

IN THE SUPREME COURT OF INDIA
(Civil original Jurisdiction)
WRIT PETITION(CIVIL) NO. 310 OF 1996

IN THE MATTER OF:

PRAKASH SINGH AND OTHERSPETITIONERS

VERSUS

UNION OF INDIA AND OTHERSRESPONDENTS

LAST SUBMISSIONS ON BEHALF OF THE PETITIONERS

The writ petition was admitted on July 30, 1996. Ten years have passed since. The writ was essentially to free the police from the stranglehold of politicians and to make it accountable to the laws of the land and the Constitution of the country. The need for such a reform is felt even more acutely today.

At the time the writ was filed the petitioners had drawn the attention of the Court to, among others, two major tragedies which had overtaken the Republic of India due to the failure of the police to uphold the Rule of Law. These were:

- The 1984 Riots, when large number of Sikhs were massacred in Delhi and the police was immobilised by the hooligans belonging to the ruling party;
- The demolition of the disputed shrine at Ayodhya in 1992, when the state and the central paramilitary forces remained mute spectators to the vandalism of the *kar sevaks*.

Justice Nanavati Commission of Inquiry, in its Report on the 1984 Anti-Sikh Riots, recommended that “there should be an independent police force which is free from the political influence and which is well equipped to take immediate and effective action”. (The Liberhan Commission on Ayodhya has yet to submit its report)

During the pendency of the writ petition, the country was witness to Gujarat Riots in 2002, when the police acted in a partisan manner. The National Human Right Commission, which inquired into the riots, commented as follows:

“The Commission is of the view that recent events in Gujarat and, indeed, in other States of the country underline the need to proceed without delay to implement the reforms that have already been

recommended in order to preserve the integrity of the investigating process and to insulate it from extraneous influences

.... much of what occurred in the aftermath of the Godhra tragedy was 'alien to the envisaged constitutional machinery' and that there is, inter alia, urgent need for radical police reform along the lines already directed by the Supreme Court 'if the situation is to be cured, if the rule of law is to prevail'. The Commission therefore urges that the matter of Police Reform receive attention at the highest political level, at the Centre and in the States, and that this issue be pursued in good faith, and on a sustained basis with the greater interest of the country alone in mind, an interest that must overrule every 'extraneous' consideration. The rot that has set in must be cured if the rule of law is to prevail."

Committee to draft new Police Act

The Government of India have since appointed, vide Ministry of Home Affairs Office Memorandum no. 25019/15/2005-PM-II dated September 20, 2005 a Committee comprising Shri Soli Sorabjee, former Attorney General and five others to draft a new Police Act "in view of the changing role of police due to various socio-economic and political changes which have taken place in the country and the challenges posed by modern day global terrorism, extremism, rapid urbanization as well as fast evolving aspirations of a modern democratic society".

The Committee was required to submit its report within a period of six months. It has since been given two extensions, one for two months and the second one for three months. It is now required to give its report by the end of August 2006. We have no reasons to doubt that the Committee shall be able to prepare a good Model Police Act. However, looking at the fate of recommendations made by earlier committees, the petitioners have serious reservations if the government would accept, or be able to accept, the recommendations made by the Committee in view of the strong vested interests which the Central and the State Governments have developed in maintaining the *status quo*.

Police in any case is a state subject and, even if the central government agrees to carry out the much needed police reforms, it is most unlikely that the state Chief Ministers, who look upon police as their exclusive preserve because it enables them further their political interests, would agree to the same. At one stage, the Home Minister of India (Shri Indrajit Gupta), in a letter dated April 03, 1997 addressed to the Chief Ministers of all state governments, wrote that "a time has come when all of us may have to rise above our limited perceptions to bring about some drastic changes in the shape of reforms and restructuring of the police before we are overtaken by the unhealthy developments which appear to have been taking place all over the country". He went on to exhort the Chief Ministers to "break out of our colonial system of policing and bring about certain reforms and structural changes in consonance with the developments which have taken place during the last 50 years or so in the administration of criminal justice in general and police functioning and practices

in particular". The Home Minister specifically desired that the salient recommendations of the National Police Commission, which are also the thrust of the Petition, be considered for implementation. The Chief Ministers, however, did not take any follow up action.

