

(1992) 08 CAL CK 0018
In the Calcutta High Court

SK. Ladla

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-08-1992

Acts Referred:

Citation : 96 CWN 1212

Hon'ble Judges : Umesh Chandra Banerjee, J

Bench : Single Bench

Judgement

Umesh Chandra Banerjee, J.—The most accepted methodology of a Governmental working is to act fairly and in accordance with law and the police administration is no exception. The law makers have already circumscribed the powers of the police authority in various statutes and contradiction on the part of the police administration will take us back to the regime of a police raj or a police State - which in my view, on the wake of 21st century cannot even be comprehended. Police is the protect or of society in terms of the provisions of the statutes and in the event of there being any action contrary thereto, the society shall suffer and ultimately perish which situation the world's largest democracy cannot afford to have neither the law courts can permit such a situation. Law Court has a duty to the society and it is in discharge of that duty to the society, it must declare the action of the police authorities, in the event of there being any action contrary to the principles of law or opposed to the concept of fairness, as unlawful and illegal. Turning attention on to the present writ petition which was moved before this Court on 15 the June, 1992 inter alia for the issuance of a writ of mandamus commanding the respondent police authority to file a report before this Court regarding the incident of police firing on 25th March, 1992 at about 8 P.M. near Society Hotel, Phool Bagan within the Benlapukur police Station area in which the petitioner's son SK. Abdul Ali alias (sic) Bobby and one Sarwar were shot at which led to the death of both the persons - while petitioner's son succumbed to his injuries after a few days Sarwar died on his way to the hospital.

2. It is the definite case of the petitioner that before these two young boys were

taken to hospital they were first taken to the Beniapukur Police Station with severe bleeding injuries and then to the hospital. It is the petitioner's further case that even after the death of Sarwar and during the time when Chusni Bobby was fighting for his life, hurling of abusive language turned out to be a common and regular feature to the petitioner as also to the wife of Bobby whenever there was any attempt to visit the hospital to see the dying son or the husband. These allegations, in my view, if at all there is any truth in it, cannot in a civilized society be appreciated. Incidentally it is, however, to be noted that in the counter-affidavit filed by the police authority these statements have been categorically denied through however contemporaneous correspondence from petitioners and, record, such a state of affairs. I however do not wish to dilate in much on this score excepting what has been recorded as above.

3. As noted above, this writ petition was moved before this Court on 15th June, 1992 whereupon this court directed filing of affidavits and the matter was directed to stand over for 4 weeks. During the pendency of this writ petition another writ petition was filed on 24th June, 1992 by one Asgar Ali, being the father of the other victim, Sarwar, on more or less the self same allegations. Having regard to allegations in the two writ petitions this Court directed that both the writ petitions be heard together and in pursuance where of upon consideration of Mr. Bhattacharjee's submission, in support of the writ petitions, as regards total inaction of the Police administration this Court passed an order directing the Deputy Commissioner of Police Eastern Suburban Division (E.S.D.) to appear before this court and to file a report in regard to the steps taken by the notice authorities as of 25th June, 1992, From, the report filed by the Deputy Commissioner certain significant facts emerge, for convenience sake, the report of the Deputy Commissioner (E.S.D.) is set out herein below.

This is to bring to your Lordships kind notice that although the incident of police firing took place on 25/3/92, the Commissioner of Police, Calcutta passed an order under his memo No. 1027(2) / C on 23/4/92 directing the undersigned to hold an executive enquiry in terms of regulation 40 Chapter IV of police regulation, Calcutta. Accordingly the process of holding the enquiry was initiated and thereafter several dates for the recording of the statements of various witnesses were fixed. On some occasions it was not possible for the undersigned to record their statements due to various preoccupation with crime and law& order matters. On other occasions, the witnesses did not turn up. Further it was also decided to give the various eye witnesses a little time for " detached thinking so that their testimony was not considered in the heat of the moment. Finally, the undersigned completed the enquiry on 26.6.92 and duly forwarded the report to the commissioner of Police Calcutta, through D.C. Detective Department is desired. The undersigned may kindly be excused for any inordinate delay in the matter.

