

W.P(MD)No.4379 of 2023

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON : 03.01.2025**

**PRONOUNCED ON : 20 .01.2025**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN**

**W.P(MD)No.4379 of 2023**

**and**

**W.M.P(MD)Nos.4113, 4114 & 4115 of 2023**

Dr.C.Vijayabaskar

... Petitioner

Vs

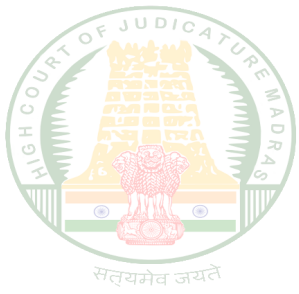
The State of Tamil Nadu,  
Represented by its Chief Secretary,  
Fort St. George,  
Chennai – 600 001.

... Respondent

**PRAYER:** Writ Petition filed under Article 226 of Constitution of India, to issue a writ of Certiorari, to call for the records pertaining to the impugned G.O in G.O.No.SS.II/500-4/2022 dated 17.10.2022 of the respondent/Chief Secretary, Government of Tamil Nadu and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.N.Nithyaesh Natraj  
for Mr.Vaibhav R.Venkatesh

For Respondent : Mr.Veera Kathiravan  
Additional Advocate General  
Assisted by  
Mr.D.Gandhi Raj  
Special Government Pleader



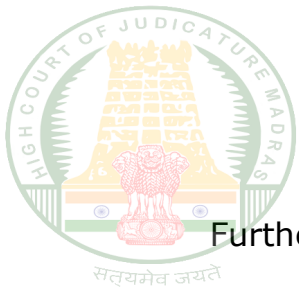
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**ORDER**

This Writ Petition has been filed by the petitioner challenging the Hon'ble Thiru.Justice A.Arumughaswamy Commission of Inquiry report dated 23.08.2022 insofar as the petitioner is concerned in paragraph Nos.39.1 to 39.7 and 47.28 thereby the petitioner was found fault with and suggested for investigation is to be ordered.

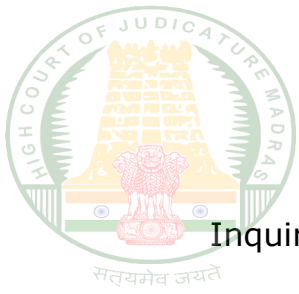
2.The petitioner is the former Health Minister of the State of Tamil Nadu. He was Minister under the regime of 'the late Chief Minister of Tamil Nadu Selvi.J.Jayalalithaa' (in short hereinafter referred to as 'the late Chief Minister of Tamil Nadu'). While she was functioning as a Chief Minister, she fell ill and was admitted into a private hospital on 22.09.2016. While she was taking treatment, she died on 05.12.2016. The respondent passed an order in G.O.Ms.No.817, Public (S.C) Department dated 25.09.2017 thereby appointing the Commission to inquire into the demise of the late Chief Minister of Tamil Nadu headed by 'the Hon'ble Thiru.Justice A.Arumughaswamy' (in short hereinafter referred to as 'the Commission'), former Judge of this Court.



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Further, another Government Order passed in G.O.Ms.No.829, Public (S.C) Department, dated 27.09.2017, thereby ordered the Commission to inquire into the circumstances and situation leading to the hospitalization of the late Chief Minister of Tamil Nadu on 22.09.2016 and subsequent treatment provided till her unfortunate demise on 05.12.2016. In pursuant to the said Government Orders, the Commission assumed charge on 30.09.2017 and had examined 151 witnesses as Commission Witnesses in which the petitioner was examined as Commission Witness No.146 on 21.01.2019. After completion of the enquiry, the Commission submitted a report on 23.08.2022. Aggrieved by the recommendations/observations and findings of the Commission's report insofar as the petitioner is concerned, the Commission's report is under challenge in this Writ Petition.

