

പതിനാലാം കേരള നിയമസഭ

ഒൻപതാം സമ്മേളനം

നക്ഷത്രചിഹ്നമിടാത്ത ചോദ്യം നമ്പർ 22

23.01.2018-ൽ മറുപടിക്ക്

സോളാർ കമ്മീഷൻ റിപ്പോർട്ട്

ചോദ്യം

മറുപടി

ശ്രീ. തിരുവഞ്ചൂർ രാധാകൃഷ്ണൻ
ശ്രീ. കെ.സി. ജോസഫ്
ശ്രീ. ഷാഫി പറമ്പിൽ
ശ്രീ. അനിൽ അക്കര

പിണറായി വിജയൻ
(മുഖ്യമന്ത്രി)

(എ) സോളാർ കമ്മീഷൻ റിപ്പോർട്ട് സർക്കാരിന് എന്നാണ് ലഭിച്ചത്;

(എ) 26.09.2017-ന്

(ബി) പ്രസ്തുത റിപ്പോർട്ടിന്മേൽ സ്വീകരിക്കേണ്ട നടപടികൾ സംബന്ധിച്ച് സർക്കാർ അഡ്വക്കേറ്റ് ജനറലിന്റെയും പ്രോസിക്യൂഷൻ ഡയറക്ടർ ജനറലിന്റെയും നിയമോപദേശം തേടിയിരുന്നോ; നിയമോപദേശത്തിന്റെ വിശദാംശം നൽകുമോ;

(ബി) തേടിയിരുന്നു.

ബന്ധപ്പെട്ട രേഖകളുടെ പകർപ്പ് ഉള്ളടക്കം ചെയ്യുന്നു.

(സി) ഇവരുടെ നിയമോപദേശത്തിന്റെ അടിസ്ഥാനത്തിലാണോ റിപ്പോർട്ട് സഭയിൽ വയ്ക്കുന്നതിന് മുമ്പ് മുഖ്യമന്ത്രി പത്ര സമ്മേളനം നടത്തി നടപടികൾ വിശദീകരിച്ചത്;

(സി) അല്ല.

(ഡി) ഈ റിപ്പോർട്ട് സംബന്ധിച്ച് സുപ്രീംകോടതി മുൻ ജഡ്ജി അരിജിത്ത് പസ്സായത്തിന്റെ നിയമോപദേശം തേടിയിരുന്നോ;

(ഇ) ശ്രീ. അരിജിത്ത് പസ്സായത്തിന്റെ നിയമോപദേശം സർക്കാരിന് ലഭിച്ചിട്ടുണ്ടോ; പ്രസ്തുത നിയമോപദേശം അഡ്വക്കേറ്റ് ജനറലിന്റെ നിയമോപദേശത്തിന് ഘടകവിരുദ്ധമാണോ; വിശദാംശം നൽകുമോ;

(ഡി) മുൻ സുപ്രീം കോടതി ജഡ്ജിയും അരിജിത്ത് പസ്സായത്തിൽ (ഇ) നിന്നും ലഭിച്ച നിയമോപദേശത്തിന്റെ പകർപ്പ് ഉള്ളടക്കം ചെയ്യുന്നു.

(എഫ്) ഈ റിപ്പോർട്ടിന്മേൽ നിയമവകുപ്പിന്റെ ഉപദേശം ആശ്രയിക്കുന്നോ; എങ്കിൽ നിയമവകുപ്പ് നൽകിയ ഉപദേശം വെളിപ്പെടുത്തുമോ?

(എഫ് ഇല്ല)


സെക്ഷൻ ഓഫീസർ



C. SREEDHARAN NAIR

DIRECTOR GENERAL OF PROSECUTIONS, KERALA
STATE PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM
&
SPECIAL ATTORNEY
KERALA LOK AYUKTA

Phone { Office : 0484 2564303
Mobile : 9847015696
Official : 9446577271
Fax : 0484 2394933

E-mail : adv.csn.nji@gmail.com
sppkerala@gmail.com
Kochi-682 031

10th October, 2017

The Additional Chief Secretary,
Home (Secret Section-A) Department,
Government Secretariat,
Thiruvananthapuram.

Sir,

Sub:- Justice (Rtd.) G. Sivarajan Commission of Inquiry (Solar
Commission) Report – Remarks forwarding of – Reg.

Ref: Govt. Letter No. 77989/SSA2/2013/Home dated 03.10.2017.

