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STATE OF BIHAR

v.

LAL KRISHNA ADVANI AND ORS.

SEPTEMBER 16, 2003

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[BRIJESH KUMAR AND ARUN KUMAR, JJ.]

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Commission of Inquiry Act, 1952—Section 8B—Persons likely to be prejudicially affected to be heard—Enquiry Report containing impinging remarks on respondent affecting his reputation and image—High Court, in Writ Petition by respondent, ordering deletion of such remarks since it was made without following principles of natural justice—Right to be heard—Availability of—Held, one is entitled to have one's reputation and a right to protect it—Hence, impinging remarks made on respondent without following principles of natural justice is violative of Section 8B of the Act and law.

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The appellant State appointed a Commission of Enquiry under Section 3 of the Commission of Inquiry Act, 1952 for inquiry into the Bhagalpur communal riots of 1989. The Commission was initially a Single Member Commission but later on in 1993, two others were also notified as Members of the Commission. The members of the Commission were retired High Court Judges. The Commission gave two Reports—one by one member and the other by two other members.

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Respondent no. 1 filed a Writ Petition before High Court for expunging certain remarks made in the Report submitted by two members contending that the remarks were made against him without issuing a notice under Section 8B of the Act and thereby violating the principles of natural justice; that the remarks are such which impinge upon his reputation as a public man; and that his reputation and image was adversely affected in the eyes of the people. High Court, without going into the recommendations of the Report, partly allowed the writ petition of respondent no. 1 ordering such parts of the report, which consists of the impinging remarks on respondent no. 1, to be inoperative and no action be taken on the basis thereof.

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In appeal to this Court, the appellant-State contended that the

Writ petition of respondent no. 1 before the High Court was premature since no action was taken by the State against the respondent in pursuance of the report of the Enquiry Commission; that the terms of the Reference of the Commission were quite wide which included looking into the causes behind the riots and recommending preventive measures; and that the Commission was not inquiring into the conduct of respondent no.1 in particular.

Dismissing the appeals, the Court

HELD : 1.1. One is entitled to have and preserve one's reputation and one also has a right to protect it. In case any authority, in discharge of its duties fastened upon it under the law, traverses into the realm of personal reputation adversely affecting him, must provide a chance to him to have his say in the matter. In such circumstances, the right of an individual to have the safeguard of the principles of natural justice before being adversely commented upon by a Commission of Inquiry is statutorily recognised and violation of the same will have to bear the scrutiny of judicial review. One cannot be condemned unheard is one of the attributes of the principles of natural justice, which operates even in the absence of a written provision under the law. [852-E-F, 847-C]

The State of Jammu and Kashmir & Ors. v. Bakshi Gulam Mohammad & Anr., AIR (1967) SC 122; *Smt. Kiran Bedi & Jinder Singh v. Committee of Inquiry & Anr.*, AIR (1989) SC 714 and *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni & Ors.*, [1983] 1 SCC 124, referred to.

D.F. Marion v. Minnie Davis, [55 American LR 171] and *Peter Thomas Mohan v. Air New Zealand Ltd. & Ors.*, (1984) A.C. 808, referred to.

International Covenant on Civil and Political Rights, (1965) ICCPR, referred to.

1.2. Section 8B was brought into the Commission of Enquiry Act, 1952 by Amending Act 79 of 1971 i.e. about 20 years after passing the main Act itself. The experience during the past two decades must have

A made the Legislature to realise that it would be necessary to notice a person whose conduct the Commission considers necessary to inquire into during the course of the inquiry or whose reputation is likely to be prejudicially affected by the inquiry. It is further provided that such a person would have a reasonable opportunity of being heard and to adduce evidence in his defence. Thus the principle of natural justice

B was got inducted in the shape of statutory provision. It is thus incumbent upon the Commission to give an opportunity to a person, before any comment is made or opinion is expressed which is likely to prejudicially affect that person. Failure to comply with principles of natural justice renders the action non-est as well as the consequences thereof. [852-G-H, 853-A-B]

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1.3. It is not necessary for a person to wait till certain action is initiated by the Government considering the report of the Inquiry Commission where the observations made by the Commission are such

D which militate against the reputation of a person and particularly without giving any chance to such a person to explain his conduct. It would be open for him to move the Court for deletion of such remarks made against him violating the provisions of Section 8B of the Act. The State actually takes action or it does not or the fact that the Report is yet to be considered from that angle, cannot be a reason to submit that it won't be an appropriate stage to approach the Court. There may be occasions where after consideration of the Report, the Government may not decide to take any action against the person concerned yet the observation and remarks may be such which may play upon the reputation of the person concerned and this aspect of the matter has been fully taken care of under clause (b) of Section 8B of the Act. It is not, therefore, necessary that one must wait till a decision is taken by the Government to take action against the person after consideration of the Report. [853-D-E, 854-F-H, 855-A]

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G *State of Karnataka v. Union of India & Anr.*, [1977] 4 SCC 608 CB; *Brijnandan Sinha v. Jyoti Narain*, AIR (1956) SC 66 and *Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & Ors.*, [1959] SCR 279 CB, referred to.

H CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1792 of 1997.

From the Judgment and Order dated 10.5.96 of the Patna High Court in C.W.J.C. No. 5790 of 1995. A

Dinesh Dwivedi, Kumar Rajesh Singh and B.B. Singh for the Appellant.

Harish N. Salve, Mrs. Vanita Bhargava, Ms. Bina Gupta and Mrs. Sree Deve Raja for the Respondents. B

The Judgment of the Court was delivered by

BRIJESH KUMAR, J. : In this appeal, preferred by the State of Bihar, ultimately the question which falls for consideration is the effect of non-compliance of all time tested and ancient principle of natural justice. One cannot be condemned unheard is one of the attributes of the principles of natural justice, which operates even in absence of a written provision under the law. Though in the case in hand there is such a provision which, according to the appellant, was not necessary to be complied with, but the High Court of Patna has held to the contrary. It relates to applicability of Section 8B of the Commissions of Inquiry Act, 1952 (60 of 1952) (for short 'the Act'). C D

In the year 1989 some communal riots took place in Bhagalpur District, State of Bihar, resulting in many deaths and left some others injured. Undoubtedly, it was a matter of concern and the State Government decided to constitute a Commission of Inquiry under Section 3 of the Act, which reads as under : E

"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 [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: F G

A (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.

B xxx xxx xxx

C (4) The appropriate Government shall cause to be laid before [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.]"

D The terms of the Reference are as follows :

"a) to enquire into the facts and circumstances leading to communal disturbances in the district of Bhagalpur and adjacent areas on 24th October, 1989 and thereafter;

E b) to enquire into whether these disturbances were pre-planned and, if so, the elements responsible for the same;

F c) to enquire whether measures taken by the District Administration to prevent and deal with the said disturbances were timely and adequate, and to fix responsibility for lapses if any, in this regard with the said disturbances were timely and adequate, and to fix responsibilities for lapses if any, in this regard;

G d) to recommend measures for preventing recurrence of such disturbances;

H e) to consider such other matter relating to these communal disturbances and make such recommendations as the Commission may think it proper and necessary."

It was initially a single Member Commission and Mr. Justice Ram Nandan Prasad was appointed as a sole Member of the Commission. Subsequently, however, on 20.09.1993 two others were also notified as Members of the Commission, namely, Mr. Justice Ram Chandra Prasad Sinha and Mr. Justice S. Shansul Hasan. They are also retired Judges of the High Court. The Commission seems to have been divided in its opinion; one report was handed down by Justice Ram Nandan Prasad and the second by the other two members, namely, Mr. Justice Ram Chandra Prasad Sinha and Mr. Justice S. Shansul Hasan. The respondent no. 1 Shri Lal Krishna Advani and some others felt aggrieved by certain parts of the Report submitted by the two members of the Commission. In this appeal we are concerned with the remarks relating to the respondent no. 1 alone. The respondent no. 1 felt that such remarks made in the Report submitted by the two members of the Commission were uncalled for and were not necessary to be made looking to the terms of the Reference and in any case the remarks are such which impinge upon his reputation, as a public man. According to him, his reputation and image was adversely affected in the eyes of the people and such parts of the report were liable to be expunged, and the appellant was required to be directed not to take any action in pursuance of such observations against him, in the Report, more so, when the respondent no. 1 was not issued notice under Section 8B of the Act. If the notice had been given it might have provided an opportunity to the respondent no. 1 to dispel whatever misconceptions were entertained and the findings recorded in the Report. It would be appropriate to peruse the provision as contained under Section 8B of the Act :

"8B. Persons likely to be prejudicially affected to be heard.— If, at any stage of the inquiry, the Commission,-

- (a) considers it necessary to inquire into the conduct of any persons or
- (b) is of opinion that the reputation of any person is likely to be prejudicially affected by the inquiry, the Commission shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached."

