1952 Act, however, the Supreme Court, while agreeing with the judgment of the Uttar Pradesh High Court appointed one man Commission under the orders of the Court. Supreme Court held that the aforesaid Commission would constitute as a Court Commissioner, who was appointed with the consent of the parties.

3.8 In submission no.(e), the petitioner relies upon the judgment passed in **Jan Sangharsh Manch's case** delivered by Hon'ble Division Bench of Gujarat High Court. In that case, the Government formed an opinion that continuity of commission was unnecessary, hence, notification dated 02.09.1997 was issued, which was made the subject matter of challenge before the Court. In para 9 of the judgment, the Court considered the effect of the notification and examined the powers of the Court to order revival or its continuance. It was held that the discretionary power that has been exercised by the Government can under no circumstances be treated as malafide. Thus, the Special Civil application was dismissed. However, it nowhere lays down that the Commission cannot be restored or revived at the instance of the Government if its previous term has come to an end. There is no automatic cessation of the Commission . The Commission only ceases when a conscious decision is taken by the competent authority in this regard.

3.9 In **Peela Pothi Naidu's case(supra),** the Government, after issuance of notification, declaring that Commission of Inquiry has ceased to exist issued fresh notifications for withdrawal of earlier notification and the continued existence of Commission. In that context, it was held that the Commission, which has ceased to exist cannot be revived to life by equating the analogy of life of a human being, which comes to an end with death. The court was also impressed by the fact that it was not the case of the Government that it has implied power to revive the Commission. The facts of this case are totally different. In

this case, there is no conscious decision of the Government to declare that the Commission of Inquiry has ceased to exist. Notification issued on 02.09.2016 is only to the effect that the term of Commission of Inquiry shall come to an end with immediate effect, from the date of notification. However, subsequently, the Division Bench found an error in the procedure followed by the Commission while conducting the inquiry. In such circumstances, the judgment of the Division Bench will not be applicable. Even the judgment passed in **Kinnari Mullick's case (supra)** would not be applicable qua the opinion of the second Judge, particularly when it is left to the Government to take a decision. In absence of any prohibition or restriction in the Act, this Court does not find it appropriate to hold that the Government does not have the power to reconstitute or revive a 'Commission of Inquiry', particularly when the Act envisages continuous proceedings, irrespective of vacancy, for any reason and non-interruption of proceedings by reason of vacancy or change in constitution of the Commission. Sub-section 2 of Section 8A of the '1952 Act' specifically provides that a fresh and de novo inquiry is not required on account of change which has taken place in the constitution of provision by reason of any vacancy having been filled or by any other reason. The inquiry may be continued at the stage at which the change took place.

3.10 The judgment of **Ajay Singh's case (supra)** is not applicable in the matter at hand. Initially, the Commission of Inquiry was presided over by Shri Justice S.T.Ramalingam, Judge of Madras High Court. Subsequently, he was sought to be substituted with Justice

G.G.Sohani, who showed his disinclination to continue with the assignment and tendered his resignation. Thereafter, Justice Kamlakar Choubey was appointed as the sole member constituting the Commission of Inquiry. The court held that appointment of Justice G.G.Sohani as invalid because there was no vacancy in the office to enable the Government to exercise powers under Section 3(3) of the 1952 Act. Hence, the aforesaid judgment has been passed on the facts that are visibly and substantially different from this case. In para 21 of the afoesaid judgment, the Supreme Court culled out the following issue:-

> *"21.The real question for decision in the present case is:Whether the appropriate Government after constituting the Commission under Section 3 of the Act is empowered to reconstitute the Commission substituting another person as the sole member in place of the initial appointee? In substance, it is this power that the State Government claims to have exercised in the present case and is attempted to be justified by the argument advanced by Shri Shanti Bhushan to support the appointment first of Justice G.G. Sohani and then of Justice Kamlakar Choubey in place of Justice S.T. Ramalingam. To recapitulate, the argument of Shri Shanti Bhushan is that the power of reconstituting the Commission in this manner is available to the State Government under Section 21 of the General Clauses Act which can be invoked in aid of the power of the Government under Section 3 of the Commissions of Inquiry Act. Section 8-A of the Commissions of Inquiry Act is referred to by Shri Shanti Bhushan as an indication of the existence of this power in the State Government even though he does not rely on it as a source of this power. Shri Kapil Sibal, on the other hand, contends that the scheme of the enactment shows that the appropriate Government cannot interfere with the working of the Commission after its constitution except in the manner expressly provided in the Act and Section 7 is a clear indication that interference with the functioning of the Commission is not permissible in any other manner. Shri Sibal contends that Section 21 of the General Clauses Act is not*

available to support the Government's action in the present case.

3.11 Once the Government has the power to appoint a Commission, its continuation, filling up of any vacancy, in order to ensure completion of the Inquiry, in that case the submission by the learned counsel for the petitioner that the Government has no power to revive the commission in order to complete the Inquiry, in accordance with law, on account of subsequent order passed by the Court would be against the spirits of the Act. He has submitted that this issue was never debated and discussed during the course of hearing. It is probably for this reason that the Hon'ble Senior Judge made casual observations in this regard. The Second Judge upon reading the draft judgment of the First Judge got an opportunity to examine the matter and it resulted in a separate opinion.