3.The learned counsel appearing for the petitioner would submit that the petitioner was examined as a Commission Witness ie., C.W.146. However, the findings and observations of the Commission's report prejudicially affected his reputation and caused serious prejudice in the minds of the general public. It is a complete violation of mandatory statutory provisions of the Commissions of



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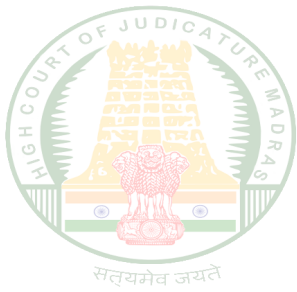
Inquiry Act, 1952 (in short hereinafter referred to as 'the Act, 1952') and the Commissions of Inquiry (Central) Rules, 1972 (in short hereinafter referred to as 'the Rules, 1972'). In order to proceed against the person whose reputation will likely be affected as a result of inquiry before it, a notice in terms of Section 8B of the Act, 1952 will have to be mandatorily issued to such person. Further Section 8C of the Act, 1952 embodies the principles of natural justice. The Commission failed to issue notice to the petitioner in terms of Section 8B of the Act, 1952 and the petitioner was not given an opportunity of hearing as contemplated under Section 8C of the Act, 1952. Therefore, suggesting to conduct an investigation is wholly without jurisdiction of the Commission and recommendation for initiation of appropriate action cannot be sustained that too without giving reasonable opportunity to adduce evidence on behalf of the petitioner. Further, the Commission came to the conclusion without any material and on the deposition of the petitioner itself concluded that the petitioner was found fault with and investigation is to be ordered. In fact, the private hospital in which the late Chief Minister of Tamil Nadu was admitted for treatment filed an application to constitute a Medical Board in A.No. 213 of 2022. It was not considered and the Hon'ble Supreme Court of India passed an order in SLP Civil No.10189-10190 of 2019,



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requesting the Director, All India Institute of Medical Sciences (AIIMS), New Delhi to nominate a panel of Doctors, specialists in the fields of treatment of the ailments as suffered by the late Chief Minister of Tamil Nadu. Further, directed the Commission to furnish all medical records to the Medical Board to participate in all further proceedings of the Commission. However, the Commission had chosen to negate the report submitted by the AIIMS Medical Board on specious and vague pleas.

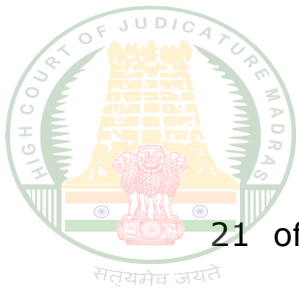
4.As per the report of the Commission, only two persons were arrayed as respondents and the petitioner is arrayed as a witness to the Commission. Nowhere the petitioner was arrayed as a respondent during the course of enquiry by the Commission. In fact, the counsel for the Commission had taken out an application in A.No.214 of 2018 sought for leave from the Commission to proceed as against the then Chief Secretary and Health Secretary as respondents 3 and 4 in the proceedings. The said application was deferred and no specific order was passed to make them as respondents. However, no application was made to array the petitioner herein as a respondent in the main proceedings.



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5. In order to maintain the Writ Petition against the Commission's report, the learned counsel appearing for the petitioner relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2003 (8) SCC 361** in the case of **State of Bihar Vs. Lal Krishna Advani and others**, in which, the Hon'ble Supreme Court of India held that even though the report of a Commission appointed under the Act, 1952 is only recommendatory in nature, an aggrieved person is entitled to challenge the same in the manner known to law, if the report adversely affects and prejudice his reputation. It is also followed by the High Court of Punjab and Haryana at Chandigarh reported in **2019 SCC Online P & H 1162** in the case of **Bhupindar Singh Hooda Vs. State of Haryana and others** and quashed the report of the Commission on the ground of non-observance with the mandatory procedure stipulated under Section 8B of the Act, 1952. He further submitted that the petitioner was not served with any notice under Section 8B of the Act, 1952 and not even sought to be impleaded as a respondent. He was issued summons to depose as the Commission Witness and on the deposition, the Commission found fault with the petitioner and suggested for investigation is to be ordered. It is a clear violation of its fundamental right as guaranteed under Article



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21 of the Constitution of India. In pursuant to the report, the Government passed an order in G.O.No.SS.II/500-4/2022, dated 17.10.2022 thereby recording that it was decided to initiate appropriate action on the Commission of Inquiry report's recommendations against certain individuals, after obtaining the considered opinion of the legal experts. Therefore the Writ Petition is very much maintainable.

