
(1987) 04 GUJ CK 0007
In the Gujarat High Court

J.V. Puwar and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 24-04-1987

Acts Referred:

Citation : (1987) 2 GLR 956 : (1988) 1 LLJ 311

Hon'ble Judges : R.A. Mehta, J

Bench : Single Bench

Judgement

R.A. Mehta, J.—These three police officers of different ranks have challenged their orders of suspension. Since they arise out of same common incident, they were argued and heard together and they are being disposed of by this common judgment.

2. The petitioner J.V. Puwar (Speial Civil Application No. 292 of 1987) was the Dy. Superintendent of Police (Sub-Divisional Police Officer), the petitioner B.C. Joshi (Special Civil Application No. 451 of 1987) was Police Sub-Inspector and petitioner B.J. Parmar (Special Civil Application No. 551 of 1987) was Police Inspector at Rajpipla. There was an incident in which it is alleged that some police constables committed a rape on a tribal woman and there was serious lapse in recording and investigating the complaint and ultimately under the orders of the Supreme Court, investigation had to be entrusted to C.B.I. The Supreme Court had also appointed a Commission to inquire into and report about the incident and the investigation and that Commission had made a bulky report to the Supreme Court and from the findings of the Commission it appears that these three police officers had not properly investigated and performed their duties and had tried to cover up and protect the police constables who are alleged to have committed rape on the tribal woman.

As a result of the above, the petitioners were transferred and thereafter suspended and these suspension orders are challenged.

3. The petitioner in Special Civil Application No. 292 of 1987 who was Sub-

Divisional Police Officer, Rajpipla at the relevant time in January 1986 was transferred on 11th June 1986 and has been suspended on 30th January 1987. He has submitted that he has about 40 years of service and he is due to retire in June, 1987 and when he was already transferred to Junagadh in June 1986, there was no justification for suspending him in January 1987. He has submitted that he had supervised the investigation and carried out his duties properly and there was no reason whatsoever for suspending him.

4. The petitioner Joshi in Special Civil Application No. 451 of 1987 has submitted that he was supervising several police stations at the relevant time in January 1986 including the police station where the complaint was to be investigated. He has been transferred in January 1986 itself to Amod Police Station in Bharuch District and thereafter Baroda in August 1986 and suspended in February, 1987. He has submitted that he has years of service to his credit.

5. In Special Civil Application No. 551 of 1987, the petitioner Parmar has submitted that he has been transferred in May 1986 to Ahmedabad and suspended in January 1987. He has years of service to his credit.

6. Reliance is mainly placed on the judgment reported in J.S. Solanki v. Principal Chief Conservator of Forests 1986 (1) 27 (1) GLR 41 and it is submitted that transfer and suspension both can be resorted to only in rarest of rare cases and in the present case, there were no facts justifying suspension of the petitioners.

7. In the affidavit-in-reply, it is submitted that in the matter of offence of rape on tribal woman, the Supreme Court had to take direct cognizance and certain glaring and shocking facts came to light. The Supreme Court had directed that investigation be immediately handed over to C.B.I, and also directed that a Commission be appointed to investigate into the allegations of misdeeds of officers including the petitioners. From the findings of the Commission, it appeared that these petitioners were responsible for conducting investigation on the line of B-Summary i.e. maliciously false prosecution basing the same upon the affidavits of the complainant tribal woman herself and her husband and not going deep into the matter. It is highly unusual that while investigating a complaint of rape, the complainant, an illiterate tribal woman, and her husband themselves make affidavits contrary to the complaint given by them, to the police officers. This by itself shows that the investigation was not properly done and was directed to see that the police constables were protected from prosecution. These petitioners are, therefore, alleged to have made conspiracy to see that the police constables are saved from being prosecuted. The affidavit-in-reply shows that after the report of the Commission and on the basis of the record, the petitioners were directed to be placed under suspension. If the allegations against these petitioners are true (at this stage, the Court is not required to decide about the correctness of these allegations and that might prejudice the petitioners in future proceedings against them) they would certainly attract major punishment. However, there is prima facie material to satisfy the competent authority to take an administrative decision against the

petitioners. The petitioners are alleged to have abused their official position and tried to improperly save the police constables accused of very heinous crime of mass rape on a tribal woman. It was the duty of these petitioners to make a proper investigation and take proceedings in accordance with law. However, the course of investigation adopted by these petitioners prima facie shows that the investigation was only with one view of saving the police constables accused. Otherwise, the affidavits of the complainant and husband would not have been obtained in this manner. The fact that the Supreme Court had to direct the C.B.I. to take over the investigation prima facie shows that the agency of these petitioners for investigation could not be trusted.

8. In these facts and circumstances, the petitioners had to be transferred immediately from the place where they were working because their continuing in the same place was likely to result into prejudice to the future course of investigation. However, that does not prevent the competent authority from taking a subsequent decision about suspension if the facts of the case so require. One of the considerations for suspension is that if the misconduct is proved, it would result into a major punishment and other consideration is that continuing the delinquent on duty would be against public interest and would afford an opportunity to the delinquent to indulge into similar acts again. When the allegation is regarding abuse of office and power, such misconduct is very likely to be committed by the delinquents wherever they may be on duty and office. Therefore, it cannot be said that this is not a case where both these powers cannot be exercised.

9. As a result of the Division Bench judgment, the State Government has issued a Circular laying down guidelines that while the power to suspend and transfer a delinquent vests in the State Government or competent authorities, such powers should be exercised with care and caution and very sparingly in cases only necessarily depending upon the exigencies of the situation. Therefore, it is not correct to say that transfer and suspension are to be imposed in only rarest of the rare cases. Possibility of indulging into similar activities elsewhere is one of the considerations where even after transfer, suspension is intended as per the guidelines and even as per the judgment of the Division Bench. A Government servant who is alleged to be corrupt cannot be trusted in service and must be suspended. A police officer who has abused his position and office cannot be trusted and hence he also must be suspended, and he cannot be trusted to discharge his duties anywhere,

10. In view of the aforesaid discussion about the prima facie case against the petitioners and justification of their suspension even after transfers, there is no merit in these petitions and all these three petitions are summarily dismissed. Notice discharged.