

(2015) 08 P&H CK 0111
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 508 of 2014

H.C. Arora and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-08-2015

Acts Referred:

Constitution of India, 1950 — Article 32

Citation : (2015) 4 SCT 564

Hon'ble Judges : Satish Kumar Mittal, J; Mahavir Singh Chauhan, J

Bench : Division Bench

Advocate : Brijeshwar Singh Kanwar, Senior SC, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Mahavir Singh Chauhan, J—Government of India, on 15th November, 1977, appointed a National Police Commission (hereinafter referred to as "the Commission") for examination of the role and performance of the police, both as a law enforcing agency and as an institution to protect the rights of the citizens as enshrined in the Constitution. The Commission was required, inter alia, to recommend measures and institutional arrangements to prevent misuse of powers by the police and for the quick and impartial inquiry into public complaints made against the police alleging misuse of police powers. The Commission examined all issues in depth, in a period of about three and a half years during which it conducted extensive exercise through analytical studies and research of variety of steps combined with an assessment and appreciation of actual field conditions. Various study groups comprising of prominent public men, senior administrators, Police Officers and eminent academicians were set up. Various seminars were held, research studies were conducted, meetings and discussions were held with the Governors, Chief Ministers, Inspector-Generals of Police, and Heads of Police organizations. The Commission submitted its first report in February 1979, second in August 1979, three reports each in the years 1980 and 1981 including the final report in May 1981. When the

recommendations of National Police Commission were not implemented, for whatever reasons or compulsions, and they met the same fate as the recommendations of many other Commissions, two public spirited former officers of Indian Police Service, and a social organization, known as Common cause, invoked extraordinary jurisdiction of the Hon'ble Supreme Court under Article 32 of the Constitution of India, inter alia, praying for issuance of directions to Government of India to frame a new Police Act on the lines of the model Act drafted by the Commission to ensure that the police is made accountable essentially and primarily to the law of the land and the people. Besides hearing Union of India, the State Governments and Union Territories, Hon'ble Apex Court also examined the report submitted to the Government of India by National Police Commission (1977-81), reports of various other high powered Committees and Commissions on the issue of police reforms, viz. (i) National Human Rights Commission (ii) Law Commission (iii) Ribeiro Committee (iv) Padmanabhaiah Committee and (v) Malimath Committee on Reforms of Criminal Justice System, as also that of Sorabjee Committee which was constituted by Government of India in terms of Office Memorandum dated 20th September, 2005 and vide judgment dated September 22, 2006 (reported as Prakash Singh and Others Vs. Union of India (UOI) and Ors, (2007) 103 CLT 69 : (2006) 12 JT 225 : (2006) 9 SCALE 444 : (2006) 8 SCC 1 : (2006) 6 SCR 473 Supp , inter alia, mandated that:

"There shall be a Police Complaints Authority at the district level to look into complaints against police officers of and up to the rank of Deputy Superintendent of Police. Similarly, there should be another Police Complaints Authority at the State level to look into complaints against officers of the rank of Superintendent of Police and above. The district level Authority may be headed by a retired District Judge while the State level Authority may be headed by a retired Judge of the High Court/Supreme Court. The head of the State level Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice; the head of the district level Complaints Authority may also be chosen out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him. These Authorities may be assisted by three to five members depending upon the volume of complaints in different States/districts, and they shall be selected by the State Government from a panel prepared by the State Human Rights Commission/Lok Ayukta/State Public Service Commission. The panel may include members from amongst retired civil servants, police officers or officers from any other department, or from the civil society. They would work whole time for the Authority and would have to be suitably remunerated for the services rendered by them. The Authority may also need the services of regular staff to conduct field inquiries. For this purpose, they may utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organization. The State level Complaints Authority would take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in

police custody. The district level Complaints Authority would, apart from above cases, may also inquire into allegations of extortion, land/house grabbing or any incident involving serious abuse of authority. The recommendations of the Complaints Authority, both at the district and State levels, for any action, departmental or criminal, against a delinquent police officer shall be binding on the concerned authority."

