

(2006) 09 SC CK 0119

In the Supreme Court Of India

Case No : Writ Petition (C) No. 310 of 1996

Prakash Singh and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-09-2006

Acts Referred:

Constitution of India, 1950 — Article 142, 144, 32, 355

Citation : (2006) 3 ACR 3061 : (2007) 103 CLT 69 : (2008) 1 JCR 113 : (2006) 12 JT 225 : (2006) 4 KLT 482 : (2007) 1 OLR 243 : (2006) 4 PLJR 186 : (2006) 9 SCALE 444 : (2006) 8 SCC 1 : (2006) 6 SCR 473 Supp

Hon'ble Judges : Y. K. Sabharwal, C.J.; P. K. Balasubramanyan, J.; C. K. Thakker, J

Bench : Full Bench

Advocate : Prasanth Bhushan and Ors, for the Appellant; Anis Suhrawardy and Ors., for the Respondent

Final Decision : Allowed

Judgement

Y.K. Sabharwal, C.J.—Considering the far reaching changes that had taken place in the country after the enactment of the Indian Police Act, 1861 and absence of any comprehensive review at the national level of the police system after independence despite radical changes in the political, social and economic situation in the country, the Government of India, on 15th November, 1977, appointed a National Police Commission (hereinafter referred to as 'the Commission'). The commission was appointed for fresh 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 enshrined in the Constitution.

2. The terms and reference of the Commission were wide ranging. The terms of reference, inter alia, required the Commission to redefine the role, duties, powers and responsibilities of the police with special referenced prevention and control of crime and maintenance of public order, evaluate the performance of the system, identify the basic weaknesses or inadequacies, examine if any changes necessary in the method of administration, disciplinary control and

accountability, inquire into the system of investigation and prosecution, the reasons for delay and failure and suggest how the system may be modified or changed and made efficient, scientific and consistent with human dignity, examine the nature and extent of the special responsibilities of the police towards the weaker sections of the community and suggest steps and to ensure prompt action on their complaints for the safeguard of their rights and interests. The Commission was required to recommend measures and institutional arrangements to prevent misuse of powers by the police, by administrative or executive instructions, political or other pressures or oral orders of any type, which are contrary to law, for the quick and impartial inquiry of public complaints made against the police about any misuse of police powers. The Chairman of the Commission was a renowned and highly reputed former Governor. Aretired High Court Judge, two former Inspector Generals of Police and a Professor of TATA Institute of Special Sciences were members with the Director, CBI as a full time Member Secretary.

3. The Commission examined all issues in depth, in 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 held, research studies conducted, meetings and discussions held with the Governors, Chief Ministers, Inspector Generals of Police, State 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.

4. In its first report, the Commission first dealt with the modalities for inquiry into complaints of police misconduct in a manner which will carry credibility and satisfaction to the public regarding their fairness and impartiality and rectification of serious deficiencies which militate against their functioning efficiently to public satisfaction and advised the Government for expeditious examination of recommendations for immediate implementation. The Commission observed that increasing crime, rising population, growing pressure of living accommodation, particularly, in urban areas, violent outbursts in the wake of demonstrations and agitations arising from labour disputes, the agrarian unrest, problems and difficulties of students, political activities including the cult of extremists, enforcement of economic and social legislation etc. have all added new dimensions to police tasks in the country and tended to bring the police in confrontation with the public much more frequently than ever before. The basic and fundamental problem regarding police taken note of was as to how to make them functional as an efficient and impartial law enforcement agency fully motivated and guided by the objectives of service to the public at large, upholding the constitutional rights and liberty of the people. Various recommendations were made.

5. In the second report, it was noticed that the crux of the police reform is to secure professional independence for the police to function truly and efficiently as an impartial agent of the law of the land and, at the same time, to enable the Government to oversee the police performance to ensure its conformity to the law. A supervisory mechanism without scope for illegal, irregular or mala fide interference with police functions has to be devised. It was earnestly hoped that the Government would examine and publish the report expeditiously so that the process for implementation of various recommendations made therein could start right away. The report, inter alia, noticed the phenomenon of frequent and indiscriminate transfers ordered on political considerations as also other unhealthy influences and pressures brought to bear on police and, inter alia, recommended for the Chief of Police in a State, statutory tenure of office by including it in a specific provision in the Police Act itself and also recommended the preparation of a panel of IPS Officers for posting as Chiefs of Police in States. The report also recommended the constitution of Statutory Commission in each State the function of which shall include laying down broad policy guidelines and directions for the performance of preventive task and service oriented functions by the police and also 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.