3.12 Since submission no.(g) is practically the same as submission made under clause (c), hence, to avoid repetition, reference may be made to para 3.6. Needless to observe that the Division Bench has not quashed the Inquiry report on the merits rather it has only be quashed the report on account of technical or procedural defect which is capable of being cured. Hence, it is for the Government to take a decision about the continuation of the Commission.

3.13 With respect to argument no.(i), it is necessary to note that this Court has not found any error in the decision of the Government for appointment of a Commission of Inquiry. Rather the Division Bench has found under facet no.1 of para 11, that the decision of the State

Government was based on relevant, cogent and objective material. Hence, the State Government is not required to form an opinion afresh before ordering continuation of the Commission.

3.14 The first submission of the learned Advocate General is required to be examined in the context of the language implied by the statue. Section 3 (1) provides that the appropriate Government shall 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. It is significant to focus on the word 'time', as the Act requires the Government to specify the time for its operation. It is mandatory that while appointing a Commission of Inquiry under the Act, the period within which the Inquiry is required to be completed shall be specified, which can be extended from time to time in view of the subsequent developments. The tenure of the Commission of Inquiry would come to an end at the expiry of the specified period unless the specified period is extended. However, Section 7 provides for a different situation. Section 7(1)(a) deals with a situation when appropriate Government forms an opinion that the continued existence of the Commission is unnecessary. The word 'unnecessary' has a broad connotation, as the Act has not laid down an exhaustive list in this regard. This situation can arise when the appropriate Government considers that the continuation of Commission of Inquiry is not required in view of various grounds or situations arising subsequent to the appointment of Commission of Inquiry or for any other reason. Similarly, Section 7(1)(b) deals with a situation where the

Commission of Inquiry is constituted pursuant to a resolution passed by each house of Parliament or as the case may be, the Legislature of the State and a conscious decision to discontinue the Commission of Inquiry has been taken. Sub-section 2 of Section 7 provides for issuance of a notification while specifying the date from which the Commission of Inquiry shall cease to exist. Section 7 does not deal with a situation where the term of the Commission has come to an end or the Commission has already submitted its final report, it only mandates the appropriate Government to specify a date if the Commission ceases to exist either under Section 7(1)(a) or Section 7(1)(b). In this case, the report had been submitted by the Commission on 31.08.2016, the last day of the term of the Commission. Thus, the purpose for which the Commission was constituted came to an end. However, in view of the judgment of the Court, partially setting aside the report on technical ground due to failure to follow the procedure would not debar the Government from ordering its continuation as the purpose for which the Commission was constituted has not been fulfilled. For fulfilling the purpose for which the Commission was issued, it shall be open to the Government to issue a notification in this regard. It is found that the Commission can be continued by the Government in view of the subsequent development i.e the judgment passed by the Court.

3.15 The second argument put forth by the learned Advocate General can also not be admitted because on issuance of notification dated 02.09.2016, the Government declared that the term of 'Commission of Inquiry' has come to an end. Thereafter, the working of

Commission of Inquiry ended i.e it was in suspended animation or hibernation. Similarly, the argument that the 'Commission of Inquiry' had to mandatorily finish its task has no substance because the Government in its wisdom may refuse to extend the period or it may cease the Commission under Section 7 of the 1952 Act.

3.16 This Court has carefully read the judgment passed by the Gauhati High Court in **Prafulla Kumar Mahanta vs. State of Assam and others (2019) 1 Gauhati Law Reports 354.** In the aforesaid case Justice (Retd.) Meera Sarma was appointed as the sole member of the Commission, who was relieved from the Commission on a personal ground. Thereafter, in her place, Justice Shri J.N.Sarma (Retd.) was appointed. He submitted an interim report which was not accepted by the Government. A fresh Commission of Inquiry headed by Justice (Retd.) K.N.Saikia was constituted on 22.08.2005, which was challenged in the court. During the pendency of the court proceedings, a report was also submitted. Ultimately, the court held that the Commission of Inquiry headed by its sole member Justice (Retd.) J.N.Sarma did not cease to exist and it was not appropriate for the Government to reconstitute the Commission under the Chairmanship of Justice (Retd.) K.N.Saika. In para 39, the Court held as under:-