6.The respondent filed a counter-affidavit and Mr.Veera Kathiravan, learned Additional Advocate General appearing for the respondent raised preliminary objections that the Writ Petition itself is not maintainable and submitted that the petitioner is a sitting MLA and former Minister of the State of Tamil Nadu and as such it has to be posted before the Special Bench constituted for hearing the cases relating to the cases involving the sitting for former M.Ps and M.L.As. The Commission was held at Chennai and the report was submitted at Chennai. The Commission conducted an enquiry as ordered by the Government in G.O.Ms.No.817, Public (S.C) Department, dated 25.09.2017, at Chennai. In pursuant to the Commission's report no action has been taken so far and as such the Writ Petition itself is premature in nature. The



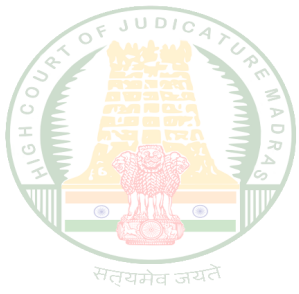
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Commission's report is only a suggestion and as such the petitioner does not require any audience before the Commission.

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7.The Constitutional Bench of the Hon'ble Supreme Court of India reported in **AIR 1958 SC 538** in the case of **Shri Ram Krishna Dalmia Vs. Shri Justice S.R.Tendolkar and others** held that the Commission has no power of adjudication in the sense of passing an order which can be enforced *proprio vigore*. A clear distinction must, on the authorities, be drawn between a decision which, by itself, has no force and no penal effect and a decision which becomes enforceable immediately or which may become enforceable by some action being taken. It is merely to investigate and record its findings and recommendations without having any power to enforce them, the inquiry or report cannot be looked upon as a judicial inquiry in the sense of its being an exercise of judicial function properly so-called and consequently the question of usurpation by Parliament or the Government of the powers of the judicial organs of the Union of India cannot arise on the facts of this case.





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8.He also relied upon the Judgment of the Full Bench of this Court reported in **2006 (4) L.W 560** in the case of ***P.P.M.Thangaiah Nadar Firm and others Vs. The Government of Tamil Nadu and others*** in which the Full Bench of this Court held that the report of a Commission of Inquiry is not binding on the State which constitutes such Commission of Inquiry nor its findings are binding on those against whom any recommendation is made. The conclusions of a Commission of Inquiry are not admissible in a Court of law, in a criminal case or even in a civil case. Such conclusions are merely advisory in nature.

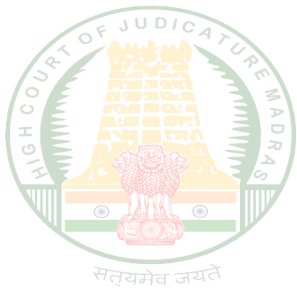
9.The Judgment of the Hon'ble Supreme Court of India reported in **2003 (8) SCC 361** in the case of ***State of Bihar Vs. Lal Krishna Advani and others*** and the Judgment of the Constitutional Bench of the Hon'ble Supreme Court of India reported in **AIR 1958 SC 538** in the case of ***Shri Ram Krishna Dalmia Vs. Shri Justice S.R.Tendolkar and others*** are followed by the High Court of High Court of Punjab and Haryana at Chandigarh reported in **(2019) 2 RCR (Cri) 165** in the case of ***Charanjit Singh and others Vs. State of Punjab and others*** wherein held that the proceedings before the Commission cannot be equated with a



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regular trial though rules of natural justice would be reasonably applicable in the proceedings before the Commission. Even failure to provide an opportunity of cross examination would not vitiate the process as proceedings are purely fact finding in nature.

10.The petitioner was summoned as a Commission Witness and examined on 21.01.2019 as C.W.146. He was given adequate and reasonable opportunity before taking decision to give evidence. After the conclusion of enquiry, the Commission filed its report on 23.08.2022 and recorded the role played by the petitioner and others in taking a decision to give treatment in the Apollo Hospital and not taking steps to take treatment in abroad. He also interprets the provisions under Sections 8B and 8C of the Act, 1952 differently that if at any stage of the inquiry, the Commission considers it necessary to inquire into the conduct of any person or is of the 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. Accordingly, the petitioner was given an opportunity to let in evidence. Therefore he prayed for dismissal of the Writ Petition.



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11.Heard Mr.N.Nithyaesh Natraj, learned counsel appearing for the petitioner and Mr.Veera Kathiravan, learned Additional Advocate General appearing for the respondent and perused the materials available on record.

12.On perusal of the materials available on record, the following two points arise for consideration:

(i) Whether the Writ Petition is maintainable or not.

(ii) The findings of the Commission's report against the petitioner can be interfered with or not.