REMARKS WITH REGARD TO SOLAR COMMISSION REPORT

In Page 845, Volume III of the Report of the Solar Enquiry Commission, recommendations running to 10 paragraphs have been made. The following are my opinions with regard to the said recommendations.

As regards Paragraph 1, cases under Sections 7, 8, 9 and 13 of the Prevention of Corruption Act can be registered against the then Chief Minister Sri. Oommen Chandy and members of his erstwhile personal staff Tenny Joppan, Jikkumon Jacob and Salimraj as well as Shri.Kuruvila, the aid of Sri. Oommen Chandy at Delhi for abetting and aiding the solar accused to cheat their customers. Further investigation in terms of Section 173(8) of the Code of Criminal

Procedure can be ordered in Crime No. 368 of 2013 of Perumbavoor Police Station and Crime No. 656 of 2013 of Konni Police Station to investigate the role played by Sri. Oommen Chandy and his aforementioned personal staff as well as others to enable the accused therein to cheat the defacto complainant therein. Criminal case can also be registered against Sri. Thiruvanchoor Radhakrishnan, the then Home and Vigilance Minister, for having made all efforts to get Sri. Oommen Chandy extricated from criminal liability through Police Officers under him.

As regards recommendations in paragraph 2, cases under the Prevention of Corruption Act as well as provisions of the Indian Penal Code can be initiated against Sri. Aryadan Muhammad, the then Power Minister, for having abetting and aiding the Solar accused in every manner possible and thus enabling them to cheat the public. It is also open to investigate the role of Sri. Aryadan Muhammad as part of further investigation in cases which have already been registered in relation to solar scam.

As regards the recommendations in Paragraph 3, the Government may initiate action against members of the Special Investigation Team for the lapses/ acts/ omissions in the conduct of investigation into the solar cases by the Special Investigation Team. It is discernible from the report that the acts/omissions of Sri. K. Padmakumar, the then Inspector General of Police, Ernakulam Range and Sri. Harikrishnan, the then Deputy Superintendent of Police, Perumbavoor Sub Division had resulted in tampering with the evidence of the case and also in destroying the key evidence linking the persons now arrayed as accused in solar cases to the then political leadership of the State. Criminal cases can be registered against the said officers.



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As regards the recommendations in paragraph 4, it cannot be said that mere inauguration of functions of team Solar Company or recommending team Solar Company for installing solar street lights amount to cognizable offences under Indian Penal Code or Prevention of Corruption Act. Therefore it has to be separately verified on a case to case basis as to whether there was any criminal culpability or intention on the part of others who recommended team solar company for investigation of solar street lights. Further, case has to be registered against Sri. Thampanoor Ravi, Ex-MLA, Sri. Benny Behanan, MLA for protecting the accused in the case as well as for destroying the evidence.

As regards the averments in paragraph 5, sexual satisfaction for any undue advantage amounts to illegal gratification as detailed in Explanation to Section 7 of the PC Act. Therefore, cases under PC Act have to be registered against persons who allegedly received sexual favours from Smt. Saritha Nair. The Commission report reveals that sexual offences including rape were committed on Smt. Saritha Nair by persons holding high offices including Ministers. Criminal Cases have to be registered against all such persons.

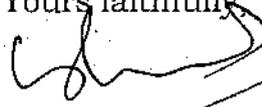
As regards the recommendations in Paragraph 6, certainly cases in terms of Prevention of Corruption Act has to be registered against all those persons against whom corruption and illegal gratification are alleged by the Commission.

As regards the recommendations in paragraph 7, a case under the Prevention of Corruption Act has to be registered against Sri. G.R. Ajith, the then Secretary, Kerala Police Association for having accepted illegal gratification from the solar accused. Suitable departmental action has also to be taken against him.



The other recommendations in Paragraph 8, 9 and 10 are to be considered by the Government on its administrative side.

Yours faithfully,



C. SREEDHARAN NAIR
DIRECTOR GENERAL OF PROSECUTIONS &
STATE PUBLIC PROSECUTOR.



C. P. SUDHAKARA PRASAD
ADVOCATE GENERAL

Office of the Advocate General, Kerala
Ernakulam, Kochi-682 031

Office : 0484 - 2395050, 2395052
Direct : 0484 - 2394505, 2564300
(Chamber, New High Court Bldg.)
Resi. : 0484 - 2807441
Mob. : 9446077442
Fax : 0484 - 2396399

E-mail : advocategeneralkerala@gmail.com

No. S.S. 28/2017/A.G.

10th October, 2017

The Additional Chief Secretary to Government,
Home Department,
Government Secretariat,
Thiruvananthapuram.