4. There can not be any manner of doubt that the report of the Deputy Commissioner of Police as above, being a verbatim copy of the counter-affidavit

filed by the police administration, is a revealing one : investigation of a police firing cannot be conducted by reason of the non-availability of the witnesses or on other preoccupations of the Deputy commissioner of Police is inconceivable. The third ground for delayed investigation as put forth by the Deputy commissioner is much more significant viz., to allow some time to the witnesses for detailed thinking so that the available evidence is a considered evidence and not a statement on the "heat of the moment": If this be the criteria for investigation in a police firing wherein two persons were killed, then and in that event I must record my total disagreement with the present state of affairs so taras the police investigation is concerned. In my view, to allow more time to witnesses for the purpose of detached thinking or obtaining a considered view in the matter cannot but be stated to be opposed to the basic criminal jurisprudence, since considered evidence is likely to bring about concoction.

5. Turning, attention on to the time lag for directing an executive enquiry. Regulation 40 of the Police Regulations Calcutta ought to be considered at this Juncture for its true scope and effect. Regulations 40 reads as follows:

40. (1) Whenever firearms are used by the Calcutta Police, the Commissioner shall hold a full enquiry and shall submit a detailed report to Government as soon as possible thereafter:

Provided that :-

(a) Where the commissioner himself has ordered firing the enquiry shall be made and the report submitted to Government by the Commissioner of the Presidency division :

(b) if the firing has been resorted to under the orders of a Deputy Commissioner, the enquiry shall be hold by the Commissioner.

(c) if the firing has been resorted to under to orders of an officer below the rank of a Deputy Commissioner, the Commissioner may either hold the enquiry himself or direct a Deputy Commissioner to hold it.

(2) The object of holding such executive enquiries is to ascertain whether the firing was justified, and whether the rules governing the use of firearms were substantially observed. The enquiry should be held With the least possible delay and in addition to the testimony of the Police personnel concerned, steps shall be taken to obtain independent views of local people such as shopkeepers, residents of the locality, etc. who are likely to have been eye witnesses of the firing.

6. On a proper reading of the Regulation it therefore appears that expedition is the basic criteria for the executive enquiry. The language used "with the least possible delay" cannot but mean with utmost promptitude on the part of the commissioner to order an enquiry. Admittedly, the commissioner of Police Calcutta, directed an executive enquiry on 24th April 1992 and the incident took place on 20th March 1992, that is to say, the enquiry was directed after about 30 days can it be said that Commissioner has acted in terms of the Regulation by

directing the enquiry after 30 days from the date of occurrence - In my view the answer cannot be in affirmative. The Counter affidavit significantly is silent on this score.

7. On the basis of records as produced by the Deputy Commissioner, E.S.D., Calcutta it appears that the first information report has been drawn upon the complaint of one Md. Sakil of 48/A, Ismail Street, Calcutta on 26th March, 1992 wherein one Abdul Ali alias Chimon has been shown as accused no. 1., Sarwar, as accused no. 2, and Samim and Abdulla as accused nos. 3 and 4. The first information report records accused nos. 1 and 2 in custody and admitted to C.N.M.C. Hospital - but Sarwar admittedly expired on 25th night around 11.30 P.M. and as such a dead person's name, figures in the first information report - Mr. Goswami, however, appearing for the police administration submitted that there was a communication gap which has resulted in incorporating a dead person's name in the first information report, though however in no uncertain terms deprecated the action of the concerned police officer.

8. The further fact which appears from records and which is much more startling, is the note of the then commissioner of police, Calcutta: The commissioner of Police had taken 30 days time to direct an investigation in the matter but, however, recorded his own appreciation of the work of constable who had shot four rounds and killing two persons. The appreciation of the Commissioner reads as follows :-

Very good. The other miscreants should immediately be arrested.