6. With the 8th and final report, certain basic reforms for the effective functioning of the police to enable it to promote the dynamic role of law and to render impartial service to the people were recommended and a draft new Police Act incorporating the recommendations was annexed as an appendix.

7. 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, this petition under Article 32 of the Constitution of India was filed about 10 years back, inter alia, praying for issue of directions to Government of India to frame a new Police Act on the lines of the model Act drafted by the Commission in order to ensure that the police is made accountable essentially and primarily to the law of the land and the people. The first writ Petitioner is known for his outstanding contribution as a Police Officer and in recognition of his outstanding contribution, he was awarded the "Padma Shri" in 1991. He is a retired officer of Indian Police Service and served in various States for three and a half decades. He was Director General of Police of Assam and Uttar Pradesh besides the Border Security Force. The second Petitioner also held various high positions in police. The third Petitioner - Common cause is an organization which has brought before this Court and High Courts various issues of public interest. The first two Petitioners have personal knowledge of the working of the police and also problems of the people. It has been averred in the petition that the violation of fundamental and human rights of the citizens are generally in the nature of non-enforcement and discriminatory application of the laws so that those having clout are not held accountable even

for blatant violations of laws and, in any case, not brought to justice for the direct violations of the rights of citizens in the form of unauthorized detentions, torture, harassment, fabrication of evidence, malicious prosecutions etc. The petition sets out certain glaring examples of police inaction. According to the Petitioners, the present distortions and aberrations in the functioning of the police have their roots in the Police Act of 1861, structure and organization of police having basically remained unchanged all these years.

8. The petition sets out the historical background giving reasons why the police functioning has caused so much disenchantment and dissatisfaction. It also sets out recommendations of various Committees which were never implemented. Since the misuse and abuse of police has reduced it to the status of a mere tool in the hands of unscrupulous masters and in the process, it has caused serious violations of the rights of the people, it is contended that there is immediate need to re-define the scope and functions of police, and provide for its accountability to the law of the land, and implement the core recommendations of the National Police Commission. The petition refers to a research paper 'Political and Administrative Manipulation of the Police' published in 1979 by Bureau of Police Research and Development, warning that excessive control of the political executive and its principal advisers over the police has the inherent danger of making the police a tool for subverting the process of law, promoting the growth of authoritarianism, and shaking the very foundations of democracy.

9. The commitment, devotion and accountability of the police has to be only to the Rule of Law. The supervision and control has to be such that it ensures that the police serves the people without any regard, whatsoever, to the status and position of any person while investigating a crime or taking preventive measures. Its approach has to be service oriented, its role has to be defined so that in appropriate cases, where on account of acts of omission and commission of police, the Rule of Law becomes a casualty, the guilty Police Officers are brought to book and appropriate action taken without any delay.

10. The Petitioners seek that Union of India be directed to re-define the role and functions of the police and frame a new Police Act on the lines of the model Act drafted by the National Police Commission in order to ensure that the police is made accountable essentially and primarily to the law of the land and the people. Directions are also sought against the Union of India and State Governments to constitute various Commissions and Boards laying down the policies and ensuring that police perform their duties and functions free from any pressure and also for separation of investigation work from that of law and order.

11. The notice of the petition has also been served on State Governments and Union Territories. We have heard Mr. Prashant Bhushan for the Petitioners, Mr. G.E. Vahanvati, learned Solicitor General for the Union of India, Ms. Indu Malhotra for the National Human Rights Commission and Ms. Swati Mehta for the Common Welfare Initiatives. For most of the State Governments/Union Territories oral submissions were not made. None of the State Governments/Union

Territories urged that any of the suggestion put forth by the Petitioners and Solicitor General of India may not be accepted. Besides the report submitted to the Government of India by National Police Commission (1977--1981), various other high powered Committees and Commissions have examined 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.