Sir,

Sub:- Justice (Rtd) G. Sivarajan Commission of Inquiry
(Solar Commission) Report – remarks forwarding
of - reg.

Ref:- That office letter No. 77989/SSA2/2013/Home
dated 03.10.2017.

I am in receipt of your letter dated 03.10.2017 yesterday
and the remarks on the report of the Solar Scam Inquiry
Commission are the following:

REMARKS REGARDING RECOMMENDATIONS IN PARAGRAPH (1) OF THE SOLAR COMMISSION REPORT. (SEE PAGE NO: 845, VOLUME III, OF THE REPORT)

1. There are serious allegations of accepting huge amounts from Smt. Saritha Nair and her company by Sri. Oommen Chandy (the then Chief Minister) personally and through others which attracts provisions of Prevention of Corruption Act. Therefore, Vigilance case is to be registered for committing offences under Sections 7, 8, 9 and 13 of the P.C. Act and thorough investigation is to be conducted.
2. Further investigations can be conducted in Crime No. 368 of 2013 of Perumbavoor Police Station and Crime No. 656 of 2013 of Konni Police Station under Section 173 (8) Code of Criminal Procedure to find out the involvement of Sri. Oommen Chandy (then Chief Minister) and his personal staff on the allegation that it is on the basis of the conspiracy, connivance and active help of these persons,



the defacto complainants in the respective crimes were cheated.

3. The Government may also consider possibility of initiating criminal investigation against the former Home and Vigilance Minister Sri. Thiruvanchoor Radhakrishnan for his efforts and actions to ensure that Sri. Oommen Chandy (then Chief Minister) is extricated from criminal liability through police officers under him. In this connection it is relevant that the then Chief Minister, Sri. Oommen Chandy, assured in the Legislative Assembly that all allegations against him and his personal staff also would be investigated by the Special Investigation Team to be constituted. However, in G.O (Rt) No. 2263/2017/Home dated 17.08.2013, 34 crimes mentioned therein, in which Smt. Saritha Nair and Sri. Biju Radhakrishnan were arrayed as accused, alone were ordered to be investigated. The



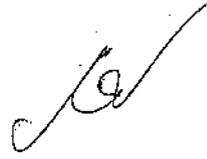
Order specifically stated that the Government was ratifying the action of the then State Police Chief Sri. K.S. Balasubrahmaniyan, IPS, as per order No. D1/57609/2013 dated 14.07.2013, in constituting the Special Investigation Team for investigation of cases registered in connection with the cheating and other offences committed by "Team Solar Renewable Energy Solutions". Since Sri. Thiruvanchoor Radhakrishnan knew about the assurance by the then Chief Minister before the Legislative Assembly to direct SIT to investigate the involvement of the then CM as well as his personal staff in the matter, the Government Order issued from his Office ratifying the Order of the then State Police Chief limiting the investigation to 34 crimes regarding the cheating by Team Solar Company was intended only to save Shri. Oommen Chandy and for preventing an investigation of his role in the scam.



REMARKS WITH REGARD TO THE RECOMMENDATIONS IN PARAGRAPH 2

4. As far as the role of the then Power Minister Sri. Aryadan Muhammed is concerned, the observations and the findings of the Commission against Sri. Oommen Chandy are equally applicable. Hence, action in terms of the remarks in the foregoing paragraphs has to be initiated against Shri. Aryadan Muhammed also.

REMARKS WITH REGARD TO THE RECOMMENDATIONS IN PARAGRAPH 3

5. The Government may also consider departmental action against the members of the SIT who were involved in the investigation of the solar case. The Departmental Action shall be initiated only after issuing show cause notices and calling for their explanations. It has also to be noted that the Commission has made serious observations about the acts/ omissions of Mr. Padmakumar I.P.S the then Inspector
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General of Police, Ernakulam Range and Mr. Harikrishnan, the then Dy.S.P, Perumbavoor in destroying the evidence of the case and thereby protecting some of the accused. Criminal cases can be initiated against them based on the report of the Commission.