9. While it is true that the gesture of the commissioner of police in appreciating the services rendered by the constables cannot be descried, but the fact remains that the law enjoins that the commissioner of Police himself will direct an investigation to be carried out by a superior and senior police official as to the cause of the firing and can it be said to be fair and reasonable and In accordance with law that the Commissioner, who is to order and Inquiry would appreciate the services rendered by the constable, who has opened fire and killed two persons, before even obtaining the inquiry report, in my view, answer shall have to be in the negative. The consequence of such an appreciation by the Commissioner however has its due impact amongst the Junior police officers.

10. The records produced reveal that emboldened by the observations of the Commissioner as above, there was a reward statement prepared by the Assistant Commissioner of Police, E.S.D., Calcutta on 11th May, 1992 I.e. to say, after the Inquiry in terms of the police regulation was ordered by the Commissioner of police as against the police firing wherein the Assistant Commissioner recommended a reward of Rs. 300/- to the person from whose revolver four rounds were fired and a reward of Rs. 100/- who was assisting the other constable. The records further reveal that the Deputy commissioner of Police, E.S.D. who was entrusted with the inquiry as per the order of the Commissioner of police has also finally recommended Rs. 350/- and 150/- for the two

constables and who shot four rounds killing two persons. Can this be stated to be in accordance with the law or in accordance with the concept of justice and fairness, the answer is a positive "no": two constables had opened fire in which two persons were killed, without there being any inquiry in terms of the police regulation the Commissioner of police records his appreciation within 48 hours - The Assistant Commissioner of Police recommends a reward of Rs. 300/- and Rs. 100/- to the two constables and the Deputy Commissioner of police who is in charge, of the enquiry in terms of the order of the Commissioner of police, recommends a reward of Rs. 350/- and Rs. 150/- for the two constables - is this the ideal working of a modern police force in the world's largest democracy, in my view, the answer cannot again but be in the negative. Neither the police atrocities nor the police inaction can be encouraged Police is to maintain a balance of bringing the offenders into books so that the law might take its own course. Police Inaction of not being able to put offenders into books cannot authorises a police constable to take out the service revolver and shot the offender down. We are supposed to be in a civilized society and not in a jungle rule. If the police authority fails to bring offenders into books it is the inefficiency of the police but that does not clothe the police officers to shoot the persons down and take their lives. No law has ever authorized to take any life by any person including a policeman. If this be allowed to continue the judiciary would be rendered functus officio. It is in consonance with the concept of justice that the police should act in accordance with law and not de hors the same - can it be said that police have acted in accordance with law the answer cannot again be but in the negative. It is for the police administration to bring the offender to books and the law courts would be the proper functionaries to deal with him in accordance with law the offender may be the scum of the earth but the police had no right to obliterate him.

11. If we recapitulate the facts it therefore appears that police finding had taken place in which two persons died may be there was likelihood of violent incidents, but does that authorize the police to open fire - there is no report from the constables who opened fire-there is no "return G.D." by the constables - no information even was sent to Beniapur Police Station and it is only after the incident that the Officer-in -Charge of the Police Station on the basis of an information from a local resident went to the place of occurrence. Can any civilized State boast of such a police action. In my view the answer can not but be in the negative. Police Act, Police Regulations are there, but it is the (sic) he shall have to implement the same In its true letter and spirit for which they were engrafted in the statute book and if top most police official without directing an inquiry appreciate the bravery of killing can any enquiry succeed - then why this farcesical show of an enquiry, is it just to keep the records straight. Police is not there to put the records straight. Police is not there to put the records straight. Police is there as a law enforcing agency and it is the police on whom the basic trust of justice is bestowed by the common man. It is high time that the police administration should think it over and formulate certain basic guidelines so that

they can regain the confidence of the people - so that they can act as a protector of the society - so that they can act in terms of the true intent and spirit of the legislation which has been engrafted into the statute book. They must rise above everything and bring home a feeling of security in the minds of the public in General that police can do no wrong and it is the police who would act as the protector and not as killers.