A One of the paragraphs of the Report in which a reference to Mr. Advani has been made as also quoted in the judgment of the High Court, reads as follows :

B ".....Thus Jansangh disappeared and became a part of the Janta Party. Along with people like..... Mr. Advani became Information and Broadcasting Minister and Vajpaee the Minister of External Affairs, while invidiously Mr. Advani spreading the message of his cult through the official media...."

Paragraph 63 is also quoted, which reads as under :

C ".....Mr. Advani really spilled the beans and revealed the real intention of the BJP in his statement Reported in the PANCHAJANYA and copied by the 'Times of India' dated January 30th, 1993"..... "Speaking for ourself, were distressed to read that statement not out of fear because our life and our religion are both safe in this country but because of an eminent national leader should resort to threat of rioting unless the norms set by him are followed....".

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Yet another part of the Report in paragraph 625 reads as under :

E ".....The demand by him that Muslim and Christian should style themselves as Mohammadi Hindu and Christian Hindu etc. is a proof of this depraved an achronision ideology...." (v) "....One became the protector of Islam by peddling the slogan of "ISLAM IN DANGER" the other is exactly doing the same thing by peddling the concept of protecting the Hindu...."(vi)

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In the same part of the Report paragraph 626 reads as under :

G ".....The Islam which Mr. Jinna and the Muslim League tried to save led to the chaotic condition in Pakistan. Hinduism or Sanatan Dharma which Mr. Advani is trying to save is creating the same chaotic condition in India...."

H The case of the respondent no. 1 has been that such findings and observations as recorded by the two member Report of the Inquiry

Commission objectionably painted him in the minds of the people affecting A
his reputation and bringing down his image in the public.

The High Court, in our view, has been rightly cautious in observing
that it was not concerned about the merit on the question of appointment
or the recommendations of the Commission but it confined its inquiry to B
the parts of the Report which, according to the respondent no.1, were
objectionable and it was necessary that he was allowed an opportunity
before making any comment on his alleged conduct. The High Court, after
elaborate discussion on the point involved, partly allowed the writ petition,
ordering that such parts of the report shall be inoperative and no action can C
be taken on the basis thereof.

The High Court, while referring to a decision Reported in AIR (1967)
SC p. 122, *The State of Jammu and Kashmir & Ors. v. Bakshi Gulam
Mohammad & Anr.*, observed that an authority who takes a decision, which D
may have civil consequences and affects right of a person, the principle
of natural justice would at once come into play. Reputation of an
individual is an important part of one's life. The High Court then quoted
a passage from a decision of this Court reported in AIR (1989) SC p. 714
Smt. Kiran Bedi and Jinder Singh v. Committee of Inquiry & Anr.,
which passage contains the observations from an American decision in E
D.F. Marion v. Minnie Davis, 55 American LR 171, reads as follows :

"The right to enjoyment of a private reputation, unassailed by
malicious slander is of ancient origin, and is necessary to human
society. A good reputation is an element of personal security and F
is protected by the Constitution equally with the right to the
enjoyment of life, liberty and property."

Some decisions, to which our attention has been drawn by Shri Harish N.
Salve, learned senior counsel appearing for the respondent no. 1, may be
referred. [1983] 1 SCC p. 124, *Board of Trustees of the Port of Bombay G
v. Dilip Kumar Raghavendranath Nadkarni & Ors.*, wherein it was
observed that right to reputation is a facet of right to life of a citizen under
Article 21 of the Constitution. He has also referred to the International
Covenant on Civil and Political Rights, 1965 (ICCPR), recognizing right
to have opinions and the right of freedom of expression subject to the right H

A of reputation of others. The Covenant provides :

"1. Everyone shall have the right to hold opinions without interference.

B 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

C 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary;

D (a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals."

E It is thus amply clear that one is entitled to have and preserve, one's reputation and one also has a right to protect it. In case any authority, in discharge of its duties fastened upon it under the law, traverses into the realm of personal reputation adversely affecting him, must provide a chance to him to have his say in the matter. In such circumstances right of an individual to have the safeguard of principles of natural justice before being adversely commented upon by a Commission of Inquiry is statutorily recognised and violation of the same will have to bear the scrutiny of judicial review. A reference may be made to [1984] A.C. 808, *Peter Thomas Mahon v. Air New Zealand Ltd & Ors.*

G The provision as contained under Section 8B of the Act quoted above, was brought into the statute book by Amending Act 79 of 1971.

