

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF DECEMBER 2018

PRESENT

THE HON'BLE MRS. JUSTICE B.V. NAGARATHNA

AND

THE HON'BLE MR. JUSTICE B.A. PATIL

REVIEW PETITION No.227/2016

(In W.P. No.19245/2015)

The State of Karnataka

v/s.

Sri. S.K. Kantha

ORDER

There is a delay of 180 days in filing the review petition.

2. We have heard learned Additional Advocate General for the State/review petitioners and learned advocate for the respondent and perused the material on record as well as the writ petition papers.

3. This review petition is filed seeking review of order dated 10th September 2015 passed in Writ Petition No.19245/2015 which was a Public Interest Litigation. The said order reads as under:

“

ORDER

Mr.A.G.Shivanna, learned Additional Advocate General-1, appears on behalf of the State respondents and submits, after obtaining instructions, that the report of the Karnataka State Minorities Commission submitted to the Hon'ble Chief Minister on March 26, 2012, shall be placed before both the Legislative council and the Legislative assembly of Karnataka in the February, 2016 session.

2. Recording the said concession, this writ petition stands disposed of.

3. We make no order as to costs.”

4. Learned Additional Advocate General contended that the specific prayer in the writ petition was to seek a direction to the respondents (petitioners herein) to place the report by the Karnataka State Minorities Commission titled 'A Special Report on misuse of Wakf properties and illegal disposal and encroachment in Karnataka in Bidar and other Districts of Karnataka' before the State Legislature as mandated by Section 10(2) of the Karnataka State Minorities Commission Act, 1994 and grant such other or further relief or reliefs as this Court may deem fit in the circumstances of the case. That the

respondent herein adverted to Section 10(2) of the Karnataka State Minorities Commission Act, 1994 (hereinafter referred to as the 'Act', for the sake of brevity) which contemplates only laying of recommendations of the Commission and the said provision cannot be made applicable to the Special Report on misuse of Wakf properties and illegal disposal and encroachment in Karnataka in Bidar and other districts of Karnataka (hereinafter referred to as 'Special Report', for the sake of convenience) submitted by the Commission before the State Legislature. He contended that the order sought to be reviewed is an order passed on a concession made by learned Additional Advocate General-1 to the effect that the Special Report shall be placed before the Legislative Council and Legislative Assembly of Karnataka in February 2016 Session. But, the said concession ought not have been made and that it was made on an erroneous understanding of Section 10(2) of the Act. Learned Additional Advocate General contended that Section 10(2) of the Act contemplates laying of only recommendations of the Karnataka State Minorities Commission ('Commission', for brevity's sake) before each House of the State Legislature along with a memorandum explaining the action taken or proposed to be taken on the

recommendations and the reasons for non-acceptance, of any such recommendation; that the said sub-section does not contemplate laying of any 'Special Report' before the State Legislature. That, in the instant case, in the writ petition, submission of the Additional Advocate General was made on the premise that what was sought to be laid before the House was a recommendation of the Commission and not the 'Special Report' in question. He further contended that reference made by the petitioners to sub-section (2) of Section 10 of the Act regarding 'placing recommendations before the State Legislature' mislead the State and that the concession was made on a wrong premise. It is submitted that the petitioners have a good case for seeking review of the order; and therefore, the order may be recalled and the writ petition may be heard on merits, by condoning the delay of 180 days in filing the review petition which has occurred due to *bona fide* and unintentional reasons.

5. *Per Contra*, learned counsel for the respondent submitted that there is no reason whatsoever for seeking review of the order in the instant case as the said order was passed on a concession made by learned Additional Advocate General and that there was no mistaken

impression or erroneous appreciation of the position of law by the State. Drawing our attention to the statement of objections filed to the writ petition, learned counsel contended that on a reading of the same, it is evident from paragraphs 2 and 3 that the State Government had applied its mind to the Special Report and it had constituted a High Power Committee vide Government Order dated 11.05.2012 under the Chairmanship of the Additional Chief Secretary and Development Commissioner, and comprising of Secretaries to Government, Revenue Department, Labour Department, Law Department and Minorities Welfare Department; that the State Government had also decided to conduct an enquiry through the Hon'ble Lokayuktha; that the State Government had taken a decision to place the Special Report before the Cabinet and then lay the same on the floor of the State Legislature after obtaining an opinion from the learned Advocate General on the Cabinet Note. She contended that there has been a clear application of mind by the petitioners herein to the relief sought by the respondent in the writ petition and a decision was taken to place the Special Report before the State Legislature. On the basis of the said statement of objections and on instructions, it was submitted before this Court that the 'Special Report' shall

be placed before the House of the State Legislature in February 2016. She further drew our attention to an application filed by the petitioners herein, on 01.03.2016, seeking extension of time by four months to take a decision in the matter and to place it before each House of the State Legislature. That even during the pendency of the said application, this review petition has been filed and there is no reason whatsoever to seek review of the order.

6. Learned counsel for the respondent further submitted that Section 10(2) of the Act has been adverted to by the respondent only for the purpose of seeking laying of the Special Report before the State Legislature; that even if the argument of learned Additional Advocate General regarding the purport and scope of Section 10(2) of the Act is to the effect that the said section is only with regard to laying of recommendations, there is no prohibition in the Act for laying of the 'Special Report' before the Legislature. In this regard, learned counsel adverted to Section 15 of the Act which states that the Commission may, at its discretion, submit from time to time, special reports on any matter of public importance to the Government. That the reason as to why Section 10(2) was adverted to was that the 'Special Report' was sought

to be laid before each House of the State Legislature in accordance with the procedure contemplated under section 10(2) of the Act. Under the said provision, recommendations of the Commission have to be laid before each House of the State Legislature along with the memorandum explaining the action taken or proposed to be taken on the recommendations and the reasons for non-acceptance, of any such recommendations. In the instant case, as the 'Special Report' was not placed before the State Legislature, a specific direction was sought in that regard in the writ petition, which was filed by way of public interest litigation. She contended that the submission made by the learned Additional Advocate General in the writ petition was in accordance with the statement of objections and instructions received by the petitioners herein and that there is no reason to review the order made by this court on such a submission. In support of her submissions, she placed reliance on a judgment of the Hon'ble Supreme Court in the case of *STATE OF MAHARASHTRA VS. RAMDAS SHRINIVAS NAYAK AND ANOTHER* reported in (1982)2 SCC 463.

7. By way of reply, learned Additional Advocate General, along with certain documents, submitted that

certain recommendations of the Commission under Section 10(2) of the Act were placed before the State Legislature, but the Special Report has not been placed as the placing of the same under section 10(2) of the Act does not arise. He contended that the judgment relied upon by the learned counsel for the respondent does not apply to the facts of the present case, as there is no denial of the fact that a concession indeed was made on behalf of the State in the writ petition, but the reason as to why the review petition has been filed is to contend that the said concession ought not to have been made and that it was made on an erroneous impression. In the circumstances, he contended that the delay of 180 days may be condoned and review petition may be heard on merits and allowed.

8. Having heard learned counsel for the respective parties, we note that the petitioner had sought for placing of the 'Special Report' submitted by Sri Anwar Mannipady, Chairman of the Commission, to be placed before the State Legislature in accordance with the procedure contemplated under Section 10(2) of the Act. The said Special Report has been submitted under section 15 of the Act. The same reads as under:

"15. Annual report and audit report to be laid before the State Legislature.- The Government

shall cause the annual report together with a memorandum of action taken on the recommendations contained therein, in so far as they relate to the State Government, and the reasons for the non-acceptance, if any, of any of such recommendations to be laid, as soon as may be, after the reports are received, before each House of the State Legislature. The Commission may, at its direction, submit from time to time, special reports on any matter of public importance to the Government.”

Section 10(2) of the Act reads as under:

“10. Functions of the Commission .- (1) x x x
x x x x x x x

(2) The Government shall cause the recommendations of the Commission to be laid before each House of the State Legislature along with the memorandum explaining the action taken or proposed to be taken on the recommendations and the reasons for non-acceptance, of any such recommendations.”

9. The writ petition, which was filed by way of a Public Interest Litigation, sought a specific prayer in that regard. In response to the said writ petition, statement of objections was filed on behalf of the State wherein at paragraphs 2 and 3, it is averred as under:

“ 2. It is true that Sri Anwar Mannipady, the then Chairman of Karnataka State Minorities Commission, after investigation into the illegalities in Wakf Properties through out the State of Karnataka submitted a Report to the government

on 26.03.2012. On receipt of this Report since there were serious allegations of misuse and encroachment of the Wakf properties, the Government constituted a High Power Committee vide Govt. Order No.MWD.99.WES.2012 dated 11.05.2012 under the Chairmanship of the Addl. Chief Secretary and Development Commissioner and comprised of Secretaries to the Government, Revenue Department, Labour Department, Law Department and Minorities Welfare Department. However, the State Government decided to conduct and enquiry through the Hon'ble Lokayuktha and hence, withdrew the High Power Committee vide G.O.No.MWD.99.WES.2012 dated 30.05.2012 and the report of the Minorities Commission was referred to the Karnataka Upa-Lokayuktha, as the post of Hon'ble Lokayuktha at that point of time was vacant, under Rule 7(ii)(a) of the Karnataka Lokayuktha Rules, 1984 vide order No.MWD.99.WES.2012 dated 04.07.2012. The report of the Upa-Lokayuktha is still awaited.

3. The State Government has already taken a decision to bring this Report before the Cabinet and then subsequently to place it on the floor of the Legislature. The Law Department has suggested to the State Government, to obtain an opinion from the learned Advocate General on the Cabinet Note. Based on this suggestion, the file has been referred to the learned Advocate General for opinion. As soon as the opinion is received from the learned Advocate General action will be taken by the State Government to bring the subject before the Cabinet for a decision to place the Report on the floor of Legislature."

Based on the averments made in the statement of objections, learned Additional Advocate General submitted that the 'Special Report' of the Commission submitted to the Hon'ble Chief Minister on 26th March 2012 shall be placed before both the Legislative Council and Legislative Assembly in February 2016 Session. Further, the said submission was made after obtaining instructions on behalf of the State Government. On recording the said concession the writ petition was disposed.

10. This review petition is not filed on account of there being any error on the face of the record in the order, but to contend that the concession made on behalf of the State Government ought not to have been made. In other words, the State intends to resile from its concession. The same is camouflaged by contending that the question whether a 'Special Report' could be placed before the State Legislature having regard to the procedure contemplated under Section 10(2) of the Act, is a moot question which would arise which calls for an adjudication. Hence, the review petition may be allowed by recalling the order dated 10.09.2015 is urged by Additional Advocate General. We are not impressed by the legal

controversy sought to be now raised vis-à-vis the writ petition. Section 10(2) of the Act has been pressed into service by the petitioner in the context of placing the 'Special Report' before the State Legislature. What was sought by the writ petitioner was clear. It was not placing of any recommendation of the Commission, but the 'Special Report' in question which has been clearly adverted to in the body of the petition as well as in the prayer column. The petitioners herein, who were the respondents in the writ petition, on perusing and understanding what was sought by the respondent herein in the writ petition filed the aforesaid statement of objections which was not really adversarial in nature. But, in the application filed seeking condonation of delay of 180 days in filing the review petition, at paragraphs 4 to 6, it has been averred as under:

"4. It is respectfully submitted that subsequent to this order dated 10.9.2015 as needful could not be done immediately, an application seeking extension of time was also filed before this Hon'ble Court on 01.03.2016. However, in the meanwhile, Contempt Petition No.374/2016 was also filed by the Writ Petitioner/Respondent herein namely Sri S.K.Kantha, alleging disobedience of the order dated 10.09.2015 passed in W.P. No.19245/2015.

5. It is most respectfully submitted that even though application for seeking extension of time was filed in W. P. No.19245/2015., in the meanwhile, the state Government following the tenor of Section 10(2) of KSMC Act placed the recommendation of the Commission with memorandum before both the Houses on 5.3.2016. However, the Writ petitioner/respondent herein is insisting that what was agreed to be placed before both the Houses was the special report, but not, recommendation., and as such there is disobedience to the order passed by this Hon'ble Court in W.P. No.19245/2015.

6. It is in these circumstances, the entire situation was deliberated afresh by the State Government afresh. It was noticed that there was an error due to inadvertence by the concerned officer in giving instructions to the Government advocate, in giving concession with regard to placing of report of the Commission before both the Houses, instead of recommendation. It was noticed that instead of being satisfied with the compliance of requisites of Section 10(2), the Respondent herein is alleging disobedience to the order dated 10/9/2015, in W.P.19245/2015 which was never the intention of the State. It was also noticed that if the order dated 10.09.2015 is allowed to continue, it will set a wrong precedent because what is agreed to be done is contrary to provisions of statute/Section 10(2) of KSMC Act, 2994. It is in these circumstances, the state government took a decision to seek for review of the order dated 10.9.2015 passed in W.P.No.19245/2015. In view of the aforesaid sequence of events the

petition/application seeking review of the order dated 10/9/2015 was not filed immediately within time stipulated in law. There is some delay in filing the Review Petition.”

11. It is now sought to be contended that only recommendations of the Commission are placed before the State Legislature under Section 10(2) of the Act and that provision does not apply to placing of any special report of the Commission before the State Legislature much less to the Special Report in question. It is contended that the writ petitioner could not have adverted to Section 10(2) of the Act while seeking a direction to the State Government regarding laying of the ‘Special Report’ before the State Legislature. Further, what was considered by the State Government was recommendations of the Commission and not the ‘Special Report’ in question. It is contended that on an erroneous impression that the concession was made.

12. It is further noted that under Section 15 of the Act, the annual report together with a memorandum of action taken on the recommendations contained therein insofar as they relate to State Government, and the reasons for the non-acceptance, if any, of any recommendations have to be laid, as soon as may be, after the reports are received, before each House of the state

Legislature. In addition, the Commission may submit, from time to time, special reports on any matter of public importance to the Government. Though there is no specific provision for laying of the Special Report on any matter of public importance submitted to the Government before the State Legislature, nevertheless, it is inferred that there is no bar for laying the special reports submitted by the Commission before each House of the State Legislature.

13. In fact, Section 10(2) of the Act states that the Government shall cause the recommendations of the Commission to be laid before each House of the State Legislature along with the memorandum explaining the action taken or proposed to be taken on the recommendations and the reasons for non-acceptance, of any such recommendations. A Special Report on any matter of public importance submitted by the commission to the Government must be construed to be in the nature of a recommendation of the Commission. The object of submission of a special report by the Commission is to bring to the notice of the State Government any matter which, according to the Commission, is of public importance. Therefore, a special report would have to be construed as a recommendation of the Commission coming

within the scope of Section 10(2) of the Act. In such an event, laying of special report before each House of the State Legislature would become necessary. The State Government cannot seek to place in cold-storage a special report of the Commission on any matter of public importance by not placing it before each House of the State Legislature. Obviously, the Special Report on any matter of public importance would concern protection of minorities and welfare and development of minorities. Having regard to Articles 29 and 30 of the Constitution of India and the object and purpose of the Act and the discretion being given to the Commission to submit, from time to time, a special report on any matter of public importance concerning minorities to the State Government, it is in the interest of good governance and in the interest of minorities, that such a special report be laid before the House of the State Legislature.

14. In fact, no argument has been advanced in the context of any legal impediment for placing the Special Report in question before each House of the State Legislature, except contending that it is a bulky report which, according to the respondent, is only 600 pages. In the absence of there being any legal impediment or other

strong reason, we do not find that the concession made by the State Government was contrary to law.

15. Having regard to the aforesaid discussion, we are of the view that when learned Additional Advocate General made the submission before this court on 10th September 2015, it was not on an erroneous understanding of the facts of the case or the law in question or the provisions of the Act. The said submission was based on the statement of objections which was filed after due understanding and deliberation. The submission of learned Additional Advocate General, which is in the nature of a concession, is not casual or off-the-cuff, but it is after obtaining instructions and in accordance with the statement of objections filed on behalf of the State/petitioners herein.

16. The reason as to why the petitioner approached this Court, by filing the Public Interest Litigation, was in order to bring it to the notice of the Members of both the Houses of State Legislature the contents of the Special Report, which is only about 600 pages and not voluminous one running into thousands of pages, as contended by the learned Additional Advocate General during the course of his submission. The object

and purpose of seeking such a direction was to bring to light the contents of the said report so as to enable the Members of the State Legislature to deliberate upon it and for the State Government to take action in accordance with law. Therefore, a specific prayer was sought in the writ petition which was granted on the basis of the submission made by the learned Additional Advocate General. In fact, even after the disposal of the writ petition, an application was filed seeking extension of time to comply with the order, but it is only when the contempt petition has been filed by the respondent seeking compliance, that this review petition has been filed. We do not think that the submission made by learned Additional Advocate General in the writ petition was without any basis or *de hors* any instructions or made on the spur of the moment; it was with instructions and in accordance with the statement of objections filed on behalf of the State which was filed after due deliberation and on application of mind. When such being the position, what is expected was to adhere to the submission made before this Court rather than to resile from it by filing this review petition. It is not forthcoming as to what the hesitation or the impediment is for the State Government now, so as to avoid placing the 'Special Report' before both Houses of the State Legislature.

17. We are concerned in this matter regarding compliance of orders and directions of this Court, particularly, when they are made at the instance of a party, particularly, the State as in the instant case on application of mind. There is no reason forthcoming so as to deviate from the submission made on behalf of the State in the writ petition, on the basis of which the writ petition was disposed. Surely, it is not the case of the State that the statement of objections or the submission made on behalf of the State was without due deliberation or on account of non-application of mind or without instruction being given to the learned Additional Advocate General.

18. A submission in the nature of a concession made on behalf of the State has to be given its solemnity and weightage. If a matter is disposed of on the basis of a concession made on behalf of the State, the same cannot be lightly interfered with thereafter on an after-thought. It is expected that before making any submission in a Court of Law, especially by the State, it would be on an application of mind after weighing all pros and cons and on instructions given to the Law Officers. The State cannot, by volte-face, contend that it did not intend to make such a

submission or concession or that the same was made without understanding the purport and import of law or without understanding the facts of the case.

19. Submissions made on behalf of any party and particularly on behalf of the State are taken seriously and on the basis of such submission cases are disposed of. Thereafter, a litigant and particularly the State cannot be permitted to say that a particular submission or concession was not intended to be made and therefore, the order passed on such submission or concession ought to be recalled or reviewed. Precious public time cannot be wasted in reviewing such orders. We find no reason to review the order.

20. Even otherwise, in a democratic country emphasis must be on the open Government, subject to confidentiality and secrecy being maintained in the interest of public security or national interest. In other words, there must be a balance struck between 'secrecy' and 'openness' between the interest of the State to keep information confidential and the right of the people to have access to information with an accent towards the latter. Open Government envisages transparency in Government functioning and it promotes Government credibility in the

eyes of the people. Accountability of the Government to the people being a basic postulate of a modern democratic State, the people have a right to know about the policies and programmes of the Government, and one of the ways of the people being informed is by informing their representatives in the State Legislature. A strong and informed people, in our opinion, can act as a strong check on the Government and keep it on a straight path of rectitude. However, there is a tendency on the part of any Government to curtail dissemination of vital information. Therefore, access to information and knowledge about various aspects of Government and action of the Government begins with a people's representative in the State Legislature being informed about certain things.

21. In the circumstances, although we may ignore the delay of 180 days in filing this review petition, we find no merit in the review petition. The review petition is dismissed.

However, since the time mentioned in the order for placing the 'Special Report' before the State Legislature has lapsed, the petitioners to place the Special Report before the State Legislature in its very next Session or in one of the Sessions to be held in the year 2019.