2. In pursuance of the afore-stated directions issued by the highest Court of the land, Government of India, Ministry of Home Affairs issued a circular letter dated March 23, 2010 (Annexure P1) and thereby conveyed the decision of the Government of India to set up Police Complaints Authority (for short, "the Authority") at Union Territory level. The circular letter also contained composition of the Authority, terms and conditions of appointment of Chairperson and Members of the Authority and powers and functions of the Authority. As regards composition of the Authority for Union Territory, Chandigarh (for short, "UTC"), the circular letter (Annexure P1) stated as under:

"The Police Complaints Authority will comprise of the Chairperson and two Members. The Chairperson may be from the category (i) below and the Members may be drawn from amongst any of the remaining categories and one of the Members should be a woman:

- (i) A retired High Court/District Judge or retired Civil Service Officer of the rank of Secretary;
- (ii) A person having 10 years of experience in law, either as a Judicial Officer, Public Prosecutor, Lawyer, or Professor of Law;
- (iii) A person of repute and stature from civil society;
- (iv) A retired officer with experience in Public Administration; and
- (v) A retired Police Officer of appropriate rank."

3. In pursuance of circular letter dated March 23, 2010 (Annexure P1), vide notification dated November 08, 2013 (Annexure P3), UTC Administration constituted the Authority comprising of the following:

4. Petitioners herein seek issuance of a Writ of Certiorari quashing circular letter dated March 23, 2010 (Annexure P1) to the extent it envisages appointment of a Civil Service Officer of the rank of Secretary as, and fixing salary of, Chairperson of the Authority to a maximum of Rs. 4.80 lacs per annum; and notification dated November 08, 2013 (Annexure P3) appointing respondent No. 4, Shri Pradip Mehra, IAS (Retd.) as Chairman of the Authority, these being contrary to the directions of the Hon'ble Supreme Court of India as contained in Prakash Singh & Ors. versus Union of India and Ors. (supra).

5. Union of India (Respondent No. 1), in the counter filed on its behalf, has chosen not to address the issues raised in the writ petition and has attempted to defend its action by saying that it was done so in view of size of the police force

of the UTC and the Authority is achieving the purpose as contemplated by the Hon''ble Supreme Court of India in *Prakash Singh & Ors. versus Union of India and Ors. (supra)* in so far as it has disposed of 421 complaints out of the total 470 complaints received in the year 2010.

6. UTC Administration, in its separate response, has come out with a very queer and unacceptable stand. According to it, directions of the Hon''ble Supreme Court of India in *Prakash Singh & Ors. versus Union of India and Ors. (supra)* are not mandatory and are only directory in nature. In addition to the written response, UTC Administration has also placed on record affidavit of Shri Anil Kumar, Home Secretary, UTC Administration wherein appointment of respondent No. 4 is sought to be justified by saying that before appointing Shri Pradip Mehra, IAS (Retd.) as Chairman of the Authority, a retired Judge of the Hon''ble Supreme Court of India and a retired Chief Justice of Allahabad High Court were approached but they did not consent to the proposed assignment and, in the situation, Shri Pradip Mehra, IAS (Retd.), who had been Chief Secretary to Government of Pondicherry, Joint Secretary to Government of India, Secretary to Lieutenant Governor of Delhi, Chairman, Chandigarh Housing Board and Advisor to Administrator, Union Territory, Chandigarh, was appointed as Chairman of the Authority.

7. Respondent No. 4, however, has chosen not to appear despite service.

8. We have heard the petitioner and learned counsel representing the respondents.

9. While it is argued by the petitioner that circular letter dated March 23, 2010 (Annexure P1) and appointment of respondent No. 4 as Chairman of the Authority vide notification dated November 08, 2013 (Annexure P3) are contrary to the directions of the Hon''ble Supreme Court of India as contained in *Prakash Singh & Ors. versus Union of India and Ors. (supra)*, learned counsel appearing for the respondents have defended their action by submitting that respondent No. 4 has very vast experience of administrative affairs and the directions of the Hon''ble Supreme Court of India as contained in *Prakash Singh & Ors. versus Union of India and Ors. (supra)*, are not mandatory.