Earlier Committees

It is worthwhile placing on record that following the comprehensive eight – volume reports submitted by the National Police Commission (1977-81), the following other committees/bodies have since gone into the question of police reforms:

- a) National Human Right Commission
- b) Law Commission
- c) Ribeiro Committee on Police Reforms (1998)
- d) Padmanabhaiah Committee on Police Reforms (2000)
- e) Malimath Committee on Reforms of Criminal Justice System (2002-03)

All the aforesaid committees/bodies have broadly come to the same conclusions and emphasized the urgent need for police reforms in the context of newly emerging challenges. There is a convergence of views on the need to have

- state security commission at the state level,
- transparent procedure for the appointment of Police Chief and the desirability of giving him a minimum fixed tenure,
- separation of investigation work from law and order, and
- a new Police Act which should reflect the democratic aspirations of the people.

However, these aspirations remain unfulfilled because of the combined opposition of the political parties. The petitioners would like to impress upon the Hon'ble Court that unless they intervene and issue appropriate directions, the matter of police reforms would remain in limbo and the people of India would lurch from one crisis to another.

State Security Commission

The Commission, which should be constituted at the state level, should comprise the following members:

- Chief Minister/Home Minister as Chairman
- Lok Ayukta/Member State Human Rights Commission
- High Court Judge (Retd.) nominated by Chief Justice
- Leader of Opposition in the Assembly
- Chief Secretary/Principal Secretary (Home)
- DGP as ex officio Secretary

The Commission's functions would include:

- a) Laying down broad policy guidelines and directions for the performance of preventive and service-oriented functions of the police;
- b) Evaluation of the performance of the State Police every year and presenting a report to the State Legislature
- c) Functioning as a forum of appeal for disposing of representations from any police officer of the rank of Superintendent of Police and above regarding his being subjected to illegal or irregular orders in the performance of his duties;
- d) Functioning as a forum of appeal for disposing of representations from police officers regarding promotion to the rank of Superintendent of Police and above; and'
- e) Generally keeping in review the functioning of the police in the State.

The Commission would thus, on the one hand, lay down the broad policies and the framework within which the police must function and, on the other hand, act as a shock absorber between the government and the police to ensure that there is no extraneous pressure on its functioning. The Commission must be a statutory body and its recommendations binding on the government.

Police Chief

The Police Chief of the State should be selected in such a way that only the best officer gets elevated. For this purpose, the Petitioners are of the view that the State Security Commission should prepare a panel of three officers, who fulfill the criteria for elevation to the august office, and thereafter it should be the Chief Minister's prerogative to select one of them. This procedure would ensure the primacy of the political executive in choosing the Police Chief and at the same time ensure that an undeserving person is not selected for political or other extraneous reasons. The Director General of Police of the State, once selected, should have a minimum tenure of two years regardless of the date of his superannuation. His premature removal should require prior approval of the State Security Commission except when the removal is consequent on a punishment of dismissal/removal/compulsory retirement from service or reduction to a lower post following action under the All India Services (Discipline and Appeal) Rules.

It would be desirable that officers down below in the field like the Inspector General of Police i/c Zone, Deputy Inspector General of Police i/c Range and Superintendent of Police i/c District also have a prescribed minimum tenure.

Separate Investigation from Law & Order

The Law Commission of India, in its 154th Report, had recommended the separation of the investigating police from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people. The Petitioners would like to emphasise that while separation is desirable and called for, there should be no water tight compartmentalization because both the functions of the police are closely inter-related at the ground level.

To start with, we may have separation only in towns/urban areas which have a population of at least 5 lakhs or more. It is these areas which witness day-to-day law and order problems and require dedicated staff to tackle them.

