

A STATE OF MADHYA PRADESH
v.
ARJUN SINGH AND OTHERS

NOVEMBER 17, 1992

B [M.H. KANIA, CJ., N.M. KASLIWAL AND K. RAMASWAMY, JJ.]

Commissions of Enquiry Act, 1952—Section 11—Commission of enquiry—Enlargement of terms of original reference by notification—Whether second reference illegal—Supreme Court's directions to State Government.

C The Leader of Opposition in the Legislative Assembly of the State filed a Writ Petition in the High Court on 18.10.1987, highlighting the illegalities, irregularities and misuse of powers by high officials and public men in the Government in the matter of a lottery conducted by one Churhat Welfare Society and sought appropriate directions from the High Court.
D

The Writ Petition was decided on January 20, 1989. On 24.2.1989, a notification was issued in pursuance to the judgment, appointing a commission of enquiry presided over by a Judge of the Madras High Court.

E By a notification issued under Section 11 of the Commissions of Enquiry Act 1952, the commission was empowered to follow the procedure under the Act.

F During the pendency of the enquiry, the appellant State Government by a fresh notification dated 29.3.1990 enlarged the terms of the original reference.

The respondent filed a Writ Petition challenging the second reference made under notification dated 29.3.1990.

G The High Court though rejected all the grounds on which the notification of the second reference was challenged, quashed the notification dated 29.3.1990, holding that it suffered from non application of mind and invalid exercise of powers under Section 3 of the Act.

H The appellant-State Government against the judgment of the High Court preferred the present appeal before this Court.

Disposing of the appeal, this Court

HELD: 1.1. The terms of reference contained in Clauses A and B of the second reference are already covered in the terms of the original reference. In this view of the matter there can be no bar to the commission to enquire into these matters under the original reference itself. [166-C]

1.2. So far as Clause 'C' of the second reference is concerned, the original reference in term No.1 itself covers the question as to how the affairs of the Churhat Children Welfare Society are conducted and how the share of its profit derived and the money collected through lottery has been utilised. Nothing precludes the commission from making an enquiry as to whether any profit derived or money collected through Churhat Lottery had been utilised for constructing the mansion/bungalow at Kerva Dam. [166-D]

1.3. The High Court rightly quashed the portion of Clause C as there was no relevant material before the State Government for enlarging the scope of existing enquiry under the original reference. [166-F]

1.4. The High Court's judgment does not preclude the State Government from appointing any commission of enquiry according to law after applying its mind to any fresh or further material placed before it. Such formation of opinion depends on the subjective satisfaction of an appropriate Government but should be based on an objective or real material and not merely on some vague allegations or hearsay evidence or to make fishing enquiry. [166-H, 167-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No.4842 of 1992.

From the Judgment and Order dated 4.3.1992 of the Madhya Pradesh High Court in Misc. Petition No.1681 of 1990.

Shanti Bhushan, G.L. Sanghi, N.C. Jain and Satish K. Agnihotri for the Appellant.

Kapil Sibal, N.S. Kale, Rajinder Singh, J.B. Dadachanji, Vasant B. Mehta, Mrs. A.K. Verma, Mrs. S. Pathak, Ravindra Srivastava (For JBD & Co.) S.V. Deshpande and S. Sukumaran for the Respondents.

A The Judgment of the Court was delivered by

KASLIWAL, J. Special leave granted.

B This appeal by the State of Madhya Pradesh is directed against the judgment of the Madhya Pradesh High Court dated 4.3.1992 in Miscellaneous Petition No.1681 of 1990, quashing the notification dated 29.3.1990.

C Shri Kailash Joshi the then Leader of Opposition in the Legislative Assembly of the State of Madhya Pradesh filed a Writ Petition (M.P. No.3909 of 1987) on 18.10.1987. Appropriate directions were sought from the Court in the matter of a lottery conducted by Churhat Welfare Society and the petitioner highlighted illegalities, irregularities and misuse of powers by high officials and public men in the Government. The said Writ Petition was decided on January 20, 1989. The Government of Madhya Pradesh in pursuance to the aforesaid judgment issued a notification on 24.2.1989 appointing a commission of enquiry presided over by Shri Justice **D** S.T. Ramalingam, Judge of the Madras High Court. The terms of reference were stated as under:-

E "(1) How the affairs of the Churhat Children Welfare Society are conducted and how the share of its profit derived and the money collected through lottery has been utilised?