10. Before proceeding further it needs to be emphasized that argument advanced on behalf of the respondents that the directions issued by the Hon''ble Supreme Court of India in *Prakash Singh & Ors. versus Union of India and Ors. (supra)*, are not mandatory, is patently fallacious, meritless and misconceived and, therefore, cannot be countenanced. The term "May" used in paragraph 32(6) of the judgment cannot be read to mean that the directions of the Hon''ble Supreme Court are advisory or directory. The word "may" has to be read as "shall" and the directions have to be taken as mandatory. In paragraph (31) of the judgment it has been clearly stated that the directions are issued to "the Central Government, State Governments and Union Territories for compliance till framing of the appropriate legislations". Even otherwise, tenor of the judgment

leaves nothing to guess as regards the mandatory nature of the directions. Having said that, let's reiterate that the Hon'ble Apex Court's direction is that the District Level Authority may be headed by a retired District Judge while the State Level Authority may be headed by a retired Judge of the High Court/Supreme Court. The head of the State Level Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice; and the head of the District Level Complaints Authority may also be chosen out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him. Surprisingly, firstly the Union Government, while issuing circular letter dated March 23, 2010 (Annexure P1) effaced the effect of the directions of the Hon'ble Supreme Court by adding the words "or retired Civil Service Officer of the rank of Secretary" after the words "A retired High Court/District Judge" in category (i) of the persons eligible for appointment as Chairperson of the Authority and by obliterating the requirement that head of the State level Complaints Authority is to be chosen out of a panel of names proposed by the Chief Justice of the High Court and the head of the district level Complaints Authority has also to be chosen out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him, and then UTC Administration, instead of soliciting recommendation/proposal from the Chief Justice of this Court, offered the assignment to a retired Judge of the Hon'ble Supreme Court of India and a retired Chief Justice of Allahabad High Court in a clandestine manner in full knowledge of the fact that they would, in all probability, decline the offer in view of their status and emoluments (Rs. 3500/- per sitting subject to a maximum of Rs. 4.80 lacs per annum) offered by the UTC. We smell a rat in the attempt of the respondents in bypassing the Hon'ble Chief Justice in the matter of selection of the Chairperson of the Authority and, instead seeking proposals from the Inspector General of Police, and Deputy Commissioner and then offering the post to respondent No. 4 whose name was not there in the panel of names suggested by Inspector General of Police and Deputy Commissioner.

11. It may be apposite to state here that the Authority is not expected to work as a post office meant to receive the complaints from the public and transmit the same to the Officer heading the police force. Instead, the circular letter dated March 23, 2010 (Annexure P1) and Clause (3) of notification dated November 08, 2013 (Annexure P3) require that the Authority shall inquire into allegations of serious misconduct against police personnel, i.e. death in police custody, grievous hurt, rape or attempt to commit rape, arrest or detention without due process of law, extortion, land/house grabbing or incidents of serious abuse of authority; and empower the Authority to require any person or authority to furnish required information, ask the Officer heading the police force in the UTC to present department's view on the complaint and additional facts, if any. The Authority is then obliged to hold an inquiry and communicate the findings of enquiry to the Officer heading the police force in the UTC. The findings recorded by the Authority may lead to registration of a First Information Report and/or

