

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

DISTRICT: GANDHINAGAR

EXTRAORDINARY ORIGINAL JURISDICTION

WRIT PETITION NO. OF 2019 (PIL)

In the matter of S. 3(4) of 'The  
Commissions of Inquiry Act,  
1952,

And

In the matter of Art 14, 21, 226,  
227 of the Constitution of India,

And

In the matter of sec. 3 of 'The  
Commissions of Inquiry Act,  
1952'

And

In the matter of public interest  
litigation,

And

In the matter between

R. B. Sreekumar, ( IPS) (retd),

Age: 72

Former DGP, Gujarat,

Plot No. 193,

"Sreelekshmidheepam",

Sector -8, Gandhinagar – 382008.

...Petitioner

V E R S U S

The State of Gujarat

Notice to be served through the

Chief Secretary, Gujarat State,

Block No. 1, 5<sup>th</sup> Floor,

New Sachivalaya, Gandhinagar ...Respondent

TO

*THE HON'BLE THE CHIEF JUSTICE*

*AND OTHER HON'BLE JUDGES OF*

*THE HON'BLE HIGH COURT OF*

*GUJARAT AT AHMEDABAD*

THE HUMBLE PETITION OF

THEPETITIONERS

ABOVENAMED

MOST RESPECTULLY SHEWETH: -

1. The Present petition is being filed under Article 226 of the Constitution of India by way of Public Interest Litigation and the Petitioner herein has no personal interest in the said matter. The said public interest litigation is being filed in the interest of the citizen and the people living in and outside Gujarat. The said petition is also filed in the interest of proper implementation of rule of law and to see

that the law is implemented and after perusing the recommendations and findings of the commission appropriate steps be initiated in accordance with law.

2. The petitioner is the citizen of India and is a retired Director General of Police, State of Gujarat and draws monthly pension.

3. That the petitioner is filing the present petition purely in Public Interest on their own and not at the instance of any other person or organization. The petitioner states that the present petition is filed purely in public interest against the inaction on the part of the State of Gujarat especially the chief secretary, the state of Gujarat in not making the full report of the Nanavati- Shah – Mehta Commission public by placing it in the Gujarat State Assembly. The ‘Commission’ has already been disbanded as it has served its purpose and therefore it is the sole responsibility of the respondent herein to put the entire report before the State’s Assembly. Petitioner states that he has not faced any contempt in any other court including the Hon’ble Supreme Court of India. The litigation cost, including the advocate’s fees and the traveling expenses are being borne by the petitioner himself.

4. That the facts of the case in brief are as follows:-

4.1 Following large scale destruction and damage, attacks on the minority community in 2002, where

the role of the State was very clear, the State Government had appointed a “One-Man” commission of enquiry to enquire into the cause and fallout of the incident of train burning at Godhra on 27-2-2002 and the wide scale violence against the minority community that followed until 31-5-2002.

4.2 The incident in question took place on 27<sup>th</sup> February, 2002. On 28<sup>th</sup> February, 2002, an announcement was made by the Chief Minister of the State of Gujarat, in the assembly for the appointment of a Commission under the Act of 1952. On 6<sup>th</sup> March, 2002, the Commission of Inquiry was appointed by the State of Gujarat under the Act, 1952. It was one man Commission. Since the terms of reference was inadequate and did not allow the Commission to enquire into the role played by Senior Ministers and other political leaders including the Chief Minister, petitions were filed before this Hon’ble Court challenging the terms of the reference and the manner in which the commission was appointed.

4.3 The Act empowers the State legislature to constitute and appoint a Commission of Inquiry to conduct investigation on any issue that is of public importance and to perform certain responsibilities entrusted to the Commission under the Act. The State legislature shall appoint the Commission only after a resolution has been passed in the Parliament and the appropriate Government desires to

appoint a Commission. That, the legal department issued notification no. GK/08/2002 – COI/102002/797 –D Dtd. 6.3.2002 on appointment of a commission. The state government under its notification dtd. 21.5.2002 re-constituted the aforesaid Commission in public interest by converting the single member Commission into two – member Commission headed by Mr. Justice G. T. Nanavati, former judge of the Supreme Court of India as Chairperson and Mr. Justice K.G. Shah, former High Court Judge as a member and after demise of one of its members namely Justice K. G. Shah, the state government appointed Justice Akshay H. Mehta, former judge, Gujarat High Court. The terms of reference vide notifications dtd. 6.3.2002 and 20.7.2004 are annexed as **ANNEXURE – A** to this petition.

4.4 While the Petition before the Hon'ble Court was pending, on 21<sup>st</sup> May, 2002, there was a reconstitution of the Commission. A retired Judge of the Hon'ble Supreme Court was appointed in the Commission in addition to the retired judge of the Hon'ble High Court of Gujarat. On 20<sup>th</sup> July, 2004, further terms of Reference were expanded, so as to include into the inquiry the role and conduct of the Chief Minister, other ministers, police officers, individuals etc. On 3<sup>rd</sup> June, 2002, there was an expansion of terms of Reference of the Commission appointed under the Act of

1952. The terms of reference vide notifications dtd. 6.3.2002 and 20.7.2004 are annexed as **ANNEXURE - B** to this petition.

4.5 The question that even today requires consideration is whether the State Government, having been accused of its dubious role during 2002 Gujarat riots be permitted to persist with tabling an incomplete report by splitting the first part of the reference in the Legislative Assembly during the monsoon session that began on September 25, 2008 and withholding the second part of the report, which it has done since 2008.

