
(2017) 12 GUJ CK 0031
In the Gujarat High Court
Case No : 203 of 2017

RAHUL SHARMA, I.P.S. (RETD.)

APPELLANT

Vs

STATE OF GUJARAT & ANR.

RESPONDENT

Date of Decision : 18-12-2017

Acts Referred:

Bombay Police Act, 1951, Section 5A, Section 5B -
Representation of People Act, 1951, Section 28A

Citation : (2017) 12 GUJ CK 0031

Hon'ble Judges : R.Subhash Reddy, Vipul M. Pancholi

Bench : Division Bench

Advocate : IH SYED, PRITHU PARIMAL, KAMAL TRIVEDI, MANISHA? LAVKUMAR, UTKARSH SHARMA, AMIT SHARMA, SHAHIL M SHAH

Final Decision : Disposed Of

Judgement

1. This writ petition is filed, by way of Public

Interest Litigation, with the prayers, which read

as under:

"A. This Hon"ble Court may be pleased to allow this petition;

B. This Hon"ble Court may be pleased to issue the writ of mandamus or any other appropriate writ, order or direction, to the Respondent to appoint a regular full- time Director General and Inspector General of Police for Gujarat State at the earliest;

BA. This Hon"ble Court may be pleased to issue the writ of mandamus or any other appropriate writ, order or direction, to Respondent No.1 to propose the name of a suitably qualified officer to be posted as the Director General and Inspector General of Police, Gujarat State, to Respondent No.2 at the earliest and further direct Respondent No.2 to decide on such proposal at the earliest

after the communication of such proposal by Respondent No.1 and further direct Respondent No.1 to appoint such person to the post of Director General and Inspector General of Police, Gujarat State, at the earliest in accordance with law;

BB. This Hon''ble Court may be pleased to issue the writ of mandamus or any other appropriate writ, order or direction, to Respondent No.2 to give detailed reasons if it were to refuse the aforesaid proposal sent by Respondent No.1;

BC. This Hon''ble Court may be pleased to issue the writ of mandamus or any other appropriate writ, order or direction, to the Respondents to complete the aforesaid appointment process by the last date of withdrawal of nomination for the first phase of elections, i.e. by 24.11.2017;

C. This Hon''ble Court may be pleased to issue the writ of mandamus or any other appropriate writ, order or direction, to the Respondent to allow the person so appointed as a full-time DG&IGP of Gujarat State, to continue in office for a tenure specified by the provisions of the Bombay Police (Gujarat Amendment) Rules, 2007, and on the conditions mentioned therein;

D. This Hon''ble Court may be pleased to direct the Respondent to begin the exercise for the selection of a new DG&IGP, one month prior to the date of superannuation of the incumbent DG&IGP in future.

E. This Hon''ble Court may be pleased to direct the Respondent that in case of a sudden vacancy to the post of DG&IGP, necessary notification to appoint a new incumbent to the post of a regular DG&IGP must be made within two weeks from the date on which such vacancy arose;

F. Pass any such other orders as may be deemed fit, proper and just in the interest of justice pending admission,

hearing and final disposal of the present petition."

2. The petitioner, a retired IPS Officer, seeks directions to the 1st respondent Government to appoint a regular full time Director General and Inspector General of Police. It is stated in the petition that, since 15.4.2016, the 1st respondent has not appointed a full time Director General and Inspector General of Police. Earlier, Director General and Inspector General of Police, Shri P.C.Thakur was replaced by in-charge Director General and Inspector General of Police,

Shri P.P.Pandey and when his appointment was questioned, following the assurance given by the State of Gujarat before the Hon''ble Supreme Court, Shri P.P.Pandey was superannuated and his extension of service was revoked. It is alleged that, in his place, Smt. Geetha Johari was given additional charge of the Director General and Inspector General of Police.