13.The petitioner is a member of the Legislative Assembly and former Health Minister of the State of Tamil Nadu. The respondent passed an order in G.O.Ms.No.817, Public (S.C) Department dated 25.09.2017, thereby appointing the Commission to enquire into the demise of the late Chief Minister of Tamil Nadu on 05.12.2016. Further the respondent issued another Government

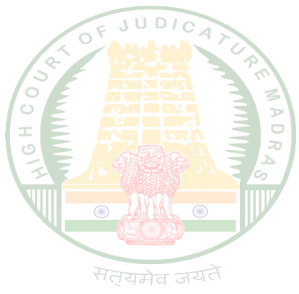


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Order in G.O.Ms.No.829, Public (S.C) Department, dated 27.09.2017, thereby ordered the Commission to inquire into the circumstances and situation leading to the hospitalization of the late Chief Minister of Tamil Nadu on 22.09.2016 and subsequent treatment provided till her unfortunate demise on 05.12.2016. Accordingly, the Commission had proceeded with the enquiry and examined 151 witnesses in which the petitioner was summoned and examined as C.W.146 on 21.01.2019. After completion of inquiry, the Commission submitted a report on 23.08.2022. The petitioner challenged the suggestions and conclusions in so far as the petitioner is concerned in paragraph Nos.39.1 to 39.7 and 47.28 of the Commission's report.

14.It is relevant to extract the portion of the Commission's report impugned in this Writ Petition in paragraph Nos.39.1 to 39.7 as follows:

*“39.1.C.W.146 - Dr.C.Vijayabaskar, stated that, on information, that the late C.M. was admitted in the hospital on 22.9.2016, he came from his native place and reached the Hospital in the morning of 23.9.2016.*



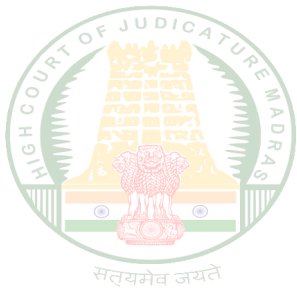
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39.2. *The Secretary, Health Department, was assisting him in bringing the AIIMS Doctors. When he was asked if the Secretary, Health Department, had given anything in writing for convening the Cabinet meeting, he answered that question would not be applicable to him. It is wrong to state that the Apollo Doctors had given treatment to late C.M., only after due consultation with him, the Secretary, Health Department, the Chief Secretary and R.1. Apollo Hospital never personally disclosed anything to him. When asked as to whether the Apollo Hospital Doctors unanimously decided, he answered "yes, they had". When asked if his Secretary had written a letter to the AIIMS, mentioning the names of Doctors, without mentioning the need for a Cardiac Surgeon, he stated that he knew that he had written a letter requesting that a Medical Team should be constituted to treat Amma. When asked, if she had a setback in her health condition due to perforation in her heart on that night, he replied that he only knew about the setback caused and the reasons were unknown to him. When he was asked whether was aware of her heart vegetation and perforation, since it was not informed in the Apollo briefing, he stated that, as mentioned earlier, he did not remember it.*

39.3.C.W. 146-Dr.Vijayabaskar, Health Minister; in his evidence for a query, answered that he was aware of the telephonic conversation with Dr.Stuart Russel and Dr.Samin Sharma who came from



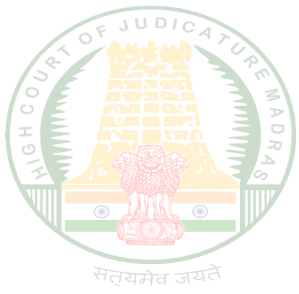
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*USA and Dr.Rajeev Soman, who came from Bombay. For these questions, however, he pleaded ignorance about the opinion given by them. When he was asked even when Sasikala was not present at the time of briefings, how she was aware of the late C.M.'s health condition, he stated that the question may be confined to himself. When questioned about the signature put by the Chief Secretary and Sasikala during the procedural aspects for late C.M., he pleads ignorance. Regarding the treatment given to late C.M. he would say that it was decided only by the Apollo Hospital. He has spoken about the treatment given to late C.M, in an evasive and Illusive manner.*

*39.4. Dr.Richard Beale is a Doctor for sepsis and critical care. It is evident that he is not a Cardiac Surgeon. The AIIMS Doctors did not give any treatment to her. If it is true that they only supervised the treatment given by the Apollo Doctors, why were they giving treatment jointly as a treating team? When asked if AIIMS Doctors did not prescribe even a single medicine to her, he pleaded ignorance. Dr.Soman arrived at Apollo as a Consultant Doctor to give treatment to Late C.M., but he did not know about his suggestion that an angiogram should be performed for her. When asked, he said that he came back from Thanjavur Election only after the perforation in the heart valve of Late C.M. was diagnosed. When asked as to when he came to know about the recommendation for an angiogram, since he went for election work for a*