4.6 The petitioners state, that a perusal of the terms of reference appointing the Commission (2002) and second, revised (2004) irrevocably club the tragic incidents of 27-2-2002 and thereafter and hence should be looked at in toto. Tabling one part of the report and making it public is not merely detrimental to the public interest as outlined in the Commission of Inquiry's Act but in actual fact also amounts to splitting the terms of reference of the state government, into two.

4.7 The petitioner states that huge amount of public money was spent by the state government for this commission and therefore the findings and recommendations of the 'Commission' is required to be made public. The State

Government has no legal right to sit over the report and suppress the truth.

4.8 The petitioner states that the respondent is deliberately not making the report of the 'Commission' public in violation of sec. 3 (4) of "The Commissions of Inquiry Act, 1952. The petitioner craves leave to reproduce the said provision as under:-

Sec. 3 (4) The appropriate Government shall cause to be laid before the House of the people or, as 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.

4.9 The petitioner made a representation dtd. 18.11.2015 to the then Chief Minister of the State of Gujarat for disclosing the report of the Commission. The petitioner respectfully submits that the representation of the petitioner has not yet been heeded and till this date the respondents have neither disclosed its report nor have produced before the legislative assembly. Annexed as **ANNEXURE - C** to this petition is the copy of the representation dtd. 18.11.2015.

4.10 The object of appointing a Commission is to conduct investigation on any issue that is of public importance and to perform certain responsibilities entrusted to the Commission under the Act. However, if its findings, conclusions and suggestions are not made public then the same would tantamount to waste of public money. It is under these circumstances the petitioner is left with no alternative remedy but to seek appropriate relief from this Hon'ble Court.

4.12 While the above Commission was functioning, the then Central Government had appointed a Committee on 4<sup>th</sup> September, 2004 in exercise of the powers under Article 73 of the Constitution of India to look into the incident of the burning of the Sabarmati Express. Another notification dated 2<sup>nd</sup> December, 2005 was issued under Section 11 of the Act, 1952. The Commission called as "U. C. Banerjee Commission of Inquiry" was also given powers under the Act of 1952. That the constitution of the 'Commission' was challenged before the Gujarat High Court in Special Civil Application No.16500 of 2005. The Hon'ble High Court was pleased to restrain the Union of India from placing the same in the Parliament and ultimately the writ petition was allowed by the judgment and order dated 13.10.2006.

- 5 The petitioner states that the source of information is the documents received by the petitioner through personal knowledge as well as through media. The petitioner has personally inquired and found that the second part of the report is not yet produced in the Gujarat Assembly.
- 6 The petitioner has not made any representations except what is mentioned in para 4.10 of this petition. This details are upto the date of filing of this petition before this Hon'ble Court.
- 7 The petitioner states that to the best of knowledge of the petitioner, no public litigation has been filed by the petitioner or anymore else on the same issue with same parties before this Hon'ble Court or before any other court.
8. The petitioner files the present petition on following amongst the other grounds.
  - a. That the provisions of the Act make it mandatory to produce the report of the Commission before the Legislative Assembly.
  - b. Huge public money is utilized for this Commission and therefore a citizen has legal right to peruse the report.
  - c. The findings of the Commission's report would unearth the hidden facts if any and its recommendations can be fruitfully implemented.
  - d. The recommendations of the Commission can be incorporated by amending the 'Gujarat Police

Manual' and improve the police force as well as the law and order of the state.

- e. Non production of the Commission's report before the legislative assembly is violation of sec. 3(4) of the Act.

9. The petitioner is seeking interim relief on following ground.

- a. For that the act of withholding the report of "The Commission of Inquiry Act 1952" is illegal.

10. The petitioner has not filed any other litigation or any other appeal or applicant either before this Court or Supreme Court of India or before any other Court on the same subject matter.

11. The petitioner has no other alternative efficacious remedy but to approach this Hon'ble Court by way of this petition.

12. The petitioner humbly prays:

- (A) Your Lordship be pleased to allow the present writ petition ( P.I.L.);
- (B) Your Lordships be pleased to issue appropriate writ or a writ of Mandamus or writ in nature of Mandamus, order or direction, directing the respondent to forthwith produce the report of the commission before the legislative assembly

of the State of Gujarat and to comply with sec. 3 (4) of 'The Commissions of Inquiry Act, 1952' in its true letter and spirit;

(C) Your Lordships be pleased to order that pending admission and or final disposal of this petition the respondent be directed to produce the final report of the commission before the legislative assembly of the State of Gujarat in the interest of justice;

(D) Your Lordships be pleased to direct initiation of appropriate steps against the respondent and / or responsible authorities for committing delay in producing the final report of the Commission before the legislative assembly of the State of Gujarat in the interest of justice;

(E) Your Lordships be pleased to grant such other and further reliefs as the circumstances may require;

AND FOR THIS ACT OF KINDNESS AND JUSTICE

THE PETITIONER SHALL AS IN DUTY BOUND

FOREVER PRAYS

Ahmedabad

(M. M. TIRMIZI)

Date: / 7/2019

Advocate for the petitioner

## A F F I D A V I T

I, R. B. Sreekumar, 72 years, having address as mentioned in the cause title, do hereby solemnly affirm and state on oath that whatever has been stated herein above in para 1 to 11 is true to the best of my knowledge and I believe the same to be true and correct. Para 12 is prayer clause.

Solemnly affirmed on this Day of July, 2019 at Gandhinagar

R. B. Sreekumar

Deponent

The contents of the petition are  
explained to me in Gujarati

Before me