F (2) What is the amount collected draw-wise by the agent and the Society and what is the tax liability as per the Madhya Pradesh Lottery (Niyantaran Tatha Kar) Adhiniyam, 1973?

G (3) Whether any irregularities, illegalities and offences were committed in organizing the lottery, holding of draw of lottery, distribution of prizes, and in that even the person responsible for the same.

(4) Any other matter incidental or connected with the above subject matter of enquiry."

For convenience we shall hereinafter mention the above reference as 'original reference'. Government by notification issued under Section 11 of **H** The Commissions of Enquiry Act, 1952 (hereinafter referred to as 'the

Act') empowered the commission to follow the procedure under the Act. During the pendency of the enquiry, the State Government by a fresh notification dated 29.3.1990 enlarged the terms of the original reference (in short 'second reference'). The respondent Shri Arjun Singh filed a Writ Petition (M.P. No.1681 of 1990) Challenging the second reference on several grounds. The High Court by judgment dated 4.3.1992 rejected all the grounds on which the notification of the second reference was challenged, but quashed the notification dated 29.3.1990 holding that it suffered from non application of mind and invalid exercise of powers under Section 3 of the Act. The State Government aggrieved against the aforesaid judgment of the High Court has come in appeal before this Court.

The terms of second reference issued vide notification dated 29th March, 1990 are reproduced as under:-

"A. The entire affairs and activities of Churhat Children Welfare Society from its inception to the date of the High Court Judgment including an enquiry into its assets, liabilities, income and expenditure, the illegalities committed by it and the official favour shown or given to it against the normal and legal procedure and the persons responsible for the same.

B. Whether in the matter of grant of licence of Churhat Children Welfare Society under the M.P. Lottery Adhinyam to run the lottery and grant of tax exemption u/s 26 of the said Adhinyam to the Society either in anticipation of the Cabinet approval or by the Cabinet, there was any abuse of power? If so, the persons authorities responsible for the same.

C. Since Shri Arjun Singh has failed to give explanation to the Nation after the High Court's decision the enquiry be also made as to at what cost he and his family members have acquired and built his mansion at Kerva Dam and from where they got the funds for that purpose."

The High Court took the view that in the facts of the case and as disclosed from the contents of the impugned notification, apart from the

A observations and the comments of the High Court (in M.P. No.3909 of 1987) there was no relevant material before the appropriate Government for enlarging the scope of existing enquiry which was set up only to comply with the directions contained in the operative part of the judgment of the High Court in the Churhat lottery case. The High Court further observed that the resolution or order of the appropriate Government dated 23.3.1990, which culminated in passing of the impugned notification on 29.3.1990, had not been produced before them, although a specific prayer for the same was made in the prayer clause of the petition. We have heard the learned counsel for the parties at length and have gone through the record.

C In our opinion, so far as the terms of reference contained in Clauses A and B of the second reference are concerned, the same are already covered in the terms of the original reference. Neither counsel controverted this position. In this view of the matter there can be no bar to the commission to enquire into these matters under the original reference itself. Now, so far as Clause 'C' of the second reference is concerned, the original reference in term No.1 itself covers the question as to how the affairs of the Churhat Children Welfare Society are conducted and how the share of its profit derived and the money collected through lottery has been utilised. We further make it clear that nothing precludes the commission from making an enquiry as to whether any profit derived or money collected through Churhat Lottery had been utilised for constructing the mansion/bungalow at Kerva Dam. But so far as the following portion of Clause C of the second reference is concerned, the High Court rightly quashed the same as there was no relevant material before the State Government for enlarging the scope of existing enquiry under the original reference:-

"the enquiry be also made as to at what cost he and his family members have acquired and built his mansion at Kerva Dam and from where they got the funds for that purpose."

G It is also made clear that this judgment does not preclude the State Government from appointing any commission of enquiry according to law after applying its mind to any fresh or further material placed before it. H Such formation of opinion depends on the subjective satisfaction of an

appropriate Government but should be based on an objective or real material and not merely on some vague allegations or hearsay evidence or to make fishing enquiry. The appeal is disposed of as aforesaid. No order as to costs. A

V.P.R.

Appeal disposed of.