H It may be noticed that the amendment was brought about, about 20 years after passing of the main Act itself. The experience during past two decades must have made the Legislature to realize that it would but be necessary to notice a person whose conduct the Commission considers it

necessary to inquire into during the course of the inquiry or whose reputation is likely to be prejudicially affected by the inquiry. It is further provided that such a person would have a reasonable opportunity of being heard and to adduce evidence in his defence. Thus the principle of natural justice was got inducted in the shape of statutory provision. It is thus incumbent upon the Commission to give an opportunity to a person, before any comment is made or opinion is expressed which is likely to prejudicially affect that person. Needless to emphasise that failure to comply with principles of natural justice renders the action *non-est* as well as the consequences thereof.

Shri Dinesh Dwivedi, learned counsel appearing for the appellant submits that since no action has been taken against the respondent no.1 so far, in pursuance of the report of the Inquiry Commission there was no occasion for him to move the Court in the matter. It was not the appropriate stage to raise any grievance by filing a petition challenging certain observations made by the Commission of Inquiry. The petition was thus premature. We feel that it may not be necessary for a person to wait till certain action is initiated by the Government considering the report of the Inquiry Commission where the observations made by the Commission are such which militate against the reputation of a person and particularly without giving any chance to such a person to explain his conduct. It would be open for him to move the Court for deletion of such remarks made against him violating the provisions of Section 8B of the Act.

It is then submitted by Shri Dwivedi that the Commission was appointed to inquire as to whether the riots "*were pre-planned and, if so, the elements responsible for the same*". The Commission was also required to recommend measures for preventing such recurrences. Therefore, the terms of the Reference were quite wide and the anxiety of the Government was only to identify the elements behind such disturbances and to take sufficient measure to prevent recurrence in future. The Commission was not inquiring into the conduct of the respondent no. 1 in particular. These were some general observations touching the matter under reference to the Commission. In this connection, relying upon a decision reported in 1977(4) SCC p. 608, *State of Karnataka v. Union of India & Anr.*, a seven Judge bench judgment, referred to the observations made in paragraph 77 to say that the scope of such inquiries is wide enough to cover anything

- A reasonably related to the matter under inquiry. It is further submitted in reference to observations made in paragraphs 184 and 186 of the aforesaid decision that the function of the Commission is purely fact-finding and its pronouncement is neither binding nor a definitive judgment. The Commission is required to submit its report, which may or may not be
- B accepted by the appointing authority. It is further submitted that the stage for any grievance arrives when in consideration of the report the authority decides to take any action not otherwise. The Commission has no power of adjudication in the sense of passing an order which can be enforced. A reference has also been made to a case reported in AIR (1956) SC page
- C 66, *Brijnandan Sinha v. Jyoti Narain*, a Division Bench Judgment, to indicate that report made by the Commissioner under the Public Servants (Inquiries) Act (37 of 1850) is merely expression of his opinion and it lacks both finality and authoritativeness. Learned Counsel has then referred to [1959] SCR page 279, *Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & Ors.*, a Constitution Bench Judgment, to submit that the
- D recommendations of Commission of Inquiry are not enforceable *proprio vigore*. It is not an adjudication. It is merely a recommendation of the Commission. On the basis of the decisions referred to above, much stress has been given on the point that this was not the stage for respondent no.1 to have approached the Court raising any grievance in respect of some
- E observations made here and there while inquiring into the Bhagalpur communal riots, its reasons and to recommend measures to check such recurrences in future.

- We have already observed that had it been only a question of any adverse action being taken against the person against whom some adverse
- F finding has been recorded, the contention of the learned counsel for the appellants may perhaps would have been entertainable. The government actually takes action or it does not or the fact that the report is yet to be considered from that angle, cannot be a reason to submit that it won't be appropriate stage to approach the Court. There may be occasions where
- G after consideration of report the government may not decide to take any action against the person concerned yet the observation and remarks may be such which may play upon the reputation of the person concerned and this aspect of the matter has been fully taken care of under clause (b) of Section 8B of the Act. It is not, therefore, necessary that one must wait
- H till a decision is taken by the government to take action against the person

after consideration of the report. We have already dealt with the point A
about the right to have and protect one's reputation. We, therefore, find
no force in the submission that the respondent no.1 had approached the
Court at pre-mature stage. No other point has been urged on behalf of
the appellant. In our view, the judgment of the High Court calls for no
interference. B

In view of the discussion held above, the appeal is dismissed. There
will, however, be no order as to costs.

B.S.

Appeals dismissed.