Two other vital recommendations made by different committees relate to the setting of a Police Establishment Board and a Police Complaints Authority.

Police Establishment Board

The Police Establishment Board, as recommended by Ribeiro Committee, should comprise the DGP and four seniormost officers borne on the IPS cadre of the State who are immediately junior to the DGP, to monitor all transfers, promotions, rewards and punishments as well as other service related issues of all officers of and below the rank of the Deputy Superintendent of Police. The state government may interfere with the Board decisions only in the rarest of rare cases after recording cogent reasons in writing for any divergence from its decisions. The Boards would also make appropriate recommendations to the government regarding the postings and transfers of officers of and above the rank of Superintendent of Police.

Police Complaints Authority

The Police Complaints Authority should be set up at the district level to examine complaints from the public on police excesses, arbitrary arrests and detentions, false implications in criminal cases, custodial violence etc. and make appropriate recommendations to the government/state human rights commission/state security commission. The NHRC and the Ribeiro Committee recommended that the District & Sessions Judge, the Collector and the Superintendent of Police should constitute the Authority at the district level with the District and Sessions Judge acting as the Chairman and the Superintendent of Police as the Secretary. The petitioners however feel that looking at the large number of complaints against the police, the serving officers may not have the time to look into them and that therefore a retired District and Sessions Judge may be made Chairman of the body. He may be assisted by two other eminent persons of the district who have a reputation for objectivity; they may be nominated by the Chairman of the State Human Rights Commission/Lok Ayukta. The Superintendent of Police or the Additional SP of the district could act as Secretary of the Authority.

Other Countries

Progressive countries already have constitutional/administrative arrangement which enable the police to function independent of external pressures. These include UK, Japan, USA, Canada, France, Sweden, and some others.

In UK (England and Wales), a policeman has an original power vested in him as a constable to uphold the Queen's Peace. Once a law is passed by Parliament, no one can tell any policeman how he should act in upholding it. The policeman is no one's servant, a principle most clearly stated in the case of *Fisher Vs. Oldham Corporation (1930)*, and he must use his own discretion

when carrying out the law. As Lord Denning stated in *R v. Metropolitan Police Commissioner ex-parte Blackburn*, “The responsibility for enforcement lies on him (Commissioner of Police). He is answerable to the law and the law alone”.

In Japan, there is a National Public Safety Commission (NPSC) at the apex which comprises a Chairperson, who is a Minister of State and five other members who are appointed with the consent of both the Houses of the Diet. At the local level, police affairs are dealt with by Prefectural Police Forces and the Tokyo Metropolitan area. There is a Prefectural Public Safety Commission (PPSC) consisting of five or three members depending on the size of the prefecture. Both the NPSC as well as the PPSC are insulated from political pressures and neither the Prime Minister nor the Prefectural Governor have the power to give them any directions.

Other countries of South Asia have also moved ahead in this direction. In Sri Lanka, through the Seventeenth Amendment to the Constitution, the government have constituted a National Police Commission which has been vested with the powers of appointment, promotions, disciplinary control and dismissal of police officers other than the Inspector General of Police, etc., and any person who influences or interferes with any decision of the Commission shall be liable to a fine not exceeding one hundred thousand rupees or imprisonment for a term not exceeding seven years or both. Even Pakistan promulgated Police Ordinance 2001, which aims at organizing a police which is “independently controlled, politically neutral, non-authoritarian, people friendly and professionally efficient”. The Pak authorities actually borrowed from our National Police Commission recommendations.

The developing threat from terrorism further underlines the need for police reforms. The police constitutes the frontline in our battle against this menace. It must be efficient, be able to collect advance intelligence, and take adequate preventive action to frustrate the evil designs of the terrorists and secure the life and property of the citizens. This would be possible only if structural and systemic reforms of a radical nature on the lines suggested in the petition are carried out.

