
(2014) 10 RAJ CK 0033

In the Rajasthan High Court

Case No : Civil Writ Petition (PIL) No. 3758/2013

Mahendra Shandilya

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Citation : (2015) 1 WLN 67

Hon'ble Judges : Sunil Ambwani, Acting C.J.;Veerender Singh Siradhana, J

Bench : Division Bench

Advocate : Vishal Sharma, Advocate on behalf of N.M. Lodha, Advocate General, Advocates for the Respondent

Judgement

1. We have heard the Counsel appearing in person. Shri Vishal Sharma appears for the State-respondents. On 07.03.2013, this Court took notice of the pleadings in respect of the happenings on 6th & 7th March, 2013, in which the police personnels are alleged to have attacked a peaceful procession of lawyers, proceedings towards State Legislative Assembly, with an object of giving a memorandum to the Speaker of the House with regard to the demands of the Advocates for allotting land in a colony, and for releasing the Advocate Welfare Fund. The lawyers were subjected to lathi charge by the police. On the next day, the police personnels, without any provocation, fired 150 tear gas shells in the District Court premises at Jaipur.

2. It is submitted that in these extraordinary circumstances, this writ petition was filed for a direction to appoint a Judicial Enquiry Commission, to enquire into the incident of lathi charge, and firing of tear gas shells on the lawyers in the Court campus, and to give necessary instructions to the police for taking appropriate steps, so as to ensure that no further untoward incident happens, and the law and order is maintained.

3. On 07.03.2013, this Court, after taking notice of the pleadings, directed the respondent Nos. 3 and 4 to take all necessary steps to ensure that no further

untoward incident happens, and that law and order is maintained. The respondents were also directed to secure proper and necessary medical treatment to the injured, who were taking treatment in the SMS Medical Hospital, and other hospitals in Jaipur.

4. This Court also took notice of the fact, that the campus of the Court of Jaipur Metropolitan was cordoned by the police, amongst others, to prevent ingress and egress of the members of the Bar. They were directed to ensure that there is no impediment for members of the Bar to enter the Court compound.

5. On the next date i.e. 08.03.2013, taking assistance of the then Advocate General, the Division Bench, in order to prevent any further agitation, issued certain directions, on which the Commissioner of Police, and other officers, who were blamed of causing assault on the lawyers without provocation, were transferred.

6. The compliance report was filed by the respondents, in which it was reported that the direction No. 2 issued by the Court, has been complied with, and that the State Government in compliance of the direction No. 3, issued directions to all the District Superintendent of Police, Police Commissioner, Jaipur and Jodhpur, and all Inspector General of Police (Ranges) to ensure compliance of the direction. In respect of direction No. 5, it was stated that necessary directions have been issued, as mentioned in the wireless message dt. 10.03.2013. The direction No. 6 was also complied with, with instructions to the Principal Secretary, Department of Medical Education as well as Principal Secretary, Department of Medical & Health, and for direction No. 7 also, necessary wireless message was sent on 10.03.2013. So far as remaining directions, namely direction Nos. 1 and 8 are concerned, it was stated that these are not related to respondent Nos. 3 and 4.

7. The matter was not listed thereafter, nor any reply, or rejoinder-reply has been filed. No further material has been brought on record, to either establish the pleadings, or to place on record any subsequent developments with regard to the incident and the injuries caused to the lawyers. There is no proof on record of all the allegations made in the pleadings regarding police excesses, on the date when the incident is reported to have happened.

8. We are informed that so far as direction No. 1 is concerned, no steps were taken by the then Hon"ble Chief Justice to hold a judicial enquiry by a sitting Judge or any officer of the Court, to be nominated, or decided by the Hon"ble Chief Justice. The petitioner also did not make any request thereafter to constitute a Judicial Enquiry Commission, or any other officer of the Court to enquire into the incidents.

9. The matter thereafter came up after more than 1-1/2 years on 15.09.2014, and on that day, an order was passed by this Court as follows:--

"Petitioner, appearing in person, prays for and is allowed two weeks" time to file

rejoinder-reply.

List for hearing on 14.10.2014, as a first case.

In this matter, considering the urgency which had arisen to entertain the Division Bench Civil Writ Petition, as public interest litigation, the Division Bench of this Court, has, on 08.03.2013, passed an order, which has far reaching effects. These directions are quoted as follows:--

"(1) A Judicial Enquiry into the incidents of 6th and 7th March, 2013 which form the subject matter of the instant writ petition be made, if admissible, by a sitting Judge of this Court or otherwise to be nominated/decided by the Chief Justice. The Committee is requested to submit its report within a fortnight from today.

(2) In order to facilitate proper and impartial enquiry, the respondents No. 5 & 6, in particular, may be shifted, if needed, from the present place of posting. Further orders in their regard, as deemed necessary would be passed on the receipt of the report.