REMARKS WITH REGARD TO THE RECOMMENDATIONS IN PARAGRAPH 4

6. The Commission, in the report, has found that all Ministers who inaugurated the functions of Team Solar Company, the MLAs who recommended for installing the solar street lights of Team Solar Company in their constituencies and also helped in settling the criminal cases of the solar accused and Sri. Thampanoor Ravi Ex. MLA and Sri. Benny Behnan, MLA etc. had worked for saving Sri. Oommen Chandy. Mere inauguration of the functions of Team Solar Company or recommending installation of Team Solar's street lights by itself cannot be said to be criminally



culpable acts. Unless the above persons have criminal intention in saving Sri. Oommen Chandy or in any way helping the solar accused to cheat the public, criminal cases cannot be taken against them. Probe has to be conducted in this regard. But, on the basis of the materials placed before the Commission, criminal cases can be registered against Sri. Thampanoor Ravi, Ex. MLA, Sri. Benny Behnan, Ex MLA and also other persons who had intentionally involved in protecting the solar accused and interfered with the criminal investigation into the solar cases.

REMARKS WITH REGARD TO THE RECOMMENDATIONS IN PARAGRAPH 5

7. On the basis of oral as well as documentary evidence produced before the Commission, the Commission found that there were sexual abuses and harassment and even rape committed on Smt. Saritha Nair and no investigation



on these allegations have been conducted by the Special Investigation Team. Therefore, criminal cases can be registered against the persons against whom commission of sexual offences have been attributed to by Smt. Saritha Nair in her letter dated 19.07.2013 and investigation has to be conducted.

8. Apart from accepting huge amounts as illegal gratification, according to the Commission, sexual satisfaction was given to various persons dealt with in report and mentioned in letter written by Smt. Saritha Nair on 19.07.2013. The same amounts to gratification for obtaining undue advantage to the accused persons and it attracts Section 7 of the P.C. Act. Therefore, criminal cases have to be initiated against all these persons and thorough investigation is to be conducted.



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REMARKS WITH REGARD TO THE RECOMMENDATIONS IN PARAGRAPH 6

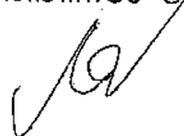
9. The same has been dealt with in paragraph (1) above

REMARKS WITH REGARD TO THE RECOMMENDATIONS IN PARAGRAPH 7

10. The Government may also consider the departmental as well as criminal cases on the allegations of acceptance of illegal gratification to the tune of Rs.20 lakhs by the office bearers of Kerala Police Officers Association particularly its General Secretary Sri. G.R. Ajith, under the relevant Conduct Rules and under the provisions of P.C. Act.

REMARKS WITH REGARD TO THE RECOMMENDATIONS IN PARAGRAPH 8

11. Based on the report of the Solar Commission, in order to streamline the investigation of the police machinery in a more efficient and impartial manner and also to examine the proper discharge of the duties and responsibilities of



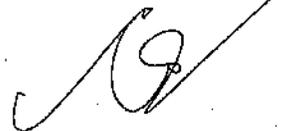
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the Jail Authorities including production of the accused before the Court, a Commission may be constituted to give report to the Government.

FURTHER REMARKS

12. On the basis of the complaint received or on the basis of the further information received by the Government or investigating agency, either fresh criminal cases or further investigation in the existing case can be ordered.

Yours faithfully,



C.P. SUDHAKARA PRASAD
ADVOCATE GENERAL

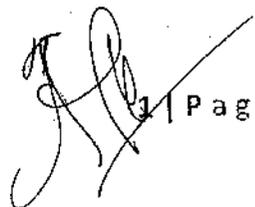


KERALA STATE GOVERNMENT.....QUERIST

OPINION

The following questions have been referred by the Kerala State Government for my opinion:

1. Whether, based on the findings and recommendations of the Commission of Inquiry, cases can be registered and investigated against persons named in the Report?
2. Is it legally permissible for the Government to issue an order to the effect that cases be registered and investigated against persons, on the basis of the recommendations of the Commission?
3. (a) If the Commission has made some findings and recommendations on matters which are related to the terms of reference, and included in the clarificatory statement issued by the Commission, vide Proceedings dated 7th November, 2014 (Annexure 6) what would be the legal status of such findings and recommendations?
(b) Whether cases can be registered and investigated against persons found to have committed offences by the Commission in its findings alone, which fall under (a) above?
(c) Cognizable offences are revealed from the depositions, documents and materials which came up before the Commission in the course of its proceedings and which are mentioned in the Report. What is the course of action to be adopted by the Government in this regard?


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4. (a) When the same fact situation makes out offences under the IPC and the PC Act, is the Special Investigation Team constituted by a Government Order legally competent to investigate offences under both the Acts?
(b) What are the legal requirements to be fulfilled for entrusting the investigation under both the Acts to the Special Investigation Team?
5. (a) Whether the Government Order proposed to be placed before the Council of Ministers for approval (Annexure 4) is legally sustainable?
(b) If any modifications are required in the above order, so as to make it legally sustainable, what are the modifications?