12. In addition to above, the Government of India in terms of Office Memorandum dated 20th September, 2005 constituted a Committee comprising Shri Soli Sorabjee, former Attorney General and five Ors. 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 Sorabjee Committee has prepared a draft outline for a new Police Act (9th September, 2006). About one decade back, viz. on 3rd August, 1997 a letter was sent by a Union Home Minister to the State Governments revealing a distressing situation and expressing the view that if the Rule of Law has to prevail, it must be cured. Despite strong expression of opinions by various Commissions, Committees and even a Home Minister of the country, the position has not improved as these opinions have remained only on paper, without any action. In fact, position has deteriorated further. The National Human Rights Commission in its report dated 31st May, 2002, inter alia, noted that:

Police Reform:

28(i) The Commission drew attention in its 1st April 2002 proceedings to the need to act decisively on the deeper question of Police Reform, on which recommendations of the National Police Commission (NPC) and of the National Human Rights Commission have been pending despite efforts to have them acted upon. The Commission added that recent event in Gujarat and, indeed, in other States of the country, underlined 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'.

In the above noted letter dated 3rd April, 1997 sent to all the State Governments, the Home Minister while echoing the overall popular perception that there has been a general fall in the performance of the police as also a deterioration in the policing system as a whole in the country, expressed that time had come to rise above limited perceptions to bring about some drastic changes in the shape of reforms and restructuring of the police before the country is overtaken by unhealthy developments. It was expressed that the popular perception all over the country appears to be that many of the deficiencies in the functioning of the police had arisen largely due to an overdose of unhealthy and petty political interference at various levels starting from

transfer and posting of policemen of different ranks, misuse of police for partisan purposes and political patronage quite often extended to corrupt police personnel. The Union Home Minister expressed the view that rising above narrow and partisan considerations, it is of great national importance to insulate the police from the growing tendency of partisan or political interference in the discharge of its lawful functions of prevention and control of crime including investigation of cases and maintenance of public order. Besides the Home Minister, all the Commissions and Committees above noted, have broadly come to the same conclusion on the issue of urgent need for police reforms. There is convergence of views on the need to have (a) State Security Commission at State level; (b) transparent procedure for the appointment of Police Chief and the desirability of giving him a minimum fixed tenure; (c) separation of investigation work from law and order; and (d) a new Police Act which should reflect the democratic aspirations of the people. It has been contended that a statutory State Security Commission with its recommendations binding on the Government should have been established long before. The apprehension expressed is that any Commission without giving its report binding effect would be ineffective. More than 25 years back i.e. in August 1979, the Police Commission Report recommended that the investigation task should be beyond any kind of intervention by the executive or non-executive. For separation of investigation work from law and order even the Law Commission of India in its 154th Report had recommended such separation to ensure speedier investigation, better expertise and improved rapport with the people without of-course any water tight compartmentalization in view of both functions being closely inter-related at the ground level.

The Sorabjee (Committee has also recommended establishment of a State Bureau of Criminal Investigation by the State Governments under the charge of a Director who shall report to the Director General of Police. In most of the reports, for appointment and posting, constitution of a Police Establishment Board has been recommended comprising of the Director General of Police of the State and four other senior officers. It has been further recommended that there should be a Public Complaints Authority at district level to examine the complaints from the public on police excesses, arbitrary arrests and detentions, false implications in criminal cases, custodial violence etc. and for making necessary recommendations. Undoubtedly and undisputedly, the Commission did commendable work and after in depth study, made very useful recommendations. After waiting for nearly 15 years, his petition was filed. More than ten years have elapsed since this petition was filed. Even during this period, on more or less similar lines, recommendations for police reforms have been made by other high powered committees as above noticed. The Sorabjee Committee has also prepared a draft report. We have no doubt that the said Committee would also make very useful recommendations and come out with a model new Police Act for consideration of the Central and the State Governments. We have also no doubt that Sorabjee Committee Report and the

new Act will receive due attention of the Central Government which may recommend to the State Governments to consider passing of State Acts on the suggested lines. We expect that the State Governments would give it due consideration and would pass suitable legislations on recommended lines, the police being a State subject under the Constitution of India. The question, however, is whether this Court should further wait for Governments to take suitable steps for police reforms. The answer has to be in the negative.

Having regard to (i) the gravity of the problem; (ii) the urgent need for preservation and strengthening of Rule of Law; (iii) pendency of even this petition for last over ten years; (iv) the fact that various Commissions and Committees have made recommendations on similar lines for introducing reforms in the police set-up in the country; and (v) total uncertainty as to when police reforms would be introduced, we think that there cannot be any further wait, and the stage has come for issue of appropriate directions for immediate compliance so as to be operative till such time a new model Police Act is prepared by the Central Government and/or the State Governments pass the requisite legislations. It may further be noted that the quality of Criminal Justice System in the country, to a large extent, depends upon the working of the police force. Thus, having regard to the larger public interest, it is absolutely necessary to issue the requisite directions. Nearly ten years back, in *Vineet Narain and Others Vs. Union of India (UOI)* and *Another*, this Court noticed the urgent need for the State Governments to set up the requisite mechanism and directed the Central Government to pursue the matter of police reforms with the State Governments and ensure the setting up of a mechanism for selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also all police officers of the rank of Superintendents of Police and above. The Court expressed its shock that in some States the tenure of a Superintendent of Police is for a few months and transfers are made for whimsical reasons which has not only demoralizing effect on the police force but is also alien to the envisaged constitutional machinery. It was observed that apart from demoralizing the police force, it has also the adverse effect of politicizing the personnel and, therefore, it is essential that prompt measures are taken by the Central Government.

The Court then observed that no action within the constitutional scheme found necessary to remedy the situation is too stringent in these circumstances. More than four years have also lapsed since the report above noted was submitted by the National Human Rights Commission to the Government of India. The preparation of a model Police Act by the Central Government and enactment of new Police Acts by State Governments providing therein for the composition of State Security Commission are things, we can only hope for the present. Similarly, we can only express our hope that all State Governments would rise to the occasion and enact a new Police Act wholly insulating the police from any pressure whatsoever thereby placing in position an important measure for securing the rights of the citizens under the Constitution for the Rule of Law, treating everyone equal and being partisan to none, which will also help in

securing an efficient and better criminal justice delivery system. It is not possible or proper to leave this matter only with an expression of this hope and to await developments further. It is essential to lay down guidelines to be operative till the new legislation is enacted by the State Governments. Article 32 read with Article 142 of the Constitution empowers this Court to issue such directions, as may be necessary for doing complete justice in any cause or matter. All authorities are mandated by Article 144 to act in aid of the orders passed by this Court. The decision in Vineet Narain's case (supra) notes various decisions of this Court where guidelines and directions to be observed were issued in absence of legislation and implemented till legislatures pass appropriate legislations. With the assistance of learned Counsel for the parties, we have perused the various reports. In discharge of our constitutional duties and obligations having regard to the aforementioned position, we issue the following directions to the Central Government, State Governments and Union Territories for compliance till framing of the appropriate legislations:

State Security Commission

(1) The State Governments are directed to constitute a State Security Commission in every State to ensure that the State Government does not exercise unwarranted influence or pressure on the State police and for laying down the broad policy guidelines so that the State police always acts according to the laws of the land and the Constitution of the country. This watchdog body shall be headed by the Chief Minister or Home Minister as Chairman and have the DGP of the State as its ex-officio Secretary. The other members of the Commission shall be chosen in such a manner that it is able to function independent of Government control. For this purpose, the State may choose any of the models recommended by the National Human Rights Commission, the Ribeiro Committee or the Sorabjee Committee, which are as under:

NHRC

Ribeiro Committee

Sorabjee Committee

1. Chief Minister/HM as Chairman

1. Minister i/c Police as Chairman.

1. Mimker i/c Police (ex officer Chairperson).

2. Lok Ayuktaor, in his absence, aretired Judge of High Court to be nominated by Chief Justice or a Member of State Human Rights Commission.

2. Leader of Opposition.

2. Leader of Opposition.

3. A sitting or retired Judge nominated by Chief Justice of High Court. 3. Judge, sitting or retired, nominated by Chief Justice of High Court

3. Chief Secretary.
4. Chief Secretary.
4. Chief Secretary.
4. DGP (ex officio Secretary).
5. Leader of Opposition in Lower House.
5. Three non-political citizens of proven merit and integrity.
5. Five independent Members.
6. DGP as ex officio Secretary.
6. DG Police as Secretary.

The recommendations of this Commission shall be binding on the State Government

The functions of the State Security Commission would include laying down the broad policies and giving directions for the performance of the preventive tasks and service oriented functions of the police, evaluation of the performance of the State police and preparing a report thereon for being placed before the State Legislature.