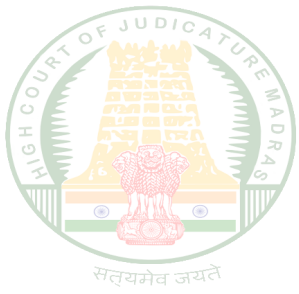
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*long period, he said it was not known to him. He did not see the visit of Dr.Soman, who had not participated in the briefings. He does not know of the fact that Dr.Samin Sharma and Dr.Stuart Russell stated that angio should be performed for her. He knew that Dr.Stuart Russell was consulted through video conference in the Hospital. He only knew that Dr.Samin Sharma came in connection with the treatment.*

*39.5. When asked about his opinion of late C.M. being taken by Air Ambulance and Dr. Richard Beale also having stated that he was also ready to accompany her in the air Ambulance and admitted in his Hospital itself at London, he answered that he, Senior Minister Hon'ble Thiru O.P.S., and Hon'ble Dr.Thambidural were eager in taking her abroad and giving her the best treatment. But, as both the AIIMS Doctors and Apollo Doctors, stated that they were giving proper treatment to her and there was improvement, and there was no necessity for abroad treatment, this option was dropped. Dr.Richard Beale stated that, if she had been taken abroad for treatment, she would have been only under the control of the Doctors, unlike others. He also stated that though summons were served to him three times and when he was ready to appear, it was adjourned and due to this news in the media, it caused stigma in his political career. He took it as his duty to come and adduce evidence before the Commission, whenever summoned, he cooperated, but such kind of questions caused him*



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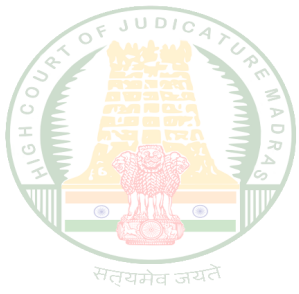
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*much hardship. When questioned, if she was taken abroad for treatment, whether he considered it as a disgrace to the Indian Doctors, he affirmed that he did not consider it to be so.*

*39.6. When asked for his opinion when the former Chief Minister Dr.M.G.Ramachandran was admitted in the same Apollo Hospital in 1984 and the former Prime Minister Tmt. Indira Gandhi arranged to send him abroad for treatment, and, at that time when one Dr.K.Mani, the then Apollo Doctor stated that, for kidney failure, the act of taking him abroad, would reflect on the reputation of the Indian Doctors much, Tmt. Indira Gandhi diplomatically replied 'one had to see the issue from the patient's point of view as well', which was published in "India Today" on 15.11.1984, he stated that he did not know about it. He does not know the details about the former Chief Secretary and R.1 putting 20 signatures in the Hospital forms for Late C.M. He does not know, if the Secretary, Health Department was aware of this fact. When asked about the question of the possibility to convene a Cabinet meeting for deciding to take her abroad for treatment, if both of them informed about this to his Government, he pleaded ignorance and stated that he cannot give his opinion in this regard.*

*39.7. It is surprising that being the Health Minister, he did not take the necessary and proper initiative to take late C.M. abroad for treatment. Even*





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*though C.W.146-Health Minister is a qualified doctor and is capable of understanding the clinical condition of the patient, the medical terms, the procedures proposed and done, etc., it is astonishing that he did not apply his mind and prudence to the lifesaving suggestions of Dr.Richard Beale regarding abroad treatment and that of Dr.Stuart Russell, Dr.Samin Sharma, Dr.Rajeev Soman and C.W.120 regarding the exigency, safety, importance and advantages of doing an angiogram to find out not only the invisible defects but also to treat her well. More surprising is that in the witness box, for a question put to gain information regarding the treatment he stated that he was not available or that he does not remember, but would un-mistakenly add that Apollo Doctors were giving the best treatment. In short, he was the main tool used by R.1 and Apollo Doctors to thwart the attempts of taking late C.M. abroad and manage her in Apollo Hospitals itself till the doomsday of the late C.M., who had no solid relative for support. It will not be too much, if it is recorded that R.2 treatment regarding failure to take angio was well planned and rightly executed, by R.1., C.W.99-Dr.Y.V.C. Reddy, C.W.106-Dr.Babu Abraham, C.W.17-Dr.Sivakumar, C.W.136-Health Secretary and C.W.146-Health Minister.”*



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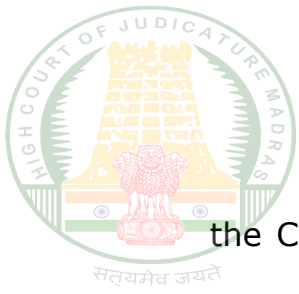
Accordingly the Commission found fault with the petitioner. Further, the Commission made observations against the petitioner and it would prejudicially affected his reputation and cause a serious prejudice among the general public.

