

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WRIT PETITION (PIL) No. 216 of 2012

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PUCL GUJARAT CHAPTER & 1 - PETITIONER

Versus

COMMISSIONER OF INQUIRY PRESIDED BY HON'BLE MR. JUSTICE & 1

- RESPONDENT

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Appearance :

MR YUSUF MUCHHALA, LD.SENIOR ADVOCATE WITH MR SM VATSA, LD.ADVOCATE WITH MR.AJ YAGNIK, LD.ADVOCATE for PETITIONERS.

None for RESPONDENT : 1,

MR KAMAL B. TRIVEDI, LD.ADVOCATE GENERAL WITH MR PK JANI, LD.GOVERNMENT PLEADER WITH MS.SANGEETA VISHEN, LD.ASST. GOVERNMENT PLEADER for RESPONDENT : 2,

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CORAM : HONOURABLE THE CHIEF JUSTICE
MR. BHASKAR BHATTACHARYA

and

HONOURABLE MR. JUSTICE J. B. PARDIWALA

Date : 12/10/2012

ORAL ORDER

(Per : HONOURABLE THE CHIEF JUSTICE MR. BHASKAR
BHATTACHARYA)

1. By this Public Interest Litigation, the writ-petitioners have prayed for the following relief as stated in paragraph 12 of the writ-application :

“(A) Direct the Respondent No.1 to exercise its powers under Section 4 of the Commission of Inquiries Act to direct Respondent No.2 to protect and preserve all the documents sought vide applications dated 30/12/2011 and 21/02/2012.

(B) Direct the Respondent No.1 to exercise its

powers under Section 4 of the Commission of Inquiries Act to direct Respondent No.2 to forward all the documents sought for by the applications dated 16/05/2011, 15/12/2011, 23/12/2011 and 11/02/2011 to the Petitioners;

(C) Direct the Respondent No.1 to exercise its powers under Section 4 of the Commission of Inquiries Act to direct Respondent No.2 to forward all the 'representations' referred to in the Notification dated 20/07/2004 to the Petitioners;

(D) Direct the Respondent No.1 to exercise its powers under Section 5 read with Section 4 of the Act to further examine the Petitioner No.2; and/ or

(E) Direct the Respondent No.1 to issue notice to the present Chief Minister so as to enable his appearance and examination;

(F) Direct the Respondent No.1 to submit the final report in respect of the amended terms of reference to the Office of Her Excellency the Governor of Gujarat rather than to Respondent no.2;

(G) Interim-relief-During the pendency of the present Petition and pendency of proceedings before the Commission in view of the reliefs sought at Clause Nos."A"-“E”, direct Respondent No.1 not to submit the final report as mandated under the Terms of Reference;

(H) Any any other order that may be deemed

appropriate and necessary.”

2. So far the prayers as made out in paragraph 12(A) to 12(D) are concerned, according to the writ-petitioners, the petitioner No.2 wanted to give evidence before the Commission and for the purpose of giving deposition by way of an affidavit, he wanted to rely upon certain documents and for the above purpose, he wanted to have inspection of those documents as indicated in pages 486 to 488 of this writ-application, but the commission has refused to issue any direction upon the State Government for giving inspection of those documents. Further grievance of the petitioners is that even it appears from an interview given in a newspaper, namely, “The Indian Express”, the Senior Counsel, who appeared before the Commission on behalf of the State Government, had stated that certain intelligence records relating to 2002 riots were destroyed in 2007. Subsequently, however, the reports appeared in a section of the media that the State Government had denied the aforesaid allegation.

3. Mr.Yusuf Muchhala, the learned Senior Advocate appearing with Mr.S.M. Vatsa, the learned advocate appearing with Mr.Anand Yagnik, the learned advocate on behalf of the writ-petitioners, submits that if those documents are destroyed and at the same time, his client is not given an opportunity to inspect those documents before making statement before the Commission, the purpose of the Commission would be frustrated. In other words, according to Mr.Muchhala, a right conferred upon his client by virtue of constitution of such Commission would be taken away by the destruction of those documents or if those documents are not produced before the Commission.