3. In this petition, it is stated that, the petitioner was a member of 1992 batch of the direct recruits to the Indian Police Service and he believes in the rule of law and sincerely believes that, observance to the rule of law is in the interest of the society and the nation. It is alleged that, the quality of criminal justice system in the country, to a large extent, depends upon the working of the police force. Towards this purpose, it is essential that, the Director General and Inspector General of Police should be appointed on regular basis, with a minimum tenure, which will go a long way in ensuring his impartiality and neutrality of the post and also of the police force of State of Gujarat. It is alleged that, said issue of appointment of a regular Director General and Inspector General of Police has been considered by the Hon''ble Supreme Court and directions were issued in the judgment in the case of Prakash Singh & Ors. Vs. Union of India & Ors. reported in 2006(8) Supreme Court Cases page 1. It is stated that, in the State of

Gujarat, Bombay Police Act, 1951 is made applicable and said Act is amended by Gujarat Act No.23 of 2007. It is submitted that, as per the provisions of the said Act, it is obligatory on the part of the 1st respondent State to appoint a regular Director General and Inspector General of Police, who will be in-charge of over all direction and supervision of police force in the State.

4. At first instance, this petition was filed only by impleading State of Gujarat as a party respondent. Based on the advance copy served to the learned Government Pleader, learned Advocate General appeared on earlier occasions and brought to the notice of this Court about the election schedule announced by the Election Commission of India. Learned Advocate General placed on record the letter dated 25.10.2017 addressed by the Election Commission of India to the Chief Secretary of the Government of Gujarat. In the said letter dated 25.10.2017, it is stated that, the Election Commission has announced the schedule for holding general elections to the Legislative Assembly of Gujarat vide press note dated 25.10.2017 and in view of the same, the Model Code of Conduct has come into force with immediate effect. There is a further letter dated 26.10.2017 issued by the Chief Electoral Officer, Gujarat State to the Additional Chief Secretary to Government, Home Department, Gujarat, wherein

directions were issued to issue notification,
designating Director General of Police/Additional
Director General of Police/Inspector General of
Police and all the police officers below the
level of Director General of Police borne on the
strength of State Government, for the purpose of
Section 28A of the Representation of People Act, 1951
latest by 14.11.2017. Copy of the letter dated
26.10.2017 reads as under:

"No.ELC-102017-ECI-466(2)-CHH

Dated: 26/10/2017

To

Additional Chief Secretary to Government,

Home Department,

Sachivalaya, Gandhinagar.

Subject: General Election to Gujarat Legislative Assembly - 2017 Police
Personnel connected with election related duties-exercise of supervisory/
disciplinary control. regarding.

Sir,

Please refer to the Election Commission's order No.434/1/ES026/94/MCS dated 24th October, 1994(Copy Enclosed) on the subject mentioned above. As per the Commission's direction, the State Government has to issue a Notification designating the following officers for the purpose of Section 28-A of R.P.ACT-1951 on the same day, the Commission issues notification under section 15 or 150 of the R.P.Act-1951 to hold General Election to State Legislative Assembly:-

1. The Director General of Police/Additional Director General of Police/Inspector General of Police and
2. In a General Election all the police officers below the level of Director General of Police borne on the strength of the State Government;

The schedule of the General Election to the Gujarat Legislative Assembly has been announced by the Commission on dt. 25/10/2017. Accordingly necessary notification will be issued by the Commission on dt.14/11/2017.

You are requested to issue a suitable notification designating police Officers as

designated officers for the purpose of section -28A of the R.P.Act-1951 latest by dt. 14/11/2017 as directed by the Commission.

Encl: as above

Yours faithfully,

Sd/-

(B.B.Swain)

Chief Electoral Officer

Gujarat State"

Further, in response to such communication, the

1st respondent has issued notification dated

6.11.2017, designating aforesaid police officers

for the purpose of Section 28-A of the

Representation of People Act, 1951, to conduct

the general elections to the Legislative Assembly

of Gujarat during the month of December, 2017.

Copy of the said notification reads as under:

"HOME DEPARTMENT

Notification

Sachivalaya, Gandhinagar, 6th November, 2017.

REPRESENTATION OF THE PEOPLE ACT, 1951

No.GG/68/SB-I/ELC/102017/79: In pursuance of the provisions of Section 28-A of the Representation of the People Act, 1951 and in view of the directions contained in the Election Commission of India's order No.434/ESO26/94/MCS, dated 24th October, 1994, the Government of Gujarat hereby designates the following Police officers for the purpose of Section 28-A of the R.P. Act-1951 to conduct the General Elections to the Legislative Assembly of Gujarat during the month of December,2017, viz:-

1. The Director General of Police/Additional Director General of

Police/Inspector General of Police and

2. In a General Election all the police officers below the level of Director General of police borne on the Strength of the State Government;

This order shall be effective from 14/11/2017 and shall remain in force till the date of completion of process of the said General Elections.