Police reforms are absolutely essential for

- good governance,
- to uphold the Rule of Law,
- ensure protection of human rights,
- survival of the democratic structure, and
- the economic progress of the country.

Supreme Court’s Legal & Constitutional Authority

The following principle regarding Power of the Supreme Court was laid down in *Vineet Narain v. Union of India* (1998)

“48. In view of the common perception shared by everyone including the Government of India and the Independent Review Committee (IRC)

of the need for insulation of the CBI from extraneous influence of any kind, it is imperative that some action is urgently taken to prevent the continuance of this situation with a view to ensure proper implementation of the rule of law. This is the need of equality guaranteed in the Constitution. The right to equality in a situation like this is that of the Indian polity and not merely of a few individuals. The powers conferred on this Court by the Constitution are ample to remedy this defect and to ensure enforcement of the concept of equality.

49. There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141 and there is mandate to all authorities to act in aid of the orders of this Court as provided in Article 144 of the Constitution. In a catena of decisions of this Court, this power has been recognised and exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role. It is in the discharge of this duty that the IRC was constituted by the Government of India with a view to obtain its recommendations after an in-depth study of the problem in order to implement them by suitable executive directions till proper legislation is enacted. The report of the IRC has been given to the Government of India but because of certain difficulties in the present context, no further action by the executive has been possible. The study having been made by a Committee considered by the Government of India itself as an expert body, it is safe to act on the recommendations of the IRC to formulate the directions of this Court, to the extent they are of assistance. In the remaining area, on the basis of the study of the IRC and its recommendations, suitable directions can be formulated to fill the entire vacuum. This is the exercise we propose to perform in the present case since this exercise can no longer be delayed. It is essential and indeed the constitutional obligation of this Court under the aforesaid provisions to issue the necessary directions in this behalf. We now consider formulation of the needed directions in the performance of this obligation. The directions issued herein for strict compliance are to operate till such time as they are replaced by suitable legislation in this behalf.

50. There is another aspect of rule of law which is of equal significance. Unless a proper investigation is made and it is followed by an equally proper prosecution, the effort made would not bear fruition...

51. In exercise of the powers of this Court under Article 32 read with Article 142, guidelines and directions have been issued in a large number of cases and a brief reference to a few of them is sufficient. In *Erach Sam Kanga v. Union of India*¹² the Constitution Bench laid down certain guidelines relating to the Emigration Act. In *Lakshmi Kant Pandey v. Union of India*¹³ (*In re, Foreign Adoption*), guidelines for adoption of minor children by foreigners were laid down. Similarly in *State of W.B. v. Sampat Lal*¹⁴, *K. Veeraswami v. Union of India*⁷, *Union*

*Carbide Corpn. v. Union of India*¹⁵, *Delhi Judicial Service Assn. v. State of Gujarat*¹⁶ (Nadiad case), *Delhi Development Authority v. Skipper Construction Co. (P) Ltd.*¹⁷ and *Dinesh Trivedi, M.P. v. Union of India*¹⁸ guidelines were laid down having the effect of law, requiring rigid compliance. In *Supreme Court Advocates-on-Record Assn. v. Union of India*¹⁹ (IInd Judges case) a nine-Judge Bench laid down guidelines and norms for the appointment and transfer of Judges which are being rigidly followed in the matter of appointments of High Court and Supreme Court Judges and transfer of High Court Judges. More recently in *Vishaka v. State of Rajasthan*²⁰ elaborate guidelines have been laid down for observance in workplaces relating to sexual harassment of working women. In *Vishaka*²⁰ it was said: (SCC pp. 249-50, para 11)

“11. The obligation of this Court under Article 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA region. These principles were accepted by the Chief Justices of Asia and the Pacific at Beijing in 1995 (*) (As amended at Manila, 28th August, 1997) as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are:

“*Objectives of the Judiciary:*

10. The objectives and functions of the Judiciary include the following:

- (a) to ensure that all persons are able to live securely under the rule of law;
- (b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
- (c) to administer the law impartially among persons and between persons and the State.”