Selection and Minimum Tenure of DGP

(2) The Director General of Police of the State shall be selected by the State Government from amongst the three senior-most officers of the Department who have been empanelled for promotion to that rank by the Union Public Service Commission on the basis of their length of service, very good record and range of experience for heading the police force. And, once he has been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation. The DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission * consequent upon any action taken against him under the All India Services (Discipline and Appeal) Rules or following his conviction in a court of law in a criminal offence or in a case of corruption, or if he is otherwise incapacitated from discharging his duties.

Minimum Tenure of I.G of Police & other officers

(3) Police Officers on operational duties in the field like the Inspector General of Police-in-charge Zone, Deputy Inspector General of Police-in-charge Range, Superintendent of Police-in-charge district and Station House Officer-in-charge of a Police Station shall also have a prescribed minimum tenure of two years unless it is found necessary to remove them prematurely following disciplinary proceedings against them or their conviction in a criminal offence or in a case of corruption or if the incumbent is otherwise incapacitated from discharging his

responsibilities. This would be subject to promotion and retirement of the officer.

Separation of Investigation

(4) The investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people. It must, however, be ensured that there is full co-ordination between the two wings. The separation, to start with, may be effected in towns/urban areas which have a population often lakhs or more, and gradually extended to smaller towns/urban areas also.

Police Establishment Board

(5) There shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. The Establishment Board shall be a departmental body comprising the Director General of Police and four other senior officers of the Department. The State Government may interfere with decision of the Board in exceptional cases only after recording its reasons for doing so. The Board shall also be authorized to make appropriate recommendations to the State Government regarding the posting and transfers of officers of and above the rank of Superintendent of Police, and the Government is expected to give due weight to these recommendations and shall normally accept it. It shall also function as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotion/transfer/disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State.

Police Complaints Authority

(6) 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 Anr. 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 CJD, 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.

National Security Commission

(7) The Central Government shall also set up a National Security Commission at the Union level to prepare a panel for being placed before the appropriate Appointing Authority, for selection and placement of Chiefs of the Central Police Organizations (CPO), who should also be given a minimum tenure of two years. The Commission would also review from time to time measures to upgrade the effectiveness of these forces, improve the service conditions of its personnel, ensure that there is proper co-ordination between them and that the forces are generally utilized for the purposes they were raised and make recommendations in that behalf. The National Security Commission could be headed by the Union Home Minister and comprise heads of the C.P.Os. and a couple of security experts as members with the Union Home Secretary as its Secretary.

13. The aforesaid directions shall be complied with by the Central Government State Governments or Union Territories, as the case may be, on or before 31st December, 2006 so that the bodies afore-noted became operational on the onset of the new year. The Cabinet Secretary, Government of India and the Chief Secretaries of State Governments/Union Territories are directed to file affidavits of compliance by 3rd January, 2007.

14. Before parting, we may note Anr. suggestion of Mr. Prashant Bhushan that directions be also issued for dealing with the cases arising out of threats emanating from international terrorism or organized crimes like drug trafficking, money laundering smuggling of weapons from across the borders, counterfeiting of currency or the activities of mafia groups with trans-national links to be treated as measures taken for the defence of India as mentioned in Entry I of the Union List in the Seventh Schedule of the Constitution of India and as internal security measures as contemplated under Article 355 as these threats and activities aim at destabilizing the country and subverting the economy and thereby weakening its defence. The suggestion is that the investigation of above cases involving inter-state or international ramifications deserves to be entrusted to the Central Bureau of Investigation.

15. The suggestion, on the face of it, seems quite useful. But, unlike the aforesaid aspects which were extensively studied and examined by various experts and reports submitted and about which for that reason, we had no difficulty in issuing directions, there has not been much study or material before us, on the basis whereof we could safely issue the direction as suggested. For considering this suggestion, it is necessary to enlist the views of expert bodies. We, therefore, request the National Human Rights Commission, Sorabjee Committee and Bureau of Police Research and Development to examine the aforesaid suggestion of Mr. Bhushan and assist this Court by filing their considered views within four months. The Central Government is also directed to examine this suggestion and submit its views within that time. Further suggestion regarding monitoring of the aforesaid directions that have been issued either by National Human Rights Commission or the Police Bureau would be considered on filing of compliance affidavits whereupon the matter shall be listed before the Court.

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