12. Incidentally it is to be noted that Calcutta Police Regulation in particular Chapter IV, Regulation 40 provide that whenever fire-arms are used by the Calcutta Police the Commissioner shall hold a full inquiry and shall submit a detailed report to the government as soon as possible thereafter. Regulation 40 (2) provides that the object of holding such an executive inquiry is to ascertain whether the firing was justified and whether the rules governing the use of fire-arms were substantially observed. The regulation indicates that the inquiry should be held with the least possible delay and in addition to the testimony of the police personnel concern, steps shall be taken to obtain independent views of the local people such as shop-keepers and residents of the locality who are likely to have been eye witnesses of the firing.

13. Significantly enough the inquiry report produced before the court depicts lives of the police constables were in danger so also that of one Md. Sakul. The police constables have not sustained any injury whatsoever. As regards the injuries of Md. Sakul, the hospital report does not record such a state of affairs. The patient has been able to give four page statement and signed each and every page of the statement and the hospital report further records that the patient was fully conscious and the condition of the patient was not unfavourable. Be that as it may, I do not wish to go into the matter in details since it is no part of this Court's duty to go and deliver into this matter at this stage. The report of the Deputy Commissioner was submitted on 26th June after a direction from the court to expedite the inquiry. The whole situation seems as if, the inquiry shall have to be kept in the records and not for the purpose for which such an inquiry is envisaged in terms of the police regulation so as to ascertain whether the firing was justified or not. How can the Deputy Commissioner, E.S.D. hold an inquiry as to the justification of the firing when he himself records in writing a reward for the constable who has opened fire much prior to holding of an inquiry can it be termed to be fair and reasonable and in accordance with the police regulations - the answer can only be in the negative. The Commissioner of Police himself before directing such an inquiry appreciates the services of the constable when he opened fire and killed one person and the other one was fighting for life in the hospital. Criminals also have a right to live and a right to get and obtain a trial so that they can defend themselves. According to the statements, as recorded in the files of the police Department, the two persons who were killed, were wanted in various cases but it is the police who have not been able to put the offenders into books and for their failure they cannot take the lives of those offenders, Law Courts are still functioning and Law Courts shall rise up to the occasion to do the needful in the event the Law Court

finds that there was gross abuse of the power vested on to the police.

14. Before I conclude, it is pertinent to record that the role of the State Government can not also be appreciated by this Court. There is no enquiry from the State Government as to what happened to the inquiry report. The concerns department should have raised an eyebrow in the matter of non-completion of the inquiry but unfortunately there was none. The inaction or non-action of the State Government also cannot, be appreciated - the matter is serious enough to call for an explanation from the Commissioner but unfortunately nobody just bothered.

15. Having dealt with the matter in extenso above and considering the report more particularly of the investigating officer himself directing a reward, in my view, the total inquiry and the report has been a mere farcesical show and as such I direct a fresh inquiry by an independent officer unconnected with the matter in issue, not below the rank of a Deputy Commissioner within a period of 8 (eight) weeks from the date hereof and the Commissioner shall consider the same and pass appropriate orders on the basis thereof. The Commissioner of police shall also consider as to whether the two constables involved in this matter should be allowed to continue to act as constables in the Police Station in which they are now posted and such consideration be however effected forthwith. The Secretary, Department of Home, Government of West Bengal is also directed to peruse the report when submitted by the Commissioner of Police and act to accordance with law on the basis thereof. It is made clear that the inquiry should be an independent inquiry and not a more farcesical show as has been done in the instant case. The report of the Deputy Commissioner, E.S.D. is thus, set aside and a fresh inquiry be held as directed above. Both the writ petitions stand disposed of as above without however any order as to costs.