The following documents have been enclosed for reference:

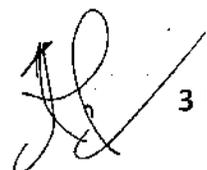
1. Questions referred for legal advice
2. Report of the Commission 4 Volumes
- 2a. Terms of Reference
3. Additional Terms of Reference
4. Recommendations of the Commission
- 4a. Legal Advice of the Advocate General
5. Legal Advice of the Director General of Prosecutions
6. Note to the Council of Ministers
7. Proceedings of the Council of Ministers
8. Press Release of Chief Minister
9. Draft Government Order
2. Notification dt. 4/12/2000

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Before dealing with the questions set out (supra) it will be appropriate to set out parameters applicable to inquiries under the Commissions of Inquiry Act (60) of 1952 (in short the Act)

The report of a Commission of Inquiry is the finale of the exercise undertaken under Section 3(1) of the Act. A Commission of Inquiry is appointed for the information of the own mind of the Government. There is no accuser, no accused and no specific charges for trial. In other words there is no lis before the Commission. The inquiry before it is 'inquisitorial rather than accusatorial'. When the Commission concludes an inquiry it does not pronounce a judgment in the legal sense of the term. The task before it is collection of facts on the question(s) referred to it and submit its report to the appropriate Government with its recommendations. In this way there is no finality attached to its report in the sense the judgment of a Court does have. It is up to the appropriate Government to decide what action should be taken on the basis of the Report.

A Commission of Inquiry appointed under Section 3 of the Act is merely a fact finding body and its report is not binding on the Government. In *Hare Krishna Mehtab v. Chief Minister of Orissa*, AIR 1971 Orissa 175 it was held that inquiry was necessary for the purpose of maintaining a high standard of public administration and indeed of public life. A Commission of Inquiry is not exercising any judicial function and he is not a Judge and does not behave like one. He is not there to hear and decide. He is only there to hear and report. Government must no doubt consider it, but they are in no way bound by it. Nor are they confined to it. The Report must be based on facts and not opinions.

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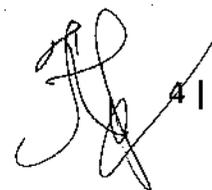
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In Ram Krishna Dalmia v. Justice S.R.Tendolkar AIR 1958 SC 538 case, their Lordships held that the only power that the Commission has is to inquire and make a report and embody therein its recommendations. The Commission has no power to adjudication in the sense of passing an order which can be enforced proprio vigore. It was observed in that case as follows:

"Therefore, as the Commission we are concerned with is merely to investigate and record its findings and recommendations without having any power to enforce them, the inquiry and the report cannot be looked upon as a judicial inquiry in the sense of its being an exercise of judicial function properly so called".

In T.T. Antony v. State of Kerala AIR 2001 SC 2637 a question arose before the Hon'ble Supreme Court as to the value of the report of a Commission of Inquiry and whether such report can be used in the investigation of a Criminal case. It was held by the Hon'ble Court that the report and findings of the Commissions of Inquiry are meant for information of the Government. Acceptance of the report by the Government would only suggest that being bound by the rule of law and having duty to act fairly, it has endorsed to act upon it. The duty of the police – investigating agency of the State – is to act in accordance with the law of the land. Acting thus, the investigating agency may with advantage make use of the report of the Commission in its onerous task of investigation bearing in mind that it does not preclude the investigating agency from forming a different opinion under Section 169/170 of Cr. P.C. if the evidence obtained by it supports such a conclusion.

The Government is under no obligation to accept each and every finding of a Commission of Inquiry. Sometimes it may accept the part of the findings and reject the other part.

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The conclusions of a Commission of Inquiry are also not admissible in a Court of law, in any criminal case or even in a civil case. Such conclusions are merely advisory in nature. However, the State would be bound by the findings of a Commission to the extent such report is accepted by the State.

No Commission of Inquiry has any right to recommend prosecution or interrogation of any individual. The Commission can be appointed only for the purpose of making an inquiry into any definite matter of public importance.

In Krishna Ballabh Sahay and ors. Vs. Commission of Inquiry and ors. AIR 1969 SC 258, the Hon'ble Supreme Court inter alia said "If the charges were vague or speculative suggesting a fishing expedition, we would have paused to consider whether such an inquiry should be allowed to proceed."