initiation of departmental proceedings against the police official/officer complained against. Needless to state that during the course of inquiry, the Authority is expected to receive and appreciate evidence and before recommending registration of First Information Report and/or initiation of departmental proceedings against a police official/officer concerned, to find out whether the allegations carry substance. When a complaint is filed before the Authority alleging that a police personnel is guilty of causing someone's death in police custody, grievous hurt, rape or attempt to commit rape, arrest or detention without due process of law, extortion, land/house grabbing or incidents of serious abuse of authority, there are two parties before the Authority: the complainant and the police official/officer complained against. They are necessarily placed in an adversarial position before the Authority. In the course of the pendency of such complaint and consequent inquiry, the Authority might be called upon to take a decision on several issues. The decision that the Authority takes on these issues cannot be termed as discharge of a purely investigative or administrative function. We are of the view that role of the Authority, in such a situation, is adjudicatory or say quasi judicial in nature. The inquiry to be conducted by the Authority, though is confined to the facts disclosed by the complainant, but the questions of law raised during the inquiry, such as admissibility of evidence, production of documents, or the claim of privilege or secrecy, have to be disposed of during the course of inquiry, besides finding out what provision of law, if any, is contravened or breached by the police official/officer complained against. Recommendations of the Authority, as held by the Hon'ble Supreme Court in *Prakash Singh & Ors. versus Union of India and Ors.* (supra), are binding on the concerned authority and may lead to launching of criminal and/or disciplinary proceedings against the police official/officer complained against. Such functions involving adjudication and arrival at certain conclusions for the purpose of imposing a decision which result in serious consequences affecting service career of the police official/officer complained against and rights of the citizens against police excesses of serious nature, cannot be treated as merely executive functions but are essentially adjudicatory or say quasi-judicial functions. It is apposite in this context to refer to the classic work of Wade on Administrative Law (Eighth Edition) at page 484. It reads as under:

"The leading speech of Lord Reid in *Ridge v. Baldwin* is of the greatest significance because of its extensive review of the authorities, which inevitably exposed the fallacies into which the decisions of the 1950s had lapsed. He attacked the problem at its root by demonstrating how the term "judicial" had been misinterpreted as requiring some super added characteristic over and above the characteristic that the power affected some person's rights. The mere fact that the power affects rights or interests is what wakes it "judicial", and so subject to the procedures required by natural justice, in other words, a power which affects rights must be exercised "judicially", i.e. fairly, and the fact that the power is administrative does not make it any the less "judicial" for this

purpose."

12. Reference is made by Wade in that context to the following statement of Lord Hodson in *Ridge v. Baldwin*, (1964) AC 40 at page 130:

".....the answer in a given case is not provided by the statement that the giver of the decision is acting in an executive or administrative capacity as if that was the antithesis of a judicial capacity. The cases seem to me to show that persons acting in a capacity which is not on the face of it judicial but rather executive or administrative have been held by the courts to be subject to the principles of natural justice."

13. In *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunhunwala and Others*, AIR 1961 SC 1669 : (1961) 31 CompCas 387 : (1962) 2 SCR 339 , it is observed as under:

"...By "courts" is meant courts of civil judicature and by "tribunals", those bodies of men who are appointed to decide controversies arising under certain special laws. Among the powers of the State is included the power to decide such controversies. This is undoubtedly one of the attributes of the State, and is aptly called the judicial power of the State. In the exercise of this power, a clear division is thus noticeable. Broadly speaking, certain special matters go before tribunals, and the residue goes before the ordinary courts of civil judicature. Their procedures may differ but the functions are not essentially different. What distinguishes them has never been successfully established. Lord Stamp said that the real distinction is that the courts have "an air of detachment". But this is more a matter of age and tradition and is not of the essence. Many tribunals, in recent years, have acquitted themselves so well and with such detachment as to make this test insufficient."

Again in para 99, it is observed as follows:

"99. Where there is a lis an affirmation by one party and denial by another - and the dispute necessarily involves a decision on the rights and obligations of the parties to it and the authority is called upon to decide it, there is an exercise of judicial power. That authority is called a Tribunal, if it does not have all the trappings of a Court. In *Associated Cement Companies Ltd. v. P.N. Sharma* this Court said: (SCR pp. 386-87)

"...The main and the basic test however, is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function. Applying this test, there can be no doubt that the power which the State Government exercises under Rule 6(5) and Rule 6(6) is a part of the State's judicial power.... There is, in that sense, a lis; there is affirmation by one party and denial by another, and the dispute necessarily involves the rights and obligations of the parties to it. The order which the State Government ultimately passes is described as its decision and it is made final

and binding."