Thus, an exercise of this kind by the court is now a well-settled practice which has taken firm roots in our constitutional jurisprudence. This exercise is essential to fill the void in the absence of suitable legislation to cover the field.

52. As pointed out in *Vishaka*²⁰ it is the duty of the executive to fill the vacuum by executive orders because its field is coterminous with that of the legislature, and where there is inaction even by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations under the aforesaid provisions to provide a

solution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field.

53. On this basis, we now proceed to give the directions enumerated hereafter for rigid compliance till such time as the legislature steps in to substitute them by proper legislation. These directions made under Article 32 read with Article 142 to implement the rule of law wherein the concept of equality enshrined in Article 14 is embedded, have the force of law under Article 141 and, by virtue of Article 144, it is the duty of all authorities, civil and judicial, in the territory of India to act in aid of this Court. In the issuance of these directions, we have accepted and are reiterating as far as possible the recommendations made by the IRC.

.....

60. In view of the problem in the States being even more acute, as elaborately discussed in the Report of the National Police Commission (1979), there is urgent need for the State Governments also to set up credible mechanism for selection of the Police Chief in the States. The Central Government must pursue the matter with the State Governments and ensure that a similar mechanism, as indicated above, is set up in each State for the selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also of all police officers of the rank of Superintendent of Police and above. It is shocking to hear, a matter of common knowledge, that in some States the tenure of a Superintendent of Police is on an average only a few months and transfers are made for whimsical reasons. Apart from demoralising the police force, it has also the adverse effect of politicising the personnel. It is, therefore, essential that prompt measures are taken by the Central Government within the ambit of their constitutional powers in the federation to impress upon the State Governments that such a practice is alien to the envisaged constitutional machinery. The situation described in the National Police Commission's Report (1979) was alarming and it has become much worse by now. The desperation of the Union Home Minister in his letters to the State Governments, placed before us at the hearing, reveal a distressing situation which must be cured, if the rule of law is to prevail. No action within the constitutional scheme found necessary to remedy the situation is too stringent in these circumstances."

The Supreme Court desired that the state governments should set up "credible mechanism" for the selection of Police Chiefs in the states, and that the Central Government must pursue the matter with the state governments to ensure that a similar mechanism is set up in each state for the selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also all police officers of the rank of Superintendent of Police and above. It is disappointing that the Supreme Court directions have not been followed up.

The investigative functions of the police form part of the administration of justice. The independence and fairness of the judiciary will have no meaning

if the police, who prepare cases to be placed before the courts, are subject to extraneous influences. A clean judiciary with a politicized police, it has been said, is like having a clean dining hall served from a dirty and unhygienic kitchen. It is, therefore, absolutely essential that the investigative functions of the police are totally insulated from all kinds of external influences.

PRAYER

Keeping the facts, circumstances and pleas made in the foregoing paragraphs, the petitioners would humbly urge upon the Apex Court, in the interest of upholding the Fundamental Rights of citizens and ensuring the Rule of Law, to pass appropriate writ, order or orders directing the Government of India and the State Governments to

- Constitute State Security Commission in each State.
- Set up National Security Commission at the central level for the Central Police Organisations,
- Ensure, through a system of empanelment, that only good and honest officers get promoted, and especially prescribe a procedure for the appointment of Police Chief, both in the States as well as at the Centre, giving the incumbent a minimum tenure,
- Set up District Police Complaints Authority in each district to look into complaints against the local police;
- Constitute a Police Establishment Board in each State to monitor and supervise the service related matters of the subordinate staff and make recommendations to the State Government regarding senior appointments;
- Take measures to insulate the investigative wing of the police by separating it from the law and order functions, ensuring at the same time that there is complete coordination between the two wings.

PETITIONERS

NEW DELHI
Dtd. 25-07-2006

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