In Ram Krishna Dalmia vs. Mr. Justice S. P. Tendulkar 59, Bom.L.R. 769 at 775, Justice Chagla amplified "It is not open to the Government to prove any individual in the position of an accused, to constitute a Commission to investigate into any offence that he might have committed, and to place before it materials collected so that on the strength of those materials a prosecution could be launched". The decision of the Hon'ble Bombay High Court was affirmed by Constitution Bench of the Supreme Court in Ram Krishna Dalmia's case(supra) AIR 1958 SC 538.

While the Commissions of Inquiry are not bound by the Indian Evidence Act, 1872, (in short the Evidence Act) they are not free to disregard the principles underlying it. The Law Commission's 24th Report (1962) on the Act quoted G.W. Keeton's remarks "When the question of the involvement of a particular person in

a particular transaction is under consideration, however, the Tribunal restricts itself to the facts admissible under the normal rules of evidence". The Law Commission recommended that the same practice should be followed in India.

In P.V.Jagannath Rao and Others vs. The State of Bihar [1968] 3SCR 789 a Constitution Bench of the Hon'ble Supreme Court held:

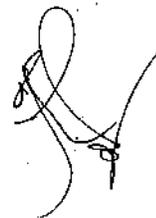
"The purpose of the inquiry is stated in the preamble to the notification which states that 'the matters aforesaid regarding the aforesaid persons should be inquired into through a Commission of Inquiry so that facts may be found which alone will facilitate rectification and prevention of recurrence of such lapses and securing the ends of justice and establishing a moral public order in future'. In other words, the object of the inquiry to be made by the Commission appointed under Section 3 of the Act was to take appropriate legislative or administrative measures to maintain the purity and integrity of political administration in the State.

In an inquiry conducted under the Commissions of Inquiry Act, there is no accuser, no accused, no plaintiff and no defendant. That is to say there is no lis before the Commission. The Commission does not conclude an inquiry by pronouncing a judgment in the legal sense of the term. The task before the Commission is collection of facts and material on the subject(s) referred to it and submit its report with its findings, recommendation(s), if any, to the appropriate Government. The Government may or may not take any action on the report. It is for the appropriate Government to decide what action, if any, is required to be taken on the report. Thus the inquiry under the Act is inquisitorial and not accusatorial as stated above.

After having highlighted the nature of the report under the Act, it has to be seen whether the report as submitted by the Commission is in reality what it ought to be in law. Then only the question of expressing opinion on the questions referred to at the threshold. It is only for the Government/Legislative Assembly to take note of the report under Section 3(4) of the Act. It would be appropriate to highlight certain aspects which need to be addressed by the Government while deciding as to whether the Report would be accepted or not.

Though the Commission itself noted that there are no parties before the Commission, there is no lis and the Commission is not a Court, it allowed impleadment of several persons as parties, and it allowed these impleaded parties to put questions to the witnesses and to seek clarifications. It is not for me to opine on the question of acceptability of the report by the Government, I have referred to that aspect of the report as my opinion on the questions posed would have foundation on the report itself.

In the aforesaid premises it is for the State Government to take a call to decide upon the acceptability or otherwise of the report and the further steps to be taken in terms of Section 3 (4) of the Act. In case the State Government decides to accept the report (either in part or in full) it can ask the competent Law Enforcement Agencies to consider the report, examine whether it contains Information which is actionable under the Criminal Procedure Code, 1973 (in short CrPC) and any other applicable statute and to adopt such steps/courses as are available in law. It would be solely within the domain of the concerned agency to decide upon further course of action to be taken. This would be in line



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Dr. Justice Arijit Pasayat
Judge
Supreme Court of India (Retd.)

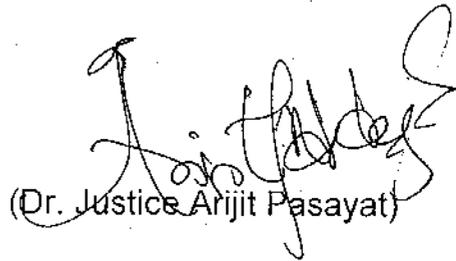
with the view expressed by the Hon'ble Supreme Court in T.T. Antony's case (supra) as emphasized above.

This appears to be the only available course as it is an accepted position that about 40 cases connected with the issues which were looked into by the Commission are pending before Trial Courts.

My opinion is rendered on the basis of factual position projected and documents provided by the Querist.

This opinion cannot be treated as evidence before any Court, Tribunal or authority and has been given on the basis of materials furnished by the Querist.

Date : 06.11:2017



(Dr. Justice Arijit Pasayat)