

1966 Present : H. N. G. Fernando, S.P.J., and Abeyesundere, J.

**N. Q. DIAS, Petitioner, and G. P. G. ABEYWARDENE**  
(Commissioner investigating the unlawful interception of Telephone messages),  
Respondent

*S. C. 171/66-Application for a Mandate in the nature of a Writ  
of Prohibition under Section 42 of the Courts Ordinance*

*Writ of Prohibition-Commissioner appointed under Commissions of Inquiry Act (Cap.393)-  
Amenability to writ-Telecommunication Ordinance.*

A Writ of Prohibition does not lie against a Commissioner appointed under the Commissions of Inquiry Act to inquire into alleged unlawful interception of telephone messages and to make a report inter alia as to the persons responsible for such unlawful interception or by or to whom the contents of messages so intercepted were divulged. Such a Commissioner does not exercise judicial or quasi-judicial functions.

**APPLICATION** for a Writ of Prohibition. C. D. S. Siriwardene, for the Petitioner. H. L. de Silva, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

May 16, 1966. **H. N. G. FERNANDO, S.P.J.-**

The Respondent to this application was appointed by the Governor- General under the Commissions of Inquiry Act (Chapter 393) to inquire into alleged unlawful interception of telephone messages and to make a report inter alia as to the persons responsible for such unlawful interception or by or to whom the contents of messages so intercepted were divulged. In pursuance of the powers conferred on him by the Commissions of Inquiry Act, the respondent summoned the petitioner to give evidence and to be examined as a witness before the Commission.

petitioner has now applied for a mandate in the nature of a Writ of Prohibition restraining the respondent from compelling the petitioner to comply with that summons. The petitioner has submitted with his application several affidavits in support of allegations by him that certain named person were responsible for the unlawful interception of telephone conversations, and in particular of such telephone conversations between members of a former Cabinet of Ministers and other persons, and that the contents of some of these conversations were divulged to some other named persons. It is likely that in the course of any evidence given by the petitioner before the Commission, he will attempt to substantiate his allegations, and that it will then become necessary for the respondent to determine the truth of such allegations. The petitioner further alleges that there is a real and substantial likelihood of bias on the part of the respondent (presumably in the matter of considering the truth of such allegations) by reason of alleged family

and business relationships with persons accused in the petitioner's allegations. It is not necessary to refer to certain other representations made by the petitioner as to the likelihood of bias on the part of the respondent.

I should add that learned Crown Counsel indicated his position that the allegations to which I have referred were unfounded and would be controverted if such a course were necessary. That course has not become necessary, because upon the view of the law applicable to this matter we saw no occasion for the issue of notice and refused the petitioner's application. In these circumstances, there is no occasion for this Court to consider whether there might be even an appearance' of possible bias tending to prejudice the acceptability of the ultimate determinations which the Commissioner may reach. Unfortunately, the observation of my brother Abeyesundere, to the effect that the possibility of bias, or the appearance of bias, seems to require consideration by the Commissioner himself, was incorrectly reported in one newspaper.

Consideration was given in the case of *de Mel v. M. W. H. de Silva* [1 (1949) 51 N. L. R. 105.] to the nature of an inquiry ordinarily held in pursuance of a Commission under the Commissions of Inquiry Act. In referring the case to a fuller Bench, Gratiaen J. stated the opinion that the functions of such a Commissioner could not properly be described as judicial or quasi-judicial functions over which the Court could exercise any controlling jurisdiction and that an application for a Writ in the nature of Prohibition would not be appropriate for the purpose of challenging the procedure adopted by such a Commissioner. The reason for this opinion is stated in the judgment of *Wijeyewardene C. J.*, namely, that such a Commission is not expected to make an order affecting the legal rights of persons. What rendered the Commissioner in that particular case amenable to such a Writ was the important additional circumstance that special supplementary legislation enacted by Parliament provided that a finding of the Commissioner that a person had been guilty of bribery would have

---

411

the effect of depriving such a person of his civic rights. On that ground the Commissioner was held to have " legal authority to determine a question affecting the rights of persons and having the duty to act judicially ". The Court thus adopted the test laid down by *Atkin L.J.* in *King v. Electricity Commissioner* [1 (1924) 1 K. B. 171. ].

Let me suppose that the Commissioner in the instant case makes a report in which is contained a determination that X intercepted certain telephone messages at the instigation of Y and divulged the contents of the messages to Z. There is literally nothing in the Commissions of Inquiry Act by reason of which such a determination can create, affect or prejudice the rights or obligations of X, or Y or Z. Even though the finding which the Commissioner is required to reach according to his terms of reference is that a person unlawfully intercepted a telephone message, the finding would not be one made in terms of the Telecommunication Ordinance, under which the function of determining whether there has been such unlawful interception is committed solely to the ordinary Courts. Even if the report of the Commissioner in this case were to be published, it would not, in the absence of any supplementary legislation, be proof for any purpose that X or Y or Z had (in the example I have taken) done any act found by the Commissioner to have been done by him.

It suffices for present purposes to refer in addition to the case of *R. v. Legislative Committee of the Church Assembly* [2 (1828) 1 K. B. 411.] in which it was held that the Committee was " not a body exercising judicial functions, or determining judicial rights or obligations of the subjects of the realm within the meaning of any previous decision of the courts ". Those observations in my opinion are equally applicable in the case of this Commission.

The petitioner's application was refused for the reasons I have stated.

**ABEYESUNDERE, J.--I agree.**

---

*Application dismissed.*

*- End -*