(3) Henceforth, no police personnel would enter the precincts of a Court of the District Judiciary for any operation of the type involved in the incidents without the prior permission of the District Judge concerned or the judicial officer incharge of the particular station.

(4) Committees at the district level would be constituted comprised of the District Judge, the Chairman of the Bar Council of Rajasthan and/or his nominee, President of the Bar, and the Collector or Superintendent of Police, as the case may be. These Committees would henceforth assess and monitor all situations, involving the members of the Bar and take appropriate steps in advance to avoid the occurrence thereof.

(5) The State Government would take all necessary steps to ensure that the law and order in the State is maintained on the issue and the access of the learned members of the Bar and the litigants to the Court premises and otherwise, is not hindered in any way.

(6) The State Government would also take appropriate steps to ensure that appropriate medical treatment is provided to the injured, who are presently taking treatment in the various hospitals in the City.

(7) Both the sides would maintain restraint and calm to ensure that no untoward incident, bearing on the law and order and causing inconvenience to the members of the public and the litigants, in particular, occurs.

(8) As has been expressed on behalf of the members of the Bar, the office bearers of the concerned Bar Councils and the Bars would actively reconsider their decision of continuing with the strike vis-?-vis their demands in the face of the above directions as well as the supervening public interest, more particularly, the interest of the litigant masses."

We have gone through the directions issued by the Division Bench on 08.03.2013. Eight directions were issued to meet the crisis on 08.03.2013, and in which, upon hearing the members of the Bar and the learned Advocate General and on a consideration of the facts and circumstances and the material available on that date, a judicial enquiry was directed into the incidents of 6th and 7th March, 2013, by a sitting Judge of this Court, and during pendency of the judicial enquiry, the respondent Nos. 5 and 6, in particular, were requested to be shifted, vide directions Nos. 1 and 2. There is no reference to appointment of any Hon''ble Judge for holding judicial enquiry on record.

The direction No. 3 was regarding entry of police personnel in the precincts of a Court of the District Judiciary for any operation of the type involved in the incidents without prior permission of the District Judge concerned, or the judicial officer, in-charge of the particular station, does not need any reiteration as the entry of the police in any Court, is to be restricted on the request or permission given by a Hon''ble Judge, or any officer, in-charge of the Court administration in the High Court, or subordinate Courts, as the case may be.

The direction No. 4 related to constitution of committees at the district level, to monitor the situation involving the members of the Bar and take appropriate steps in advance to avoid the occurrence thereof. This direction is also innocuous and was issued to resolve any situation and to maintain the law and order.

The direction Nos. 5, 6 and 7 are general in nature, given by the Court to maintain the law and order situation in the State, which sometimes arises and for which, the responsibility of the State Government cannot be denied.

The direction No. 8 related to agitation of the Lawyers, which, by this time, has lost its significance.

In view of the above, we find that apart from directions Nos. 3 and 4, no other direction requires to remain in force.

Considering the special facts and circumstances of the case, we direct that henceforth only direction Nos. 3 and 4, would remain in force. The direction Nos. 5, 6 and 7 do not require any reiteration at all. The other directions would remain suspended until final hearing of the writ petition."

10. After filing the writ petition both, the petitioner as well as the respondents, have not taken any interest in the matter. They have not brought on record sufficient materials, to either prove or disprove the allegations. The petitioner has also not filed any rejoinder reply to the compliance report. The incident has neither been enquired, nor any effort has been made to make any investigation to find out the persons who may have acted negligently or beyond their authority. Admittedly, no care was taken by either side to either establish the allegations of police excesses on the lawyers, nor any further material has been brought on record to add weight to the allegations. Both the petitioner and the respondents have thought it proper not to proceed further in the matter.

11. The incidents of the nature, as alleged in the pleadings, should be enquired into to ascertain the circumstances, and to take remedial steps, so that in future such incidents may be avoided. Though the respondent Nos. 5 and 6 were shifted, since allegations against them were not proved, we find it necessary to make an observation that the compliance of the orders passed by this Court for shifting the respondent Nos. 5 and 6, shall not be taken by the State Government to be adverse against them. The order dt. 08.03.2013 shall not be treated to be adverse for having any consequence against them in their service record, or otherwise.

12. It was reported that lawyers had suffered injuries in the incident. The injury reports however have not been brought on record, nor the affidavit of any lawyer who had suffered such injury, has been filed, to prove the allegations.

13. We find it appropriate to reiterate that directions Nos. 3 and 4, were not only necessary to have been passed on 08.03.2013, these directions must be complied with, so that no such incident happens in future, where police may enter the Court premises without permission of the District Judge, or Officer-in-charge of the particular station. The committees at district level to assess and monitor such situation, will also be helpful in avoiding any incident to take place in future.

14. In the aforesaid facts and circumstances, we do not find any need of compliance of any direction except directions Nos. 3 and 4. The rest of the directions are discharged. The writ petition is accordingly disposed of.