15.It is also relevant to extract the conclusion portion of the Commission's report impugned in this Writ Petition in paragraph No.47.28 as follows:

*“47.28. From all these aspects, the Commission concludes that R.1-V.K.Sasikala, C.W.17-K.S.Sivakumar, C.W.136-Dr.J.Radhakrishnan, then Health Secretary and C.W.146-Dr.C.Vijayabaskar, then Health Minister have to be found fault with and investigation is to be ordered.”*

On the basis of his own evidence, the Commission made observations and also found fault with the petitioner and suggested for investigation is to be ordered.

16.Admittedly the petitioner was examined as Commission Witness No.146 ie., C.W.146. He was served with a summon for his appearance before the Commission of Inquiry as



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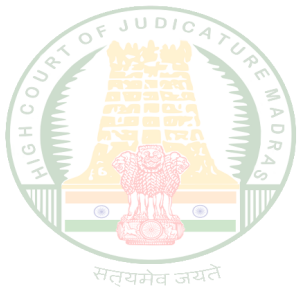
the Commission Witness to give his evidence in terms of reference of the Commission of Inquiry on three occasions ie., 12.12.2018, 26.12.2018 and 11.01.2019. Accordingly, the petitioner had appeared and deposed before the Commission.

17.The specific contention of the learned counsel appearing for the petitioner is that it is a clear violation of principles of natural justice since the observations and suggestions made by the Commission without giving an opportunity of hearing to the petitioner as contemplated under Section 8B and 8C of the Act, 1952. It is relevant to extract the provisions under Section 8B of the Act, 1952 hereunder:

*“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 person; 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:*



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*Provided that nothing in this Section shall apply where the credit of a witness is being impeached.”*

18.It is also necessary to extract the provisions under Section 8C of the Act, 1952 hereunder which further embodies the principles of natural justice:

*“8C.Right of cross-examination and representation by legal practitioner.- The appropriate Government, every person referred to in Section 8B and, with the permission of the Commission, any other person whose evidence is recorded by the Commission.-*

*(a) may cross-examine a witness other than a witness produced by it or him;*

*(b) may address the Commission; and*

*(c) may be represented before the Commission by a legal practitioner or, with the permission of the Commission, by any other person.”*

19.Thus it is clear that if the persons likely to be prejudicially affected are to be heard if at any stage of the inquiry, the Commission shall give a reasonable opportunity of being heard



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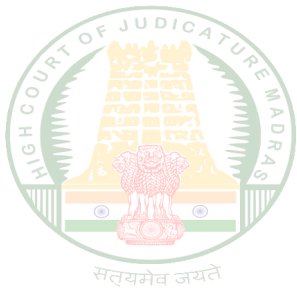
in the enquiry and also to produce evidence in his defence.

Admittedly, the petitioner was not served any notice under Section 8B of the Act, 1952. Therefore it is clear statutory violation and violation of principles of national justice enshrined under the Constitution of India. In fact, the counsel for the Commission had taken out an application in A.No.214 of 2018 to proceed as against the Chief Secretary and Health Secretary by issuance of notice under Section 8B of the Act, 1952. However, the Commission did not pass any orders in the application. Therefore the Commission fully aware of the fact that if any opinion of the Commission would likely to be prejudice the person, the Commission shall have to give reasonable opportunity of being heard in the Inquiry to the said person.

20.It is also necessary to extract the provisions under Section 5(2) of the Rules, 1972 hereunder:

*“5.Procedure of Inquiry.- (2) A Commission shall, as soon as may be after its appointment -*

*(a) issue a notice to every person, who in its opinion should be given an opportunity of being heard in the inquiry, to furnish to the Commission a statement*



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*relating to such matters as may be specified in the notice;*

*(b) issue a notification, to be published in such manner as it may deem fit, inviting all persons acquainted with the subject matter of the inquiry to furnish to the Commission a statement relating to such matters as may be specified in the notification.”*

21.Thus, it is clear that Rule 5(2) of the Rules, 1972 has also been violated since no notice was issued to the petitioner in terms of the said rule asking him to show cause as to why he should not be proceeded against after giving him sufficient opportunity to respond to the allegations and the specific charge against him. Further, the materials being used against the petitioner was also not given to the petitioner and he was never given an opportunity to rebut the same.

