
(2010) 05 AHC CK 0061
In the Allahabad High Court
Case No : Special Appeal No. 850 of 2010

State of U.P. and Others

APPELLANT

Vs

Jagannath Prasad Gaur and Others

RESPONDENT

Date of Decision : 28-05-2010

Acts Referred:

Constitution of India, 1950 — Article 142
Police Act, 1861 — Section 4

Citation : (2011) 4 ADJ 398

Hon'ble Judges : R.K. Agrawal, J;Abhinava Upadhya, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. By the Court.-The present Special Appeal has been filed against the order dated 7.5.2010 passed by the learned Single Judge whereby while granting time to the parties to exchange their affidavits, the order of transfer of the Petitioners, who have been arrayed as Respondents in the present appeal has been stayed. The learned Single Judge after considering the minