*THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

Writ Petition No.1569 of 2011

23-03-2011

Sri M. Narayan Reddy ..Petitioner

And

The Govt. of India,

Ministry of Home Affairs, Rep. by Home Secretary,

New Delhi & another ..Respondents

Counsel for the petitioner : Sri G. Mohan Rao

Counsel for respondent No.1 . : Sri Ravindran & Sri Vivek Tanka,

Addl. Solicitors General

Sri K. Vivek Reddy, for R-2

Gist:

Head Note:

Citations:

1) (1976) 2 SCC 521

2) AIR 2008 SC 1339

3) (2007) 9 SCC 461

4) (1978) 1 SCR 375

5) (1998) 8 SCC 1

6) (2004) 2 SCC 476

7) (1997) 4 SCC 306

8) (Beatson, Matthews and Elliott's Administrative Law

Text and Materials, at page 683)

9) AIR 1973 SC 106

10) K.K. Mathew, Democracy, Equality and Freedom, Ed. Upendra Baxi, (1978), p.106

11) T.K. Tope's Constitutional Law of India by Sujata V. Manohar

Third Edition at pages 165 & 166

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Writ Petition No.1569 of 2011

JUDGMENT:

The petitioner is a Practicing Advocate, a former Member of Parliament and A.P. Legislative Assembly. He has also held positions in the Zilla Parishad, Nizamabad District, and was associated with the Agro Industries in different capacities. He filed this writ petition with a prayer to declare that the action of the Union of India, Ministry of Home Affairs (for short 'the respondent'), in withholding a note on Chapter-VIII (Law and Order and Internal Security Dimensions) (for short 'the note') of the report of the Committee for Consultation on the situation in Andhra Pradesh, headed by Sri Justice Srikrishna (hereinafter referred to as 'the Committee'); as illegal, arbitrary, unreasonable and unconstitutional. Consequential direction to the respondent to furnish the same to him, or to place it on the website of the respondent, is also sought.

2. The averments, in the affidavit filed in support of the writ petition, in brief, are that, the State of Andhra Pradesh was formed by merging the Telangana Region of the erstwhile Hyderabad State with Andhra State, in 1956, and feeling that the conditions and safeguards are not honoured, the people of Telangana brought a movement in the year 1969, demanding formation of a separate State. It is alleged that 369 people lost their lives in the agitation, and in 1972, the people from other part of the State have also organized a movement for formation of Andhra State. The petitioner had narrated the subsequent developments, leading to the inclusion of the promise to form Telangana State in the election manifestoes of certain political parties, on the eve of the General Elections held in the year 2004 and in the common minimum programme of the United Progressive Alliance.

3. In the last quarter of the year 2009, there was a serious agitation, demanding formation of separate State of Telangana, by dividing the State of Andhra Pradesh. Taking note of the gravity of the situation and seriousness of the matter, the Government of India arranged for an All Party Meeting, on 07-12-2009, at Hyderabad, wherein, unanimous opinion is said to have been expressed in favour of formation of Telangana State, and that, on the next day, it was reiterated in the Assembly.

4. On 09-12-2009, the Union Home Minister made a statement, announcing the decision of the Government, to initiate steps for formation of Telangana State. The petitioner contends that this statement was reiterated on the floor of the Parliament on 10-12-2009.

5. There was protest from the Andhra and Rayalaseema regions of the State, against the announcement made by the Union of India, and almost a crisis-like situation emerged. Unable to reconcile the conflicting claims, instantly, the respondent announced constitution of a Committee, to be headed by a Former Judge of the Supreme Court of India, to examine various aspects pertaining to the issue. It was in this context, that the respondent issued an order dated 03-02-2010, forming a Committee, comprising of Sri Justice B.N. Srikrishna, a Retired Judge, Supreme Court of India, as Chairman; Prof. (Dr.) Ranbir Singh, Vice-Chancellor, National Law University, Delhi; Dr. Abusalem Shariff, Senior Research Fellow, International Food Policy Research Institute, Delhi; Dr. (Ms.) Ravinder Kaur, Professor, Department of Humanities and Social Sciences, IIT, Delhi, as Members, and Sri Vinod K. Duggal, IAS (Retd.,) former Home Secretary, as Member Secretary. On 12-02-2010, Terms of Reference were announced. The Committee has undertaken wide-ranging consultations throughout the State. It ultimately submitted a report, on 30-12-2010. The report comprised of Nine Chapters, spread over 425 pages. The same was put on a website, a week thereafter. However, the note, dealing with the Law and Order and Internal Security Dimensions, representing Chapter VIII; was handed over by the Committee, to the respondent, in a sealed cover, and it was not made public.

6. The petitioner submits that the note dealt with important aspects, and that even according to the Committee, it was taken into account in suggesting "Way Forward" in the IX Chapter. The petitioner contends that the very purpose of making available the report is, to enable the various individuals, or stakeholders to put forward their contentions, in the light of the observations or findings of the Committee, and if a vital part of it is withheld, the very purpose would be defeated.

7. The petitioner contends that he made efforts to obtain copy of the note by submitting applications to the Authorities of the Home Ministry, and when there was no response, he had approached this Court by filing a Writ Petition, under Article 226 of the Constitution of India. He submits that, at a time when the right to information is being given impetus, such as by enacting the Right to Information Act, 2005 (for short 'the RTI Act'), there was no justification for the respondent in withholding the note. He submits that his fundamental rights, guaranteed under Articles 14, 19 (1)(a) and 21 of the Constitution of India are infringed by the respondent.

8. In view of the importance and sensitivity involved in the matter, this Court requested the learned Attorney General to assist the Court, at the threshold. The request was readily acceded to, and the learned Attorney General submitted that the Committee has no statutory basis, and the exercise undertaken by it cannot be subject-matter of any judicial review. He further submitted that it is only when a decision is taken by the respondent, adversely affecting the petitioner, or for that matter, any person, that they can pursue the remedies and not *vis-à-vis* the steps, in the preparation of a report, which itself is purely recommendatory in nature.

9. Learned Attorney General submitted that it is only a Consultative Committee, and not a Commission, constituted under the Commissions of Inquiry Act, 1952 (for short 'the 1952 Act'). His further contention was that the function assigned to the Committee is only to gather public opinion and to make suggestions, and that to arrive at a decision on the issue, the political process has to be started. He has also

pleaded that the ultimate decision would involve legislative process, and that an aggrieved party has to ventilate its grievance only before a political forum, and that the remedy is not in a Court of Law. He submitted that the respondent has taken a conscious and well-informed decision, not to make the note public, and that the petitioner has no right to insist on the same, being furnished to him. He sought time to make further submissions.

10. On the next day of hearing, the learned Additional Solicitor General appeared, and submitted that the Court may go through the note, which was supplied in a sealed cover, and if it feels that the note contains sensitive information and cannot be made public, no further steps would become necessary in the writ petition; and on the other hand, if the Court feels that the note must be made public, time may be granted to the respondent to file counter-affidavit. After going through the report, this Court expressed its *prima facie* view, that the note has to be made public, and it would help the stakeholders to formulate their viewpoints. The matter was adjourned to enable the respondent to file counter-affidavit.

11. The respondent filed a counter-affidavit, opposing the writ petition. It is stated that the petitioner has no fundamental right to insist on furnishing of an important and sensitive document. According to the respondent, the note deals with the security and law and order aspects, after consultation with the various security agencies, and the same cannot be shared with public. It is also the case of the respondent that the Committee did not undertake any administrative or *quasi judicial* exercise, and that the report submitted by it, is only recommendatory in nature, and that the decision at appropriate level on the real issue would be taken by the concerned authorities, duly taking into account, all the relevant facts. Privilege under Sections 123 and 124 of the Indian Evidence Act claimed

12. The writ petition was taken up for hearing after the pleadings are complete. The learned Additional Solicitor General (ASG) commenced the arguments

by raising a preliminary objection, as to the maintainability of the writ petition. He submits that for all practical purposes, the fundamental right guaranteed under Article 19(1) (a) was codified, in the form of the RTI Act, and a perfect machinery is provided, for enforcement thereof. By referring to the various provisions of the RTI Act, he submits that an independent and foolproof machinery is provided for, under it, and that the petitioner ought to have availed the remedy under it. Learned ASG submits that the Public Information Officer (PIO), of any department or establishment is conferred with the power not only to procure and furnish information, but also to overrule an objection, that may be raised by a department. He submits that it is only when the petitioner fails in his effort to get copy of the note, by availing the remedy under the RTI Act, duly exhausting the rights of appeal, etc., that he could have approached this Court.

13. He has also apprised this Court of the limitations, in the context of issuance of *Writ of Mandamus,* and submits that there did not exist any statutory duty on the part of the respondent to furnish note, much less, the failure to discharge it. On this basis, he submits that there does not exist any occasion for this Court, to issue a *Writ of Mandamus*. He places reliance upon various precedents.

14. This Court kept in view, the objection, raised by the learned ASG, and requested the learned counsel for the parties to address arguments on merits.

15. Sri Gandra Mohan Rao, learned counsel for the petitioner submits that the fundamental right claimed by the petitioner is wider in its scope, than the one, contained in the RTI Act, and in that view of the matter, the preliminary objection is not tenable. He submits that the Constituent Assembly recognized the importance of the Right to Freedom of Speech and Expression, and while framing the restrictions, under Article 19 (2), they did not incorporate the grounds of security of State, or public interest, as justifications for restricting the scope of the right. He submits that the contents of the note would have direct bearing upon the decision making process, and withholding of the same is arbitrary and violative of Article 14 of the Constitution of India. He contends

that, in addition to being violative of rights under Article 19(1) (a) and Article 14 of the Constitution, the action of the respondent would also amount to infraction of Article 21 thereof.

16. Learned counsel submits that the remedy that is provided for under the RTI Act is, at the most an alternative, for enforcing a legal right, and not a substitute for the jurisdiction of this Court, to issue a *Writ of Mandamus*, to enforce fundamental rights. He contends that the Union Home Minister circulated a note, suggesting the parties to go through the report, in its entirety, form their opinion, on the basis of the contents, and be prepared, either to convince, or to be convinced, and in that context, if a vital part of it is withheld, the whole exercise becomes redundant.

17. Sri Mohan Rao, further submits that the security aspects, or study thereof, were never part of reference, made to the Committee, nor did the Committee express the view, that it would not be in the public interest to disclose the contents of the note. He has drawn the attention of this Court to certain aspects of methodology adopted by the Committee and urged that nowhere in its marathon exercise, the Committee gave an indication that any step taken by it would be, either confidential or secret. He submits that the Committee was constituted with the sole objective of gathering public opinion, and maintenance of secrecy on any aspect would be, in fact, contradiction in terms. He places reliance upon number of precedents, in support of his contention.

18. Sri K. Vivek Reddy, learned counsel for the 2nd respondent, who is supporting the writ petitioner, has supplemented the arguments, addressed by the learned counsel for the petitioner. He argued that the writ petition is filed challenging the decision, to keep a part of the report, secret, and in that view of the matter, the remedy is not within the scope of the PIO, or for that matter, the RTI Act. Learned counsel submits that the right of a citizen to participate in decision making is a concomitant part of good governance, and withholding of any material, that is utilized in the process from the public, would certainly make a dent into the legality and quality of the decision. He

further submits that when the effort of the Government is to invite comments from the public, in general, and stakeholders in particular, it would become fruitful only when the entire report of the Committee, together with its recommendations, is made available. He too has relied upon certain decided cases.

19. In reply, the learned ASG submits that no citizen can claim furnishing of a document or a report, or a part of it as a fundamental right. He submits that though Article 19(2) of the Constitution does not make any reference to public interest or public policy, Courts have recognized the same as one of the grounds to place restrictions on the fundamental right, under Article 19(1) (a) of the Constitution of India. He submits that the issue pertaining to the formation of a separate State of Telangana is purely in the domain of political, or legislative exercises, and no part of it can be brought under the purview of judicial review by the High Court. He submits that the Committee itself felt that a part of report, dealing with the security and law and order aspects needs to be kept secret and that it is purely for the guidance of the Government to take certain precautionary measures, and for the purpose of arriving at a definite conclusions on the issue. By referring to various judgments, learned ASG submits that, in matters of this nature, the Court would be reluctant to interfere.

20. Before discussing the matter on merits, the preliminary objection raised by the learned ASG needs to be dealt with. The gist of his argument is that, the relief claimed by the petitioner is within the scope and ambit of the RTI Act, and unless the remedies thereunder are exhausted, the writ petition cannot be maintained. In a way, it is more a plea of non-exhaustion of alternative remedy, than the one, akin to preliminary objection. By now, it is well-known that, preliminary objection is raised mostly in cases where a particular forum is reminded or informed of lack of jurisdiction in it, whether by operation of any specific provision of law, or the conferment thereof, in another equally efficacious forum or agency. For example, Section 15 of the Administrative Tribunal Act specifically excludes the jurisdiction of any Court of Law, including the High Court, as regards the matters pertaining to the service conditions of Civil Servants and confers the

same on Administrative Tribunals. If a writ petition is filed in the High Court on such matters, either inadvertently, or by placing an interpretation upon the provision, that suits the petitioner, and if the High Court was, to certain extent convinced to entertain the writ petition, the opposite party or the State, can certainly remind it of the purport of Section 15. Such is not the case here.

21. The Freedom of Speech and Expression is guaranteed and incorporated in Article 19(1)(a) of the Constitution. The provision reads:

> "**Article 19**: **Protection of certain rights regarding freedom of speech, etc**.—(1) All citizens shall have the right—
>
> (a) to freedom of speech and expression."

22. Though the provision is brief in its content, various facets thereof have been developed and evolved over the period through process of interpretation. The importance attached to this provision is reflected from the fact that public interest, which is treated as a ground for placing restrictions on the different types of freedoms, guaranteed under Article 19 is not made applicable to it. Of all the freedoms guaranteed under Article 19, the one, pertaining to speech and expression is treated as more basic for human existence, survival and excellence. Without it, human life cannot be imagined at all. This case does not provide an occasion to delve deep into the scope and ambit of the said freedom.

23. It is not uncommon that Parliament enacts laws to enforce certain facets of fundamental rights, apart from other laws. While in some cases, the enactments are exclusively for that purpose, in other cases, the gist of the various fundamental rights is reflected in parts of the enactments. The RTI Act can be said to be a legislative device, to help the citizens to secure information, which they intend to. A detailed mechanism is provided. Appointment of a Public Information Officer in every office is made obligatory. He in turn is conferred with the power to process the application submitted

for information, and to furnish it. The RTI Act also recognizes under Section 8, that certain categories of information, mentioned therein need not be furnished to an applicant.

24. Notwithstanding the comprehensive nature of the Act, it cannot be said to be repository of the fundamental right under Article 19(1)(a). The right to freedom of speech and expression is wider in its scope and it is not susceptible to any precise definition. Further, information is something which a person intends to get from others, whereas speech and expression is a phenomenon through which he conveys his ideas to others. Viewed from this angle, right to information is only a step that helps an individual to get himself well-informed, so that he can exercise right to freedom of speech and expression, effectively.

25. There are certain rights and freedoms which are fundamental to human existence. It is rather a coincidence, if not compulsion, that the States, irrespective of their form, codify such rights. Howsoever fundamental the law that codifies such rights may be, it cannot be treated as the sole repository, at least in case of certain rights and freedoms. For instance, right to life and liberty is not something which a human being acquires under an enacted provision, of a parent legislation, like the Constitution, or an ordinary legislation, like an Act. Even when the society was in a disorganized form, persons enjoyed such rights.

26. An effort made to portray that, Article 21 of the Constitution of India is the sole repository of the right to live for an Indian citizen was, no doubt, approved by the Hon'ble Supreme Court in **A.D.M., Jabalpur v. Shiv Kant Shukla,** by a majority of 4:1. The fact however remains that the learned Attorney General, who advanced such argument had said to Justice Khanna, the only dissenting judge,

> "May I offer my congratulations for your great judgement".

27. One of the learned judges from the majority said few days later, in public,

"I regret that I did not have the courage to lay down my office and tell the people, Well, this is the law."

(*See Working a Democratic Constitution – The Indian Experience by Granville Austin at page 342*).

28. It is interesting to note the observation of Chief Justice M. H. Beg, another from the majority, about the conclusion in that case.

"…The common statement of a conclusion at the end of the judgments in the *Habeas Corpus* case, based on the majority view but signed by all the Judges, including Khanna, J., was perhaps misleading as it gave the impression that no petition at all would lie under either Article 226 or 32 to assert the right of personal liberty because the *locus standi* of the citizen was suspended…

I would have certainly made it clear that the statement of a conclusion reached by the majority did not accurately set out at least my conclusion which is found at the end of my judgment…" (*See (1978) 2 SCC para 16 at p.485*)

29. The Hon'ble Supreme Court recently observed that the judgment in **A.D.M., Jabalpur v. Shiv Kant Shukla** (1 supra) did not lay the law correctly. The attempt of this Court is only to demonstrate that any effort made to present an enactment as the sole repository of a fundamental right guaranteed under the Constitution, or to restrict the scope of fundamental rights, that reflect basic tenets of human life cannot be encouraged. When a provision of the Constitution cannot be treated as the sole repository of an important right that is essential for human existence, an enactment is incapable of being the complete code of such right.

30. The word "information" is defined under Section 2(5) of the RTI Act. It refers to material of different kinds, irrespective of their form, such as documents, memos, e-mails, opinions, advices, reports, etc. Here a basic difference needs to be kept in mind. 'Information', as defined under the RTI Act connotes the one, which is in the possession, custody or knowledge of the person from whom it is sought, and correspondingly, the seeker thereof was not aware of it. In cases where public hearings are undertaken and

the agency or committee is not assigned any secret job, what it compiles is nothing, but the information, evidence and material, received from the public. Therefore, if an application is made for making available the report or a note, prepared on the basis of such hearings, what is requested is not an information-simplicitor, as defined under that Act. On the other hand, the attempt of the individual, seeking the report or a note is an effort to satisfy himself, whether the material presented by him or other stakeholders was properly reflected. In this sense, the matter cannot be said to be strictly governed by the provisions of the RTI Act. Therefore, the preliminary objection raised by the learned ASG is not sustained.

31. Another contention advanced by the learned ASG is that a *Writ of Mandamus* would lie only when a duty is cast upon an authority by a provision of law and such authority has failed to discharge that duty. He contends that basically the committee is not an authority amenable to judicial review, much less, any duty was cast upon it to make the note public. As a further extension of this argument, he submits that no duty cast upon the respondent to reveal the contents of the note and in that view of the matter, the question of its failure to discharge the duty does not arise. He places reliance upon the judgment of the Supreme Court in **ORIENTAL BANK OF COMMERCE V. SUNDER LAL JAIN AND Anr**. In that case, the Supreme Court explained the purport of the *Writ of Mandamus* by extracting a note from 'The Law of Extraordinary Legal Remedies' by F.G. Ferris and F.G. Ferris, Jr., and certain other texts and judgments. It was ultimately summed up:

> "Therefore, in order that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of some-statutory duty cast upon the authorities. The respondents have not been able to show that there is any statute or rule having the force of law which casts a duty on the appellant bank…"

32. In **TIRUMALA TIRUPATI DEVASTHANAMS V. K. JOTHEESWARA PILLAI (D) BY LRs AND Ors**, the Supreme Court reiterated the said principle by extracting the following

portion from a judgment rendered by it, in **BIHAR EASTERN GANGETIC FISHERMEN COOPERATIVE SOCIETY LTD. V. SIPAHI SINGH**. It reads,

> "A writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limits of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance."

33. In **WHIRLPOOL CORPORATION V. REGISTRAR OF TRADE MARKS, MUMBAI & ORS**., the Supreme Court held,

> **Para 15**: Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field".

34. From this it is clear that, notwithstanding the restrictions felt upon the jurisdiction of the High Court to issue a *Wirt of Mandamus* for enforcement of legal or statutory rights, the concept of existence of a duty to act upon the authority and failure to discharge such duty is not relevant, when it comes to the question of enforcement of fundamental right, or where a citizen complains of violation of principles of natural

justice, or if the proceedings are wholly without jurisdiction, or where the vires of an enactment are challenged. It was also mentioned that the list is not exhaustive.

35. **PEOPLE'S UNION FOR CIVIL LIBERTIES AND ANOTHER V. UNION OF INDIA AND OTHERS** is another judgment, in which the Supreme Court dealt exhaustively with the purport of Writ of Mandamus, particularly in the context of the right to freedom under Article 19(1)(a) of the Constitution. Restrictions thereon were also recognized. It was held that sensitive information, such as the one, relating to process of technology of a nuclear plant, cannot be parted with, and no citizen can claim it, as of right.

36. In **DINESH TRIVEDI, M.P.AND OTHERS V. UNION OF INDIA AND OTHERS**, the petitioners insisted on furnishing of the material relied upon by a committee, constituted by the Union of India, popularly known as "Vohra Committee". It is important to note that the committee was constituted by the Government of India, with heads of various investigating and intelligence agencies to work on a very sensitive issue, *viz*., "to take stock of all available information about the activities and links of all Mafia organizations/elements, to enable further action". It was not entrusted with any public hearing or investigation. The committee submitted its report and the same, in its entirety, was tabled in the Parliament. The petitioners insisted on furnishing of the material or inputs received by the committee. The Supreme Court turned down the request, keeping in view the nature of functions assigned to the committee, and the fact that the report was made public.

37. What can be discerned from these and other similar judgments is that a *Writ of Mandamus* can be maintained by a citizen to compel an authority to discharge the functions under a statute or to assail the decisions taken by the State and its instrumentalities, if they are violative of the fundamental rights guaranteed under the Constitution of India; or principles of natural justice; or to compel the discharge of a duty, which is public in nature, even if, it cannot be traced to any particular provision.

38. In the instant case, the petitioner has complained of violation of more fundamental rights, than one: Firstly, he pleads that the action of the respondent in withholding an important portion of the report, i.e. the note, is arbitrary, offending Article 14 of the Constitution of India. Secondly, he contends that his right to freedom under Article 19(1) (a) is violated on account of withholding of the note. Thirdly, he has invoked Article 21 of the Constitution of India. It hardly needs any mention that the scope of Article 21 was widened with each passing day, through process of interpretation, and it is not confined to the one of enabling a citizen to be nothing more than a living organism. Therefore, the objection raised on behalf of the respondent, as to maintainability of the writ petition does not merit acceptance.

39. It now needs to be seen as to whether the respondent was justified in keeping the note, as a secret document? For this purpose, it becomes necessary to have a broad view about the nature of functioning of Commissions of Inquiry or Committees, which are assigned almost similar functions. The functioning of the Government of whatever form is governed by the Constitution, or Conventions, and other enactments on various aspects. The enacted laws or conventions delineate the functions of the respective wings of the Government. Whenever problems or challenges in the field of public life arise, they are dealt with by the Legislative or Executive wings of the Government, depending upon the seriousness or gravity. If situations, which are a bit extraordinary, arise, the machinery available with the Government may not be sufficient, to analyze the situation or to recommend solutions. Many a time, the issues partake emotional or political characters, than legal. To meet contingencies of this nature, the practice of appointing Commissions or Committees is evolved. This is in vogue for quite a long time in England, and law in this regard was strengthened from time to time. In India, the 1952 Act provides for appointment of Commissions of Inquiry, and for vesting of such Commissions with certain powers. As and when the Government faced with problematic situations, Commissions headed by retired Judges of Supreme Court and High Courts were appointed and the working of the enactment came to be widely known.

40. For example, the appointment of Justice Vivian Bose Commission in 1956, to inquire into the affairs of Allen Berry and Company, Justice Chagla Commission appointed in 1966 to inquire into Mundra Group of Companies, Justice Tendolkar's Commission to investigate the affairs of the Dalmia Group, to mention a few, and the working thereof, virtually defined the scope and ambit of the Act and functioning of the Commissions. They have also evoked and instilled the public confidence in the system. The 1952 Act has been pressed into service, on fairly large number of occasions. The Commissions were appointed many a time, either on the basis of resolutions passed by the Parliament, or the Legislatives of the States, or in certain cases through executive orders.

41. It is also important to note that some times, committees were appointed without making reference to the provisions of the Act. For instance, the Vohra Committee on 09-07-1993, and Justice R.S. Pathak Inquiry Authority on 11-11-2005, were appointed by the Government of India, without making any reference to the provisions of the Act.

42. More often than not, sitting or former Judges are appointed to head the Commissions/Committees. In is on account of their neutrality to the issues, experience in analyzing the matters dispassionately, and their knowledge of law and procedure. In Administrative Law, Text and Materials, by Beatson, Matthews and Elliott, it is said,

> "It can be appropriate for judges to chair inquiries, because their experience and position make them particularly well suited to the role. The judiciary has a great deal of experience in analyzing evidence, determining facts and reaching conclusions, albeit in an adversarial rather than inquisitorial context. The judiciary also has a long tradition of independence from politics, and judges are widely accepted to be free from any party political bias ."

43. Any reservation expressed about this, is only on the grounds of suitability of their approach to certain critical problems with political overtones, and not otherwise.

Experience has only shown that the Commissions or Committees headed by Judges have mostly gained public confidence, both as to functioning, or as regards the results of enquiry.

44. The very purpose of appointing Commissions or Committees is to gather different views from the public and stakeholders, analyzing them with reference to evidence and other material, and to make a suggestion to the Government, enabling it to arrive at a just and proper conclusion. It is a different matter that the ultimate decision is to be taken by the Government and in a given case, the report can be ignored altogether. More than the conclusions, or recommendations of the Commission / Committee, it is the reasons, which prompted them to arrive at the conclusions, that become very important. Even where a person is otherwise opposed to a particular conclusion or viewpoint, may become convinced, once the relevant reasons are known to him. Conclusions can be arrived at by the administrative authorities also. What makes them more acceptable to the public, is the reasons recorded therefor. Since the Committee or Commission of Inquiry has a wider and larges access to the public, the reasons are bound to be sound. They are the ultimate distillation of the enormous material, which the committee receives, in the course of inquiry.

45. One of the grounds on which the administrative and *quasi judicial* authorities are required to furnish reasons in support of their conclusions, is that the Court or Authority that undertakes judicial review, or hears the appeal, *vis-a-vis* such decision would be in a position to know the working of the mind of the decision maker. That, however, is in the field of Administrative Law. A more convincing basis for insisting on furnishing of reasons is mentioned in the same treatise on Administrative Law *(See 8 supra, at page 413)*. It reads,

> "Giving reasons for decisions should be treated as a central facet of procedural fairness in administrative law. This follows both for practical reasons – in order, for instance, that individuals may know whether it is worth appealing or seeking judicial review – and <u>for normative reasons</u>

that spring from a conception of the relationship between the citizen and the state according to which the latter should treat the former with respect, and as a participant in the process of governance. Constructing the relationship in that manner in important not only because it recognizes the dignity of the individual, but also because it promotes a trust between citizens and public authorities that, in turn, acts as a springboard for cooperation between them…"

46. This normative aspect becomes more prominent in the context of reports, that are to be submitted by the Commissions / Committees of Inquiry.

47. The following passage from Administrative Law, by H.W.R. Wade & C.F. Forsyth (Tenth Edition at p. 805), reflects the practice in England:

> "In due course the inquiry is closed, and the inspector makes his report. Until 1958 the normal practice was to refuse disclosure of this report to the objectors: it was treated like any other confidential report from a civil servant to his department. Eventually the minister's decision would be given; but usually it would be unaccompanied by reasons. The failure to disclose the report and to state reasons was the source of much of the dissatisfaction with inquiries before the reforms of 1958. Although the controversies which raged round these questions have now passed into history, they provide a classic illustration of the clash between the legal and administrative points of view.

48. It is relevant to note that sub-section (4) of Section 3 of the 1952 Act makes it obligatory on the part of the Government to lay the report of a Commission of Inquiry together with the action taken by it, before the concerned Legislature. It reads,

> "**Sub-sec.(4) of S.3**: The appropriate Government shall cause to be laid before each House of Parliament or, as the case may be, the Legislature of the State, the report, if any, of the Commission on the inquiry made by the Commission under sub-section (1) together with a memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government".

49. Parliament amended Section 3 by inserting sub-sections (5) and (6) enabling the Government to withhold the report of an inquiry in its entirety, or part thereof, if it is satisfied that the interest of the sovereignty and integrity of India, the security of state, friendly relations with foreign states, or public interest; are involved. This however was to be done, by issuing a notification. Three years thereafter, the Parliament has chosen to do away with this. The statement of objects and reasons for this amendment of 1989, reads as under:

> **STATEMENT OF OBJECTS AND REASONS**
>
> Sub-section (4) of section 3 of the Commissions of Inquiry Act, 1952, casts an obligation on the appropriate Government to lay the report of the Commission of Inquiry appointed under sub-section (1) thereof before the House of the People or, as the case may be, the Legislative Assembly concerned, together with a memorandum of action taken thereon, within a period of six months of the submission of the report. However, in 1986 section 3 had been amended so as to provide therein that under certain circumstances the report of the Commission of Inquiry may not be so laid.
>
> 2. A Commission of Inquiry is always set up for the purpose of making an inquiry into any definite matter of public importance. As such, the report submitted by such a Commissioner should not be withheld from the House of the People or the Legislative Assembly under any circumstances and the public should have access to information which is of vital importance and interest to them. It is felt that the amendments made in 1986 should be done away with.

50. It therefore emerges that one of the important characteristics of the work undertaken by a Commission or Committee of Inquiry is to make its report public, and to enable the persons concerned, as well as the Government, to form their opinions. It would help them to change the opinions, which they have formed earlier, or enable them to convince those who hold the other point of view.

51. **Now; to the facts of the case**:

The State of Andhra Pradesh was formed in the year 1956 with the merger of Telangana, part of the erstwhile Hyderabad State, and the Andhra State, which was

carved out from the erstwhile Madras State. Several conditions were incorporated in various forms, to ensure that the interests of the people of both the regions are adequately protected. However, there was an upsurge in the year 1969, in the Telangana region, demanding separation of Telangana from the State of Andhra Pradesh. There was huge loss of life. When the Supreme Court upheld the Mulki Rules, which were framed to protect the interests of the people of Telangana, there was agitation in Andhra area, with a demand for separate Andhra State giving rise to loss of life, injuries, etc. Ultimately, the Government of India evolved certain schemes and safeguards. It is not necessary to refer to them in detail.

52. In the year 2004, elections were held for the Parliament as well as State Assembly. Some of the political parties, particularly, the Indian National Congress, included in its election manifesto, a promise, to create separate Telangana State. In his speech to the Joint Session of the Parliament, the President of India made a reference to this. For one reason or the other, there was no progress in this direction. In the General Elections held in 2009, many more political parties included this, in their manifestoes.

53. In the last quarter of 2009, demand for separate Telangana State gained momentum. Noticing the gravity of the situation, the Government of India initiated the steps for consultation with political parties. Ultimately, a statement was made by the Union Home Minister on 09-12-2009, to the effect that the process for formation of separate Telangana will be initiated. There were protests from the people of Andhra and Rayalaseema areas for this proposal. The people of Telangana, on the other hand, insisted that the Government must adhere to its statement. Taking note of the disturbances in both the regions, the Government of India announced the formation of a Committee. Obviously, having regard to the legal, social and administrative implications in the matter, a Committee, comprising of a former Supreme Court Judge, a sitting Vice-Chancellor, Professor of Social Sciences, a Research Fellow in Policy Making and a former Home Secretary was formed. The process through which the committee was constituted is not certain. Initially, the respondent addressed a letter dated 03-02-

2010, to one of the members and stated that the Government of India has constituted the committee comprising of the said members. The letter reads:

"…

Subject: Constitution of Committee for consultations on the situation in Andhra Pradesh.

Dear Vinod,

Kindly refer to my discussion with you on the subject cited above. Government of India has constituted the following Committee to hold wide ranging consultations with all sections of the people and all political parties and groups in Andhra Pradesh:

1) Shri Justice B.N. Srikrishna, retired Judge, Supreme Court of India – Chairman

2) Prof. (Dr.) Ranbir Singh, Vice-Chancellor, National Law University, Delhi – Member

3) Dr. Abusalem Shariff, Senior Research Fellow, International Food Policy Research Institute, Delhi – Member

4) Dr. (Ms.) Ravinder Kaur, Professor, Department of Humanities and Social Sciences, IIT, Delhi – Member

5) Shri Vinod K. Duggal, IAS (Retd.) former Home Secretary – Member Secretary

2. The terms of reference of the committee are being finalized in consultation with the Chairman and Member Secretary.

3. I am thankful that you have consented to serve on this committee.

4. A press release issued in this regard is enclosed…

Sd/--

xxx"

54. The terms of reference were framed in a letter dated 12-02-2010, addressed by the Special Secretary to Government. This was followed by a letter dated

03-03-2010, through which, the conditions of appointment, etc., are mentioned. A gazette notification was issued for constitution of the Committee and notifying the terms of reference on 04-05-2010. The Terms of Reference of the committee read,

> "The Terms of Reference of the five member Shri Justice B.N. Srikrishna Committee constituted on 3rd February, 2010 will be the following:-
>
> 1) To examine the situation in the State of Andhra Pradesh with reference to the demand for a separate State of Telangana as well as the demand for maintaining the present status of a united Andhra Pradesh.
> 2) To review the developments in the State since its formation and their impact on the progress and development of the different regions of the State.
> 3) To examine the impact of the recent developments in the State on the different sections of the people such as women, children, students, minorities, other backward classes, scheduled castes and scheduled tribes.
> 4) To identify the key issues that must be addressed while considering the matters mentioned in items (1), (2) and (3) above.
> 5) To consult all sections of the people, especially the political parties, on the aforesaid matters and elicit their views; to seek from the political parties and other organizations a range of solutions that would resolve the present difficult situation and promote the welfare of all sections of the people; to identify the optimal solutions for this purpose; and to recommend a plan of action and a road map.
> 6) To consult other organizations of civil society such as industry, trade, trade unions, farmers' organizations, women/s organizations and students' organizations on the aforesaid matters and elicit their views with specific reference to the all round development of the different regions of the State.
> 7) To make any other suggestion or recommendation that the Committee may deem appropriate.
>
> The Committee is requested to submit its report by December 31, 2010".

55. The Committee has undertaken wide ranging consultations mostly in the State of Andhra Pradesh and some, at New Delhi. Ultimately, a report was submitted on

30-10-2010. The report comprised of Nine Chapters. In the last chapter, *viz.*, "The Way Forward," six suggestions were made to the Government. The Committee itself observed that four suggestions made by it do not merit consideration. In its fifth suggestion, it recommended bifurcation of the State into Telangana and Seemandra, as per the existing boundaries. It reads,

> "(v) Bifurcation of the State into Telangana and Seemandhra as per existing boundaries with Hyderabad as the capital of Telangana and Seemandhra to have a new capital."

56. In this very suggestion, it has elaborated the pros and cons and observed that, it is the second best option. The sixth recommendation made by it was, keeping the State of Andhra Pradesh. The Committee treated that as the best option. It reads,

> "(vi) Keeping the State united by simultaneously providing certain definite Constitutional/Statutory measures for socio-economic development and political empowerment of Telangana region – creation of a statutorily empowered Telangana Regional Council".

57. Chapter VIII pertains to law and order and internal security dimensions. However, the committee did not make the text of Chapter-VIII, as part of its report. The only paragraph that occurs in Chapter-VIII reads:

> "**Law & Order and Internal Security Dimensions.**
>
> 8.1.01: During the Committee's tenure, immediate law and order problems, and also the long-term internal security implications, including the growth of Maoist/Naxal activities were examined. These apprehensions had been expressed in the memoranda submitted by the Political Parties and various other groups, and also during interactions with different stake holders at the State level meetings as well as when the Committee visited the districts and villages. Besides, the Member Secretary had one to one discussions on this subject with senior officers of the State Government, Police Department and local administration (in seventeen districts). Inputs were also obtained from various other sources. A note on the above covering all aspects has been prepared and is being submitted to the Ministry of Home Affairs in a separate cover

along with this Report. The Committee has kept these dimensions in view while discussing various options included in Chapter 9 of the Report, i.e., "The Way Forward".

58. It is apt to note that the report of the Committee was made public, at an All Party Meeting, convened by the Union Home Minister. In that meeting, a brief note was handed over to the participants. It reads, *inter alia*,

> "…I am also pleased to give you a summary of the report. The summary lists the "Optimum Solutions/Options' suggested by the Justice Srikrishna Committee and their recommendations. I urge you to give your most careful, thoughtful and impartial consideration to the report and the recommendations. In particular, I would urge you to read the report and the recommendations with an open mind and be prepared to persuade, and to be persuaded by, people who hold another point of view. It is Government's sincere hope that the report will generate an informed and mature debate…"
>
> "…It is natural that you will require some time to read the report and hold consultations within your party. Hence, if all of you agree, I suggest that we meet again on a convenient date later this month."

59. The task before this Court is indeed, a delicate one. Several fundamental questions arise for consideration. The petitioner demands that a chapter of the report, in the form of a note, which is kept as secret by the respondent, be made public. In all fairness, the respondent made available to this Court, the report itself, and submitted that in case the Court finds that the report need not be made public, the writ petition be dismissed in *limini*, and if it is felt that the report be made public, opportunity be given to them to file counter-affidavit. This accords with the principle laid down by the Supreme Court.

60. For the limited purpose of forming an opinion, as to whether Chapter-VIII deals with any aspects of security of state or any sensitive issues warranting non-disclosure, this Court perused the report carefully and with utmost caution. Initial view

that the Chapter needs to be made public, was indicated by this Court, soon after perusal of the same, and thereafter, counter-affidavit is filed and arguments are advanced. Now the occasion and necessity arises for this Court, to justify its indication made at the earlier stage.

61. One of the contentions of the petitioner is that the committee did not feel that it must be made secret and that the decision taken by the respondent to withhold it from the public is untenable. That may be the general impression, which one may gain on reading the paragraph in Chapter VIII. However, the note which was handed over to the Union of India in a sealed cover, was directed to be kept as secret by the committee itself. This is evident from the fact that, on every page of it, the word "secret" was written. Therefore, it is not the case, where the decision to keep the note secret, is taken by the Government, on its own accord.

62. The very fact that the deliberations and proceedings before the Committee were public in nature and that even according to the committee, the contents of the note were taken into account, while discussing various options in Chapter-IX, and that a specific reference was made to the note at different places of the report is *prima facie* a ground to make it available to the political parties and other stakeholders.

63. Secondly, from the preamble of the note, it is evident that the note is based upon,

> "(i) analysis of certain relevant memoranda given by the political parties and other groups; (ii) information gained through interaction with different political parties/groups at State level and during field visits (districts and villages); (iii) discussions held with Senior Officers of the State Government including that of the Police Department; with District Collectors and Superintendents of Police and with other sources; and (v) own experience".

64. The Committee discussed the issue of communal violence in its secret note. The subject is certainly a sensitive issue. As to source of information, it, however, observed,

> "The intelligence wing of the State Police and the I.B. will be more informed on this aspect".

This means that the Committee relied upon some other source, for its analysis, if not, for its recommendations. Though privilege under Sections 123 and 124 of the Evidence Act was claimed, none of the ingredients thereof either pleaded or proved.

65. After a great deal of study, an in-depth pondering over, and after weighing the factors, such as propriety, this Court opinions not as matter of choice, that the objective in preparing a separate note and delivering it to the respondent was more, an effort to persuade the Union of India to desist from showing any inclination towards Option No.5, i.e. formation of Telangana State. In a way, it can be said that, whatever positive was said in support of option No.5, was just neutralized, through the note, even at the cost of several contradictions.

66. It appears that the committee hesitated to state in its report, what is exactly intended to, particularly about its disinclination to recommend the formation of a separate State of Telangana, though it has the right or to express any view of its choice.

67. To buttress this, it becomes necessary to make reference to some portions of the note, which, by any standard, cannot be treated, either as secret or sensitive. Take for instance, what the committee said in Option No. V of the IX Chapter, about the economic viability of a separate state of Telangana, if formed. The committee said,

> "…However, the overall economic viability of Telangana with Hyderabad is projected to be stable and as a matter of fact the GDP of this state will be much larger than many other states in the country."

68. It is also mentioned that the continuing demand for a separate Telangana has some merit, though not totally unjustified. However, in the note, it painted a different picture, for a separate state. According to it, most of the major infrastructure in Telangana region in the fields of education, industries, etc., is owned by "Seemandra people", and formation of State would be detrimental to such establishments. The note, on this aspect reads,

> "Most of the major educational infrastructure in the Telangana region has historically been owned by the Seemandhra people and it is located mostly within the limits of greater Hyderabad. The student community which is spearheading the separate Telangana agitation has been using these educational institutions for their agitational activities. This may lead to migration of the faculty as well as these institutions, impacting / reducing the availability of local persons who can be productively engaged by the industry/business-houses.
>
> (i) Telangana region is mineral rich having deposits of limestone, and granite. The dominant industries here are thermal power stations, pharmaceuticals etc., which are mostly managed by Seemandhra people. One of the main propaganda issues in the Telangana agitation has been that once a separate state is created, the job opportunities in all these industries will be made available to the people of Telangana. Many of the owners and skilled personnel in these industries have historically being from Seemandhra region, the inability to substitute them with sufficient number of qualified locals may lead to conflict between the locals and non-locals and also between the management and the workforce. Telangana region is dependent on coal reserves for its power generation while Seemandhra region, though dependent on coal reserves, is rapidly expanding its energy sources, viz., gas, wind, solar and nuclear. Thus, energy deficiencies may lead to migration of population, imbalance in the employment opportunities, which may become a cause for social unrest.
>
> (ii) Farming in Telangana is mostly dependent on ground and rain water and lift irrigation schemes which require substantial amount of electrical energy. The present Government has extended free power facility to the farmers across the state which has benefited the small and marginal farmers in Telangana region to a large extent. Some districts of Telangana region such as Nalgonda, Medak, Mahabubnagar and Hyderabad are

industrially developed and hence consume substantial amount of energy. Since Telangana region energy sources are largely coal based thermal power plants, any economic imbalance may lead to energy starvation of the small and marginal farmers which will adversely affect the productivity of the land. This can cause decline in their earnings which may result in distress sale of lands and their migration to the industrial belt in the Hyderabad city. This may further cause change in the population profile, pressure on unskilled employment sector, land and water utilization in Hyderabad which in turn may accentuate inter-regional rivalry and tensions in Hyderabad area."

69. The Committee has also mentioned in its note that if state of Telangana is formed, as suggested in the V option, it would become an epicenter for Maoist violence, and communal violence. It suspected both the religious communities of being desperate and outreaching each other. About Muslims, it said,

> "…There is a certain sense of mutual suspicion between two communities who are living in the above mentioned areas. If communal passions become an additional factor in an atmosphere where unemployment, social unrest, etc. exist, it may give rise to birth of militant, Jihadi elements…"

As regards Hindus, it said,

> "…Telangana has large number of Muslim pockets and to counter Muslim influence, Hindu fundamentalists may compete with them and try to polarize the Hindu population…"

70. Fissures on caste lines were also projected. The note suggests that Maoists will extend their activities to various districts of Telangana; spread Maoist violence, and that Maoists are trying to make a combat through Telangana region.

71. However, the scenario as to Maoist violence, and Communal violence, with reference to Option No.1, i.e. to treat the movement as a normal law and order situation, the committee has this to say:

> "**(b) Maoist violence**

In the event of the demand of a separate Telangana state not being realized, some of the militant elements which have been in the forefront of the agitations may go underground to revive the Maoist movement in certain pockets of Telangana which, however, could possibly be tackled within a small timeframe with firm political will and strong administrative action. The Maoists who are active in Dandakaranya and Andhra-Orissa Border areas viz., Khammam, East Godavari, Vizag, etc., and certain forest areas of Adilabad, Karimnagar and Warangal may continue to operate along the borders with Madhya Pradesh, Chattisgarh, Maharashtra and Orissa. Their activities might be more intense in Vizag and Khammam regions but the fall out of violence may mostly be confined to these few districts.

(c) Communal violence

As the State has, by and large, been able to neutralize most of the Jihadi elements in the last two decades and has evolved a suitable mechanisms to contain communal and factional resistance, there may not be much change on the position on these two fronts. The status quo may remain. Since the alignment of political forces on communal lines is likely to be less probable, the outbreak of communal violence would be contingent upon extraneous factors".

72. Option No.3 in the report was about merger of Rayalaseema with Telangana. In the main report, almost a rosy picture was painted about it, even while expressing the view that no political party may agree for that course. In the report, however, the Committee has this to say,

"Since the BJP has a strong presence, it may try to consolidate in Telangana area and further extend its base. AIMIM may try to expand in Rayalaseema regions resulting in birth of militant communalism in certain pockets".

73. As regards Chapter-VI, the same version, as presented in the report was almost repeated in the note, may be in a different language. One can easily find the difference of approach of the committee, as reflected in the report, on the one hand, and the note, on the other hand.

74. That the Committee travelled beyond the terms of reference in its endeavour to persuade the Union of India, not to accede to the demand for Telangana, is demonstrated in a three-page Supplementary Note, appended to the note, representing Chapter-VIII. This Court pondered over for days together, as to whether it would be proper to reproduce the note. It is certainly a matter of serious concern for anyone to make public, a portion of the note, which a committee, comprising of highly placed personalities from different sections of the society; has opined otherwise. However, the reasons, that prompted this Court to make the supplementary note as part of the judgment; are,

a) section 3(4) of the 1952 Act makes it obligatory on the part of the Government to make every report of Commission/Committee, public;

b) the report submitted by the Vohra Committee, which was constituted on the same lines, as Justice Srikrishna Committee, i.e., not invoking specific provisions of the 1952 Act; was made public, though the very object of the Committee was to look into the sensitive issues pertaining to security of State;

c) The Committee herein was not assigned any task of analyzing security aspects;

d) the very exercise undertaken by the committee was in the light of a public demand on different directions and open enquiry, involving every stakeholder and that the contents of the note are of general importance; are needed to discuss certain fundamental issues, pertaining to public law domain; and

e) the committee was not assigned any private or political functions. It was constituted by issuing a notification in the gazette. In the floor of the Parliament, it was stated that about Rs.20 crores was spent upon it.

75. The Supplementary Note has three parts, and it reads:

a) Political Management

(i) There is a need for ensuring unity among the leaders of the ruling party in the State. There is also a need for providing strong and firm political leadership and placement of representatives of Telangana in key positions (may be CM / Dy.CM (Since done. This aspect was discussed with FM & HM in September, 2010). Action also needs to be initiated for softening the TRS to the extent possible, especially in the context of the fact that TRS has threatened to launch a civil disobedience movement after December 31 and also initiate a "Maha Yuddam' (a Massive war) if Centre does not announce a Separate Telangana. Gaddar's TPF (Telangana Praja Front) who had parted company with TRS have again joined hands with TRS. Inputs indicate that this agitation can be tackled if Congress Leaders do not give an impression indicating any covert / overt support to it. Hence the Congress MPs / MLAs need to be taken into confidence and asked not to lend any form of support to the agitation. The Congress High Command must sensitize its own MPs and MLAs and educate them about the wisdom for arriving at an acceptable and workable solution. With the ruling party and main opposition party (for Telangana demand) being brought on the same page, the support mechanisms have a higher probability of becoming successful.

(ii) Further, on receipt of the Committee's Report by the Government, a general message should be conveyed amongst the people of the State that Centre will be open for detailed discussions on the recommendations / options of the Report with the concerned leaders / stakeholders either directly or through a Group of Ministers or through important interlocutors and that this process will start at the earliest.

76. Before analyzing this part of the supplementary note, it is relevant to refer to the emphasis added by jurists to keep the legal and political issues, in separate compartments, in the context of such enquiries also. In the chapter, the "Role of Judges in Public Inquiries", in a treatise on Administrative Law, an article written by Drewry, 'Judicial Inquiries and Public Reassurance' was extracted. The article, in turn, made a reference to a book 'Legalism' written by Judith Shklar, published by Cambridge Mass in 1964. The learned author said,

> "There appears to be virtually unanimous agreement that law and politics must be kept apart as much as possible in theory no less than in practice. The divorce of law from politics is, to be sure, designed to prevent arbitrariness, and that is why there is so little argument about its necessity. However, ideologically, legalism does not stop there. Politics is regarded not only as something apart from law, but as inferior to law. Law aims at justice, while politics looks only to expediency. The former is neutral and objective, the latter the uncontrolled child of competing ideologies."

77. It may be noted that the Government kept with it, the ultimate power to decide the further course of action upon the statement made on 09-12-2009 which is purely a political exercise. It has constituted a committee comprising of two jurists, two social scientists, and an ex-bureaucrat, to study the situation and submit report covering legal and social dimensions of the issue. None of them were supposed to have any political leanings, or for that matter, political tendencies. Unfortunately, the portion extracted above makes one to feel, whether it fits into any Terms of Reference to the Committee at all. A rough analysis of the same discloses that,

a) there is a need for providing placement of representatives of Telangana in key positions such as Chief Minister, or Deputy Chief Minister, and that the same has been "since done";

b) the ruling and main opposition party are "being brought on the same page";

c) a political party "TRS" must be "softened", to the extent possible; and

d) it must be ensured that MPs and MLAs from the ruling party do not extend covert/overt support to the agitation.

78 The above analysis would find even political scientists and sociologists in wilderness, and persuade them to add new chapters to political sciences and public administration. None of these aspects could have been put on paper by a given ruling party, even if it is desperate. Extend the terms of reference to the extent possible without

feeling any inhibition. Still you do not have a basis for this exercise. It does not even reflect political expediency. At the most it manifest political despondency.

79. The factual accuracy of the note can be discerned from the observation of the committee in its note that its suggestion for making a representative from the State of Andhra Pradesh, as Chief Minister or Deputy Chief Minister "is done". At a time, when the committee was giving final touches to its report, a new Chief Minister was sworn in with some changes in the Cabinet. There was a serious speculation and talk that a Legislator from Telangana is going to be made as the Deputy Chief Minister, so much so, his name was also announced from Delhi. The Committee appears to have proceeded as though the said Legislator was sworn as Deputy Chief Minister.

80. The next part is much more startling. It is under the heading "Media Management". It is also beneficial to read it, and this Court is certain that, not a syllable of it pertains to "Security of State", much less "Sensitivity". The only basis for making it secret appears to be that such ideas do not occur to jurists and social scientists and they are not said in public. However, it is not necessary that anything, which cannot be discussed in public, for that very reason must be in the realm of security of state, or that privilege can be claimed about it. The part reads,

> **(b) Media Management**
>
> (i) Andhra Pradesh has got about 13 Electronic Channels and 5 major local Newspapers which are in the forefront of molding the public opinion. Except for two Channels (Raj News & hmtv), the rest of them are supporters of a united Andhra Pradesh. The equity holders of the channels except the above two and the entire Print Media are with the Seemandhra people. The main editors/resident and sub-editors, the Film world etc. are dominated by Seemandhra people. A coordinated action on their part has the potential of shaping the perception of the common man. However, the beat journalists in the respective regions are locals and are likely to capture only those events/news which reflect the regional sentiments.
>
> (ii) Hyderabad city which is expected to be the center of most of the agitations is generally covered by those journalists who are votaries of a

separate Telangana. Hence a lot of media hype on the Osmania University Students agitation, self-immolations etc. may be created. Therefore, media management assumes critical importance to ensure that only the reality is projected and no unnecessary hype is created. In the immediate past, it is observed that the media coverage on the issue has shown a declining trend resulting in a lower intensity of the agitation. Each of the media houses are affiliated to different Political Parties. In the Print Media all major Newspapers are owned by Seemandhra people and the Regional contents published by them play a vital role. Most of the editors except Andhra Jyothi are pro-united A.P. However, similar to the electronic channels, the print media have also got political affiliations. The editorial opinions, the banner headlines, the Regional content, the District editions need to be managed to be realistic and should give only due coverage to the separate Telangana agitations."

81. If one has any doubt about the hidden opposition of the Committee for formation of Telangana, that stands removed with this note. It suggests that, barring a miniscule exception, rest of the print and electronic media are dominated by people from one region of the state, and they are in a position to mould the public opinion. The committee also opined that it is only the "beat journalists" from in Telangana area, that are creating media hype on Osmania University Students agitation, self-immolations, etc.

82. If the equity-holders or owners of the channels subscribe to the view expressed by the Committee, it is a matter of deep concern as to how a sacrosanct fundamental right was reduced into a business activity and converted as tool to distort public opinion, and they do not represent the fourth estate, in its letter and spirit. On the other hand, if they do not agree with the opinion formed by the Committee, they have to prove their neutrality.

83. It is beneficial to recollect an incident, which will lend support to the opinion formed by the committee about the functioning of a section of electronic media in the State. When the agitation was at its peak, the State Government deployed large contingent of police personnel in the Osmania University Campus. Specially chosen officers were deputed to oversee the operations. On a particular day, the police

resorted to indiscriminate *lathi* charge and chasing of students. When girls, who gathered at the meeting, were running away, male police constables caught hold of them at their private parts. This was picturized by the so-called "beat journalists", and the same was telecast. The officer, who took responsibility for the entire operations, ensured that the journalist is beaten, blue and black. His motorcycle was burnt, and police constables were made to pour urine upon it.

84. In a writ petition filed by the victimized girls, this Court summoned the officer. He admitted in the open Court, that the beating of the journalist; burning of motorcycle, and pouring of urine by the constables occurred in his presence. The media, which unites to protest against even small ill-treatment of a journalist; unfortunately maintained strategic silence, and the individual had to fight the litigation by himself. The officer was rewarded with a promotional posting of 'Commissioner' at a different place. The patronage of the state, or by the support he has received from those, who run the State is such that, within a week after he was found, having sent objectionable SMS to a woman; was further promoted.

85. Many a time, when learned and great persons propound important principles, majority of the persons ignore them, as illusion or rhetoric. It is only the time, that would make the words of great people a "prophesy".

86. Way back in 1972, Justice K.K. Mathew, one of the original thinkers and trend setters in the highest judiciary, said the following, in his judgment in **BENETT COLEMAN AND CO. LTD AND OTHERS V. UNION OF INDIA AND OTHERS**:

> "If ever there was a self-operating market of ideas, as Justice Holmes assumed, it has long since ceased to exist with the concentration of mass media in few hands. Protection against government is not enough to guarantee that a man who has something to say will have a chance to say it. The owners and the managers of the press determine which persons, which facts, which version of facts, which ideas shall reach the public. Through concentration of ownership, the variety of sources of

news and opinion has become limited. At the same time, the citizen's need for variety and new opinions has increased. He is entirely dependent on the quality, proportion and extent of his news supply, -- the materials for the discharge of his duties as a citizen and a judge of public affairs – on a few newspapers. The Press Commission has observed in its report (Part I, p.310) that since the essence of the process of formation of opinion is that the public must have an opportunity of studying various points of view and that the exclusive and continuous advocacy of one point of view through the medium of a newspaper which holds a monopolistic position is not conducive to the formation of healthy opinion, diversity of opinion should be promoted in the interest of free discussion of public affairs".

"The mass media's development of an antipathy to ideas antagonistic to theirs or novel or unpopular ideas, unorthodox points of view which have no claim for expression in their papers makes the theory of market place of ideas too unrealistic. The problem is how to bring all ideas into the market and make the concept of freedom of speech a live one having its roots in reality. A realistic view of our freedom of expression requires the recognition that right of expression is somewhat thin if it can be exercised only on the sufferance of the managers of the leading newspapers. The freedom of speech, if it has to fulfill its historic mission, namely, the spreading of political truth and the widest dissemination of news, must be a freedom for all citizens in the country. "What is essential" according to Meiklejohn, "is not that everyone shall speak, but that everything worth saying shall be said" (political Freedom, p.26.) If media are unavailable for most of the speakers, can the minds of the hearers be reached effectively?" (paragraphs 124 &125)

87. He quoted the following passage from the Report of a Committee on Distribution of Income and Levels of Living:

"Of these, newspapers are the most important and constitute a powerful ancillary to sectoral and group interests. It is not, therefore, a matter for surprise that there is so much interlinking between newspapers and big business in this country, with newspapers controlled to a substantial extent by selected industrial houses directly through ownership as well as indirectly through membership of their boards of directors. In addition, of course, there is the indirect control exercised through expenditure on

advertisement which has been growing apace during the Plan periods. In a study of concentration of economic power in India, one must take into account this link between industry and newspapers which exists in our country to a much larger extent than is found in any of the other democratic countries in the World."

88. The excellent exposition of this very issue had emerged from the same learned Judge, but in a private speech. It is instructive, educative and beneficial to refer to the same. He said,

> "…The phrase (freedom of the press) must now cover two sets of rights and not one only. With the rights of editors and publishers to express themselves, there must be associated a right of the public to be served with substantial and honest basis of facts for its judgment of public affairs. Of these two, it is the latter which today tends to take precedence and importance. The freedom of the press has to change its point of focus from the editor to the citizen".

89. The Supplementary Note under discussion and the recent revelation in certain tapes pointed out a strange "link" which, if permitted to grow and develop, would have the potential of sounding a death knell to the foundations of democracy. It is the link between the Government and the Media.

90. Few years thereafter, Solzhenitsyn, in his article on "Freedom of Press", published by Harvard [(1980) Ethics and Public Policy Centre], observed,

> "What sort of responsibility does a journalist or a newspaper have to the readership or to the history? If they have misled public opinion by inaccurate information or wrong conclusions, do we know of any case of open regret voiced by the same journalist or the same newspaper? No. A nation may be worse for such a mistake, but the journalist always gets away with it. (p.10)
>
> Press has become the greatest power within the Western countries, exceeding that of legislature, the executive and the judiciary. Yet one would like to ask, 'According to what law has it been elected and to whom is it responsible? Who has voted Western journalists into their position of power, for how long and with what prerogatives? (p.10)

91. The state of affairs of the media houses prevailing in the State of Andhra Pradesh, as presented by the committee makes one to fee as how the observations of Justice K.K. Matthew and Alex Solzhenitsyn, have turned out to be true. More disturbing is the suggestion given by the Committee to the Government. It reads,

> "The print media is hugely dependent on the Government for advertisement revenue and if carefully handled can be an effective tool to achieve this goal".

92. It is trite that the freedom of press was evolved, more through the judgments of the Supreme Court, and works of jurists and academicians. They have not only evolved such freedom, as a concomitant part of Article 19(1)(a) of the Constitution, but also have nurtured it from any onslaught by State or others from time to time. State control of allocation of newsprint or release of advertisements, was misused, either to encourage those, who toe the line of the Government, or to victimize the agencies, that make true and courageous reporting, causing embarrassment to the Government. Great persons like, Ramnath, Goenka withstood the victimization and onslaught, than to surrender, even while many others have, either bent, or crawled.

93. Whatever be the circumstances under which a person in the Government may have thought of using the Government advertisements, as a mechanism to arm-twist the media, such an idea ought not to have occurred to the Committee in general, or to the individual members thereof, in particular. One would only wish that the members of the Committee hailing from the legal fraternity and social sciences were not aware of these contents of the report. However, if these passages have gained their entry into the report, with their knowledge, the people would have nothing more than, to lament, alas! where to look at.

94. Now comes the advice of the committee to the Government as to full preparedness. It is aware that if its advises are followed, they are found to be backlash and instead leaving the Government at crossroads, it gave advise as to the manner in

which the agitators must be dealt with. Not only the manner of deployment of police force, but also the type of ammunition and arsenal to be used, was also suggested. The paragraph reads as under:

> **"(c) Full Preparedness**
>
> (i) As under each of the options there is a high possibility of agitational backlash, notwithstanding the actions taken in advance as suggested in (a) and (b) above, an appropriate plan of deployment grid of police force (both Central and State) with full technical support needs to be immediately drawn up. Advance preparedness in this regard would go a long way in containing the law and order situation and minimize destruction of lives and property. It would also be necessary to have a mechanism for monitoring the situation and collection of real time intelligence with a view to ensure taking up of effective advance action to preempt any break of violence in the potentially troubled spots. The likely troubled spots (e.g. Osmania, Kakatiya, Krishna Devraya Universities etc.) and the trouble creators in the three regions must be identified in advance and suitable action plan prepared. In my discussions with Chief Secretary and DGP, the kind of equipment and weaponry to be used were also discussed and it was agreed that weaponry used should be such as not to cause fatal injuries, while at the same time effective enough to bring the agitationists quickly under control.
>
> In nutshell it may be concluded that the first couple of months will be critical after the submission of the Report, as speculative stories will thrive and emotions of people incited".

95. It is rather unfortunate that the committee did not even make a mention about the fact that about 600 persons, mostly students committed suicide during the agitation, spread over one year. At least, it ought to have taken note of the fact that, a teenaged Scheduled Tribe boy, with no parents, studying Intermediate, by doing part-time job in a small hotel, committed suicide by immolation, right in the middle of platoons of police, deployed at the gate of Osmania University. Few students in Osmania University committed suicides, out of frustration. It did not show any concern about the future of the innocent students or the families of the deceased persons, even while it expressed concern about the future of the educational institutions, industries and

establishments owned by a section of people. Universities are viewed as centres of trouble and students, as potential "trouble creators".

96. If the committee has suggested use of arsenal of lesser degree, it is not because there is any pity or sympathy towards the agitators. Obviously, it is to avoid the wrath of the human rights agencies.

97. The police, which is not inclined or able to nab persons who committed day-light murder in the middle of the city has proved its efficiency in booking cases against hundreds of students even with smallest provocation. The cases are so framed, that it would be difficult for them to get bails and even if one comes out, another case is ready, for putting him behind bars. For some, it would take remaining part of their life to come out of the cases.

98. It must not be forgotten that Universities are not only centers of learning, but also are the laboratories, where future leaders are turned out. It is not exaggeration that, either in the immediate past or at present, students, particularly, those, who were leaders in the campus, have proven to be effective leaders and administrators in the Government. Banaras Hindu University and Aligarh Muslim University, to name a few, produced leaders of very high caliber. At one point of time, the former students of Osmania University were Chief Ministers of three different States. (P.V. Narasimha Rao, S.B. Chavan and Veeredra Patil for the States of A.P., Maharashtra and Karnataka, respectively.) Later on, one of them became Prime Minister, and another, Union Home Minister. Andhra and Sri Venkateswara Universities have also presented persons of very high caliber, not only in academics, but also in different wings of the society including politics. This is not to suggest that indiscipline must be tolerated. Bullet can not be a panacea for all the problems, particularly, in a society, governed by Rule of Law.

99. For some, it may appear that politics is antithesis to study, in the campus. However, they do not realize the fact that unless some well-informed and intelligent students with character and patriotism do not grow up as politicians, the space would

be occupied by anti-social elements or by those, who do not find any difference between "University" and "anniversary", or the one between "acumen" and "vacuum". The country has already made substantial progress in this direction.

100. If students in large number have chosen to press for a demand, not concerning themselves, even at the cost of their studies and lives, the Government, and the society, at large, is required to stop for a while, and think about it, than to search modes of suppression. Today, Osmania University has become almost a cantonment, and one is welcomed with barbed wires or dreadful barricades. Many a time, the police and armed forces outnumber the students. The students do not have even freedom to go from one end of the University to another, in groups. The Government wanted a peaceful solution to this situation. The Committee, however, had a different thing in mind. Those who fed the committee with inaccurate information and projections should have realized that, if real bullets that killed 369 persons could not suppress the demand, rubber bullets may not achieve that goal.

101. For those who indiscriminately use the force against their own citizens, an eye-opener came in the recent past. Libyan Air Force was exhorted to bombard the persons, who were agitating for change of guard. Two pilots of Jet Fighters have taken off from the ground, but have para-trooped in a safe location, permitting the flights to crash.

102. More than the contents of the note, a larger question arises. Existence of peace and tranquility is always a thing, which everyone can wish and relish. In a society, where several conflicts of interests and ideologies exist, it is but natural that dissents and dissentions are expressed. Some times, they are expressed in the legislative bodies, and on other occasions, outside them. Intensity thereof would depend upon the genuinity of the cause, on the one hand, and the response of the State or the lack of it, on the other hand. The best course to put an end to such agitations is, to engage the persons in meaningful discussion, accede to their demands, if they are genuine, or to explain them

as to how their demand is not genuine, or not capable of being accepted, even if genuine. Use of forces can be justified only when the agitators resort to it first.

103. The maneuver suggested by the Committee in its secret supplementary note poses an open challenge, if not threat, to the very system of democracy. If the source of inputs that gave rise to this is the Government, it (the Government) owes an explanation to the citizens. If, on the other hand, the origin of inputs is elsewhere, the Government must move in the right earnest to pluck and eradicate such foul source and thereby prove its respect for, and confidence in, the democracy.

104. It is not uncommon that people who want quick access to power or to be in the good looks of trigger happy Rulers, cross the limits of decency and propriety, and many a time, they are rewarded. The reward, however, will not only be short-lived, but, some times, would also prove costly. This Court is not able to resist its temptation to quote what Nick Meo said, in his article HUDA THE EXECUTIONER (*The New Indian Express March 7, 2011*). It was about a lady, who ascended to the position of Mayor of the Second Largest City, Benghazi, in Libya. In his own words,

> "When Colonel Gaddafi hanged his first political opponent (Al-Sadek Hamed, a young Aeronautical Engineer) in Benghazi's basketball stadium, thousands of schoolchildren were rounded up to watch a carefully choreographed, sadistic display of the regime's version of justice. They had been told they would see the trial of one of the Colonel's enemies. But instead a gallows was dramatically produced as the condemned man knelt in the middle of the basketball court, hands bound behind his back. The crowd yelled out "No, no" as they realized what was about to happen. Two young men bravely ran up to the revolutionary judges and begged them for mercy.
>
> The worst moment came right at the end, as the hanged man kicked and writhed on the gallows. A determined-looking young woman (Huda Ben Amir) stepped forward, grabbed him by the legs, and pulled hard on his body until the struggling stopped. Afterwards everyone knew why she did it. "She was ambitious, and Gaddafi has always promoted ruthless people…"

> She knew Gaddafi would be watching on TV and would see her. Sure enough, afterwards she was rapidly promoted. That terrible thing she did was the making of Huda Ben Amir's career… She is one of the richest and most powerful women in Libya and one of the most hated, a favourite of the colonel, a member of his privileged elite, and twice mayor of Benghazi".

105. However, everybody who felt that the protest in Libya was suppressed with the martyrdom of Al-Sadek, were proved wrong. Today, the young martyr from his grave makes a dictator, who ruled the country for decades together, to run for hiding.

106. What about Huda Ben Amir ?

> "She fled from the city as soon as the uprising broke out two weeks ago, leaving her mansion home to be burned down".

107. History is replete with these examples. The lesson is that, suppression beyond a point becomes counter-productive. It is only the solutions that are brought about through mutual discussion and democratic process, that will provide a long-lasting, respectable and peaceful solution.

108. For the foregoing reasons, this Court finds that the privilege claimed by the respondent for the report is untenable and that the withholding of note from public is arbitrary, unreasonable and unconstitutional, and that a meaningful discussion, with reference to the report submitted by the Committee, cannot take place, unless it is made public.

109. The writ petition is accordingly allowed, as prayed for. This judgment, however, shall not be construed as expressing opinion on any of the alternatives suggested by the Committee, or as limiting the power of the Government to take a decision on the issue concerned. The respondent shall consider the feasibility of making the note on Chapter-VIII, public, within two weeks. There shall be no order as to costs.

110. Before parting with the case, this Court acknowledges the dispassionate and meritorious assistance rendered by the learned Attorney General, Additional Solicitors General, Sri Ravindran, and Sri Vivek Tanka, Sri G. Mohan Rao, learned counsel for the petitioner, and Sri K. Vivek Reddy, learned counsel for the 2nd respondent.

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L. NARASIMHA REDDY, J.

Dt.23-03-2011.

Note:

L.R copy to be marked.

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