4. Mr.Kamal B. Trivedi, the learned Advocate General appearing

with Mr.P.K. Jani, the learned Government Pleader and Ms.Sangeeta Vishen, learned Assistant Government Pleader on behalf of the State-respondent, asserts before us that those documents have already been placed before the Commission. At any rate, Mr.Trivedi submits that if any of those documents has not yet been placed before the Commission, he, on behalf of his client, undertakes to place those documents before the Commission within seven days from today. Mr.Trivedi also disputed the right of the petitioner No.2 to maintain this writ-application for the purpose of giving evidence before the Commission.

5. After hearing the learned counsel for the parties and after taking into consideration the fact that the State Government itself has constituted the Commission and the petitioner No.2 having decided to assist the Commission, a valuable legal right has definitely accrued in his favour to give evidence therein and for such purpose, if the available records are not given to him, he cannot effectively assist the Commission. We, thus, find that in such circumstances, a writ-application is maintainable for protecting such legal right which has accrued in favour of the petitioner No.2.
6. Be that as it may, since Mr.Trivedi has already submitted before this Court that his client will submit those documents, if not already produced, this question becomes inconsequential.
7. As regards the other prayer, i.e. a direction upon the respondent No.1 to issue notice to the present Chief Minister so as to enforce his appearance and examination, we are of the view that it is for the Commission to decide the said question. In this connection, we may profitably refer to a

recent decision given by this Bench on September 06, 2012 in the case of ***Jigneshbhai Dhirendrabhai Goswami v. State of Gujarat and others [Writ Petition (PIL) No.172 of 2011]***. While dealing with the question as to whether this Court can pass any direction upon the Commission to conclude the inquiry within specified date or whether we can interfere with the discretion exercised by the State Government in extending the period for completion of investigation, we specifically held that in order to successfully maintain a writ-application, the petitioner must establish beyond reasonable doubt that by the action or the inaction on the part of a *State* within the meaning of Article 12 of the Constitution of India, any of his legal or fundamental rights has been infringed. We pointed out that by establishment of a Commission under the Commissions of Inquiry Act, 1952, the right of no citizen is affected, as pointed out by the decisions of the Supreme Court quoted in the said judgment. It was further pointed out that the finding of the Commission is merely recommendatory in nature for the purpose of advising the State Government for effective control of the situation in future and the State Government can, even after submission of recommendations, refuse to implement the same. Therefore, there is no scope of passing any direction upon the Commission for the purpose of conducting its investigation in a particular way.

8. However, when a witness is summoned by the Commission, if any impediment is created in his way in disclosing the relevant facts known to him before the Commission, such witness has definite right to move this Court in exercise of jurisdiction under Article 226 of the Constitution of India disclosing the impediment and for the above reason, we have decided to entertain this application for the limited

purpose of seeing that the petitioner No.2 can have inspection of documents in question and those documents, which he considers to be useful, should not be destroyed.

9. We have already pointed out that the learned Advocate General has already stated before us that those documents have not been destroyed and at the same time, those have also been sent to the Commission and if any of those documents has not yet been sent to the Commission, the same would be sent within seven days from this day.
10. We, thus, find that no further direction is necessary in view of the statements made by the learned Advocate General. The petitioner No.2, however, must file his proposed affidavit within one month after the inspection is taken and such inspection should be taken positively within a fortnight from today.
11. We make it clear that we have otherwise not gone into the question of manner of the enquiry conducted by the Commission and it is for the Commissioner to decide the question of relevancy or otherwise of those documents.
12. The writ-petition is allowed only to the extent indicated above.

(Bhaskar Bhattacharya, Chief Justice)

(J.B. Pardiwala, J.)