By order and in the name of the Governor of Gujarat
PANKAJ DAVE, Under Secretary to Government"

5. While referring to the above said notifications, it is stated by the learned Advocate General appearing for the State that, no steps can be taken at this stage by the State for regular appointment of Director General of Police. Thereupon, further steps were taken by the petitioner by impleading Election Commission of India as the respondent No.2 in the petition and on service of notice, the 2nd respondent appeared and filed affidavit-in-reply on behalf of Election Commission of India.

6. In the affidavit-in-reply filed on behalf of the 2nd respondent, it is stated that, elections for Legislative Assembly in State of Gujarat were announced on 25.10.2017 and Smt. Geetha Johari was functioning as in-charge Director General and Inspector General of Police, Gujarat. Smt. Geetha Johari was superannuated on 30.11.2017. Thereafter, the Commission received a proposal from Government of Gujarat on 30.11.2017, submitting a panel of officers, who can be given the charge of Director General and Inspector General of Police on superannuation of Smt. Geetha Johari. It is stated that, the Commission has discussed the matter with regard to interse seniority of the Officers on 30.11.2017. Thereafter, they sought information regarding vigilance clearance and clearance from the angle

of disciplinary proceedings, etc. and further information was received in the late evening of 30.11.2017. It is stated that, the Commission on 1.12.2017 discussed the matter and keeping in view the time constraints, issued directions to appoint senior-most eligible IPS officer available in Gujarat cadre as in-charge Director General and Inspector General of Police with immediate effect, keeping in view the imperatives of ongoing election process. It is stated that, accordingly, one Shri Pramod Kumar, the senior-most Officer is appointed as in-charge Director General and Inspector General of Police.

7. We have heard Mr.I.H.Syed, learned counsel assisted by Mr.Prithu Parimal, learned counsel for the petitioner, Mr.Kamal Trivedi, learned Advocate General assisted by Ms.Manisha Lavkumar, learned Government Pleader and Mr.Utkarsh Sharma, learned Assistant Government Pleader for the respondent No.1-State and Mr.Amit Sharma, learned counsel assisted by Mr.Shahil M. Shah, learned counsel for the respondent No.2-Election Commission of India.

8. Mr. Syed, learned counsel appearing for the petitioner, submitted that there is no reason for not appointing a regular Director General and Inspector General of Police, as per the provisions of the Bombay Police Act, 1951, as amended by Gujarat Act No.23 of 2007. It is submitted that, in view of the directions issued

by the Hon"ble Supreme Court in the case of Prakash Singh & Ors. Vs. Union of India & Ors. reported in 2006(8) Supreme Court Cases page 1 and further, as per the provisions of the Bombay Police Act, 1951, as amended by Gujarat Act No.23 of 2007, it is obligatory on the part of the respondents to appoint a regular Director General and Inspector General of Police. It is submitted that, unless such post is filled up on regular basis, police force cannot function independently. It is submitted that, for a very long time, for one reason or the other, said appointment is made only on temporary basis and being continued as such.

9. On the other hand, learned Advocate General, Mr.Kamal Trivedi appearing for the State, submitted that, elections are notified to be held in two phases i.e. on 9th of December and 14th of December, 2017 and declaration of results is on 18th of December, 2017. It is submitted that, officers are on deputation under the control of the 2nd respondent and no steps can be taken by the present Government at this stage. It is submitted that, process for appointment of Director General and Inspector General of Police can be initiated only after new Government is formed, after declaration of results of the Assembly elections on 18th December, 2017.

10. Mr. Amit Sharma, learned counsel appearing for the 2nd respondent-Election Commission of

India submitted that, in view of the superannuation of the earlier in-charge Director General and Inspector General of Police, Smt. Geetha Johari and further, in view of the communication dated 30.11.2017 from the State Government and in view of the time constraints, orders were issued by the Election Commission directing the State Government to appoint senior-most IPS Cadre Officer of Gujarat as in-charge Director General and Inspector General of Police. It is submitted that, only after new Government is formed, steps can be taken by the 1st respondent State for appointment of a regular Director General and Inspector General of Police.