> *"39. At this stage, reference may once again be made to section 3 and section 7 of the 1952 Act. On the question of discontinuation or cessation of a Commission of Inquiry constituted under section 3(1) of the 1952 Act, there cannot be any implicit termination of a Commission of Inquiry. In other words there cannot be any implicit discontinuation of*

a Commission of Inquiry once constituted under section 3(1) of the 1952 Act. A conjoint reading of section 3 and section 7 of the 1952 Act will make it abundantly clear that the appropriate Government has to issue a notification in the Official Gazette declaring that the particular Commission of Inquiry shall cease to exist if it is of opinion that continued existence of the Commission is unnecessary. Such notification must specify the date from which the Commission shall cease to exist and it is from the issue of such notification that the Commission shall cease to exist with effect from the specified date. Respondents have not been able to place any such notification before the court to indicate discontinuation or cessation of the Justice (Retd.) J.N. Sarma Commission of Inquiry. Mere expiry of time stipulated in the section 3(1) notification for submission of report by the Commission cannot be construed to mean that the Commission had ceased to exist without there being any section 7 notification. Assertion of respondent No. 1 that the Justice (Retd.) J.N. Sarma Commission was discontinued is, thus, devoid of any legal and factual support. Therefore, when the Justice (Retd.) J.N. Sarma Commission of Inquiry was still in existence and had only submitted its interim report, the State acting as the appropriate Government could not have constituted the Justice(Retd.) K.N. Saikia Commission of Inquiry to conduct enquiry on the same subject-matter. This was legally impermissible having regard to the provisions contained in sections 3(1), 3(3) and 7 of the 1952 Act. Viewed in the above perspective, the impugned

notification dated 22.8.2005 cannot be sustained in law."

3.17 From reading of the entire evidence and the judgments passed by the courts, it becomes crystal clear that the official notification issued by the Government ending the tenure of the 'Commission of Inquiry' and a notification issued under Section 7 of the the '1952 Act' for cessation of the aforesaid commission cannot be equated. As already discussed, the continued existence of Commission ceases to exist only as per the procedure laid down in Section 7(1) (a) and (b). Since the 'Commission of Inquiry' in the present case was constituted by the appropriate Government under its executive action, it shall have ceased to exist only if the appropriate Government had issued a notification under 7(1)(a). Section 7(1)(b) is not applicable to the 'Commission of Inquiry' constituted herein. In the present case, the appropriate Government ended the working of the 'Commission of Inquiry' by issuing a notification, however, it was not a notification of cessation of 'Commission of Inquiry' under Section 7 (1) (a) of the 1952 Act. It is important to mention that the Government never issued a 'cessation notice' under Section 7(1)(a) till date. Hence, after submission of the report, the Commission remained in suspended animation and the same shall be considered to be subject to the decision of the case. In the considered opinion of the Court, this shall be the most appropriate interpretation in the facts and circumstances of the case. Hence, this Court is in consonance with the opinion formed by the second Hon'ble Judge while declaring that if the Government decides to continue with

the Inquiry as the inquiry report has been quashed the appropriate Government may issue a notification reviving the Commission.

3.18 In common parlance the expressions “come to an end” or “cessation” may sound similar, however, in the context of the ‘1952 Act’ both the expressions have a different meaning or connotation. Section 7 of the ‘1952 Act’ provides for a conscious decision of the appropriate Government or both Houses of the Parliament or the Legislature of the House for ceasing the ‘Commission of Inquiry’ due to reasons mentioned in the Section. In the present case, the appropriate Government by an official notification ended the term of the ‘Commission of Inquiry’ as the purpose for which it was constituted was fulfilled but here the period can be extended by the Government as the Commission did not cease to exist.

3.19 In the context of this case, the aforesaid distinction holds paramount significance. It has nowhere been mentioned in the Commissions of Inquiry Act, 1952 that after the submission of the ‘Inquiry Report’ by the ‘Commission of Inquiry’ it becomes functus officio or it ceases to exist. Section 7 of the 1952 Act clearly lays down the particular procedure where the appropriate authority decides to declare that the Commission ceases to exist. The ‘1952 Act’ mandates the appropriate Government to cease the Commission by way of a notification and such notification is issued by the Government on the following two grounds:-

i) if the continued existence of the Commission is unnecessary,

(ii) and in case of Commission appointed in pursuance of Legislation, the Commission shall cease to exist if a resolution in that regard is passed by the appropriate Government (i.e the Legislature).

Section 7(2) enshrines that the notification shall specify the date from which the Commission shall cease to exist, and on such notification the Commission shall cease to exist.

3.20 In the matter at hand, the appropriate Government has nowhere notified the cessation of the Commission of Inquiry under Section 7(1)(a) of the 1952 Act as mandatorily required. The courts have no power to implicitly derive from a statute what has not been explicitly granted. The courts should not assume powers or meanings beyond what is clearly stated in law. Instead, the statutes shall be interpreted according to the Legislative intent. So the argument that the Commission of Inquiry becomes functus officio or ceases to exist is erroneous as the Commission never ceased to exist. The appropriate Government Vide the notification dated 2nd September, 2016 ended the term of the Commission for making an Inquiry, however, it shall not be considered as the notification issued under Section 7 of the 1952 Act. When the Commission has not ceased to exist, it can be revived by the appropriate Government for the fulfilment of its purpose, as it will be in consonance with the spirit of the provisions of the Act.

4. Decision:-

4.1 While expressing concurrence with the opinion of the 2nd Judge of the Division Bench, the writ petition is partly allowed. The appropriate Government shall be at liberty to take a decision for

continuation of the Commission, as it may deem fit. It shall be open for the Commission to continue the proceedings from the stage when notice under Section 8B of the 1952 Act was required to be issued.

4.2 All the pending miscellaneous applications, if any, are also disposed of.

09.05.2024 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No