22.In fact, the Hon'ble Supreme Court of India passed an order in SLP Civil No.10189-10190 of 2019, requesting the Director, All India Institute of Medical Sciences (AIIMS), New Delhi to nominate a panel of Doctors, specialists in the fields of treatment

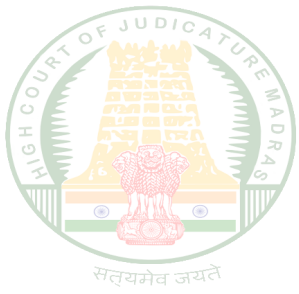


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of the ailments as suffered by the late Chief Minister of Tamil Nadu.

Further, directed the Commission to furnish all medical records to the Medical Board to participate in all further proceedings of the Commission. In terms of Section 5B of the Act, 1952, the Commission is empowered to appoint its own expert if it deems fit to advise and assist the Commission, having specialised knowledge in the inquiry. If the Commission so felt that it wanted the assistance of any other expert having specialised knowledge in the field of medicine, then it ought to have constituted its own expert committee exercising its power under Section 5B of the Act, 1952, if at all it decided not to accept the recommendation of the AIIMS Board. However, the Commission, instead of exercising its powers under Section 5B of the Act, 1952, has simply chosen to negate the report submitted by the AIIMS Board on specious and vague pleas.

23. In this regard, the learned counsel appearing for the petitioner relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2003 (8) SCC 361** in the case of **State of Bihar Vs. Lal Krishna Advani and others**, wherein the Hon'ble Supreme Court of India held as follows:



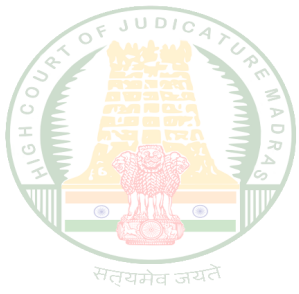
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*“10.It is then submitted by Shri Dwivedi that the Commission was appointed to inquire as to whether the riots "were pre-planned and, if so, the elements responsible for the same". The Commission was also required to recommend measures for preventing 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 vs. 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 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 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*





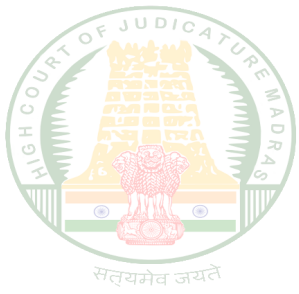
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*in AIR 1956 SC page 66, Brijnandan Sinha Vs. Jyoti Narain, a Division Bench Judgment, to indicate that report made by the Commissioner under the Public Servants (Inquiries) Act (37 of 1850) is merely expression of his opinion and it lacks both finality and authoritativeness. The learned counsel has then referred to 1959 SCR page 279, Shri Ram Krishna Dalmia Vs. Shri Justice S.R.Tendolkar & Ors., a Constitution Bench Judgement, to submit that the 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 observations made here and there while inquiring into the Bhagalpur communal riots, its reasons and to recommend measures to check such recurrences in future.*

*11. We have already observed that had it been only a question of any adverse action being taken against the person against whom some adverse finding has been recorded, the contention of the learned counsel for the appellant 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 after consideration of report the government may not decide to take any action against the person concerned yet the*



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*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. We have already dealt with the point 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 appellants. In our view, the judgment of the High Court calls for no interference."*

24.Thus the principles of natural justice were got inducted in the shape of a 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 emphasize that failure to comply with the principles of natural justice renders the action non-est as well as the consequences thereof. Further, the decision relied upon by the learned Additional Advocate General reported in **AIR 1958 SC 538** in the case of **Shri Ram Krishna Dalmia Vs. Shri Justice S.R.Tendolkar and others** also referred and held that the Government actually takes action or it does not or the fact