11. The Hon'ble Supreme Court, in the case of Prakash Singh & Ors. Vs. Union of India & Ors. reported in 2006(8) Supreme Court Cases page 1, while considering the far reaching changes that had taken place in the country after the enactment of the Indian Police Act, 1861 and the absence of comprehensive review at the national level of the police system after independence, based on the reports of the National Police Commission and other reports, issued various directions including the direction for selection and minimum tenure of Director General and Inspector General of Police. With regard to selection and minimum tenure of Director General of Police, the directions were issued, which read as under:

"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 empaneled 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."

12. It appears that, to bring in tune with the directions issued by the Hon"ble Supreme Court, Bombay Police Act, 1951, which is made applicable to State of Gujarat, is amended by Gujarat Act No.23 of 2007. By the aforesaid amendment, Sections 5A and 5B are inserted in the Act XXII of 1951. Sub-Sections (1), (2), (3) and (4) of Section 5A read as under:

"5A. (1) For the overall direction and supervision of the Police Force, the State Government shall appoint a Director General and Inspector General of Police who shall exercise such powers, perform such functions and duties and have such responsibilities and authority as may be provided by or under this Act or orders made by the State Government.

(2) The Director General and Inspector General of Police shall be selected from a panel of officers consisting of the officers already working in the rank of the Director General of Police or of the officers in the rank of Additional Director General of Police who have been found suitable for promotion after screening by a Committee under the provisions of the All India Services Act, 1951:

Provided that the panel of officers from the rank of Additional Director General of Police shall not exceed double the number of vacant posts to be filled in the rank of Director General and Inspector General of Police in the State.

(3) The Director General and Inspector General of Police so selected and appointed shall ordinarily have a minimum tenure of two years irrespective of his date of superannuation, subject to the relevant provisions under the All India Services Act, 1951 and the rules made there under.

(4) The Director General and Inspector

General of Police may be removed from his post before the expiry of his tenure by the State Government by an order in writing specifying reasons thereof, consequent upon the -

- (a) conviction by a court of law in a criminal offence or where charges have been framed by a court in a case involving corruption or moral turpitude; or
- (b) punishment of dismissal, removal or compulsory retirement from service or of reduction to a lower post; or
- (c) suspension from service; or
- (d) incapability to discharge his functions as the Director General and Inspector General of Police due to physical or mental illness; or
- (e) misuse or abuse of powers vested in him or for gross inefficiency and negligence or failure to provide leadership to the Police Force."

13. In view of the directions issued by the

Hon"ble Supreme Court in the case of Prakash

Singh & Ors. Vs. Union of India & Ors. reported in

2006(8) Supreme Court Cases page 1, coupled with

the provisions under the Bombay Police Act, 1951,

as amended by Gujarat Act No.23 of 2007, it is

clear that, for over all supervision of the

police force, State Government shall appoint a

Director General and Inspector General of Police

on regular basis. Under Sub-Section (3) of

Section 5A, it is stated that, Director General

and Inspector General of Police, so selected and

appointed, shall ordinarily have a minimum tenure

of two years. In view of such provisions, there

appears to be no reason for not filling up the

post of Director General and Inspector General of

Police on regular basis. Though it is contended

by learned Advocate General that, no steps can be

taken at this stage, unless new Government is

formed, after declaration of election results of Legislative Assembly on 18th December, 2017 but, it is the obligation on the part of any Government to make regular appointment. In view of the fact that election code is in force in the State of Gujarat and further, only after the new Government is formed, pursuant to declaration of election results of Gujarat Legislative Assembly on 18th December, 2017, steps have to be taken for appointment of Director General and Inspector General of Police on regular basis. In view of the same, we deem it appropriate to dispose of the petition with the following directions:

14. The 1st respondent is directed to initiate the process and make necessary selection by following the procedure and appoint Director General and Inspector General of Police, on regular basis, within a period of eight weeks from the date of receipt of this order. No order as to costs.