14. Hon"ble Supreme Court in the case of State of Himachal Pradesh & Ors. v. Raja Mahendra Pal & Anr., 1995 Supp (2) SCC 731, has held that the expression "quasi judicial" has been termed to be one which stands midway a judicial and an administrative function. If the authority has any express statutory duty to act judicially in arriving at the decision in question, it would be deemed to be quasi-judicial. Where the function to determine a dispute is exercised by virtue of an executive discretion rather than the application of law, it is a quasi-judicial function. A quasi-judicial act requires that a decision is to be given not arbitrarily or in mere discretion of the authority but according to the facts and circumstances of the case as determined upon an inquiry held by the authority after giving an opportunity to the affected parties of being heard or wherever necessary of leading evidence in support of their respective contentions. To discharge such functions experience in adjudicatory process and expertise in human rights, criminal law, and sound ideas of due process of law, in our well thought opinion, are necessary and this seems to be the reason that impelled the Hon"ble Supreme Court to insist that the Authority should be headed by a retired Judge of the High Court in case of State level Authority and a retired District Judge in case of District level Authority. Even the National Police Commission recommended a judicial inquiry by a Judicial Officer of the rank of Additional Sessions Judge, at least in cases involving alleged rape of a woman in police custody; death or grievous hurt caused while in police custody; and death of two or more persons resulting from police firing in the dispersal of unlawful assemblies.

15. National Human Rights Commission constituted under the Protection of Human Rights Act, 1993, has a retired Chief Justice of the Hon"ble Supreme Court as Chairperson and a retired Judge of the Hon"ble Supreme Court and a retired Chief Justice of the High Court as members in addition to two members having knowledge or practical experience in matters relating to human rights. Similarly, a State Human Rights Commission has a retired Chief Justice of the High Court as Chairperson and a retired judge of the High Court or a retired District Judge having at least seven years experience as a member in addition to one member having knowledge or practical experience in matters relating to human rights. The commissions constituted under the Protection of Human Rights Act, 1993 have only recommendatory jurisdiction but appointment of retired judge is insisted upon because the Commissions are required to inquire into violation of human rights. Functions of Police Complaints Authority, to some extent, are akin to the functions of such Commissions and, in addition, recommendations of such Authority, unlike those of the Commissions under the Protection of Human Rights Act, 1993, are binding on the head of police force.

16. Though integrity and credibility of retired Officers of Civil Services or Police force cannot be doubted and we are also conscious of the fact Police Complaints Authorities cannot succeed without the expertise and cooperation of serving

police and government officers but we are of firm view that they should not be included as adjudicating members of the Authority because their inclusion in the adjudicatory process would defeat the very purpose of constitution of such Authorities as such officers do not possess the acumen and expertise expected of an adjudicatory body and public perception of the Police Complaints Authority being an independent body, immune to police and executive influences, can be maintained only if the Authority has its leader from an organization/institution detached from the executive, including the police.

17. It may not be out of place to point out here that Shri Pradip Mehra, IAS (Retd.) (Respondent No. 4) though described as a distinguished civil servant but there are no materials available on record to indicate that he holds any qualification in law and experience in judicial processes. Astonishingly, his name does not find mention in the list of the names nominated for the post of Chairperson of the Authority. How the choice fell upon him is an enigma which has remained unresolved.

18. In view of the above, Circular letter dated March 23, 2010 (Annexure P1), to the extent it envisages the appointment of a Civil Service Officer of the rank of Secretary as regards Union Territory of Chandigarh and notification dated November 08, 2013 (Annexure P3) appointing respondent No. 4, Shri Pradip Mehra, IAS (Retd.) as Chairman of the Authority, cannot be allowed to sustain and are hereby quashed.

19. As regards part of Circular letter dated March 23, 2010 (Annexure P1) pertaining to emoluments payable to the Chairperson of the Authority we leave it to the official respondents to delve into the matter, seek help from the statutes providing for appointment of retired Judges of High Court and retired District Judges in various Commissions/Tribunals and take a decision as regards the emoluments payable to the Chairperson of the State level and District level Authority.

20. The writ petition is disposed of in the afore-stated terms.