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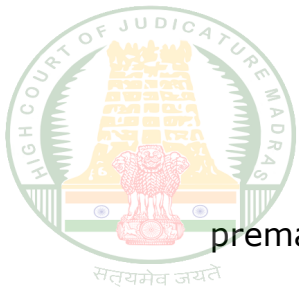
that the report is yet to be considered from that angle, cannot be a reason to submit that it won't be the appropriate stage to approach the Court. There may be occasions where after consideration of the report the Government may decide not to take any action against the person concerned yet the observation 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 Section 8B of the Act, 1952. Therefore no need to wait till a decision is taken by the Government on the Commission's report. In fact in the case on hand, after the Commission report dated 23.08.2022, the respondent passed a Government order in G.O.No.SS.II/500-4/2022, dated 17.10.2022, thereby ordering that it was decided to initiate appropriate action on the Commission of Inquiry report recommendations against certain individuals, after obtaining the considered opinion of the legal experts. Therefore it is further cause of action for the petitioner to approach this Court by way of this Writ Petition. Therefore this Writ Petition is very much maintainable.

25.Further the Judgments relied upon by the learned Additional Advocate General are not applicable to the case on hand



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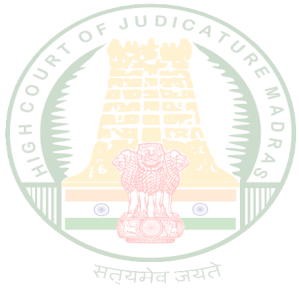
on the sole ground that all the Judgments were held on different sets of facts and in fact challenge was made against the Act and the subsequent notifications. Section 8B of the Act, 1952 was inserted by the Amended Act 79 of 1971. The intention of the legislature that it is necessary to issue notice to 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 also provides that such a person would have a reasonable opportunity of being heard and to adduce evidence in his defence. Therefore, the contention of the learned Additional Advocate General that the Writ Petition itself is not maintainable and it is premature cannot be accepted because no action pursuant to the report was initiated against the petitioner is concerned, it is not necessary for the petitioner to wait till certain action is initiated by the respondent considering the Commission's report where the observations made against the reputation of the petitioner that too without giving an opportunity of hearing to explain his conduct as contemplated under Section 8B of the Act, 1952. In fact, subsequent to the Commission's report, the respondent issued G.O.No.SS.II/500-4/2022, dated 17.10.2022, thereby ordering that it was decided to initiate appropriate action, after obtaining the legal opinion. Therefore it cannot be said that this Writ Petition is a



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premature one. Therefore it would be open for the petitioner to move the Court for deletion of such remarks made against him on the sole ground of violation of principles of natural justice. Admittedly the petitioner was not served with any notice under Section 8B of the Act, 1952. Though all the respondents before the Commission were given opportunity of hearing and also to cross examine the witnesses, the petitioner was not given an opportunity of hearing and also to cross examine the witnesses as contemplated under Sections 8B and 8C of the Act, 1952 which is mandatory in nature. The petitioner was not arrayed as a respondent and only two witnesses were arrayed as respondents.

26.In view of the above, this Court finds infirmity in the Commission's report dated 23.08.2022 in so far as the observations and suggestions made against the petitioner in paragraph Nos.39.1 to 39.7 and 47.28 is concerned and the consequence G.O.No.SS.II/500-4/2022, dated 17.10.2022 thereby ordered to initiate appropriate action as against the petitioner after obtaining legal opinion cannot be sustained and the same are liable to be quashed.

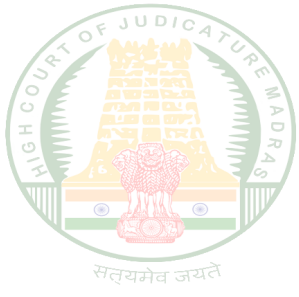


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27. Accordingly, the Commission's report dated 23.08.2022 in so far as the observations and suggestions made against the petitioner in paragraph Nos.39.1 to 39.7 and 47.28 is concerned and the consequence G.O.No.SS.II/500-4/2022, dated 17.10.2022 are quashed and the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

**.01.2025**

NCC : Yes  
Index : Yes  
Internet : Yes  
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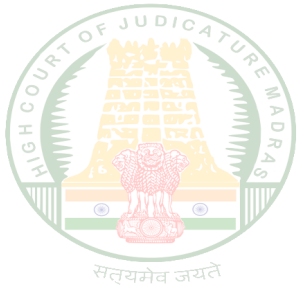
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**W.P(MD)No.4379 of 2023**

To

The Chief Secretary,  
State of Tamil Nadu,  
Fort St. George,  
Chennai – 600 001.



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**G.K.ILANTHIRAIYAN, J.**

ps

Pre-Delivery Order made in  
**W.P(MD)No.4379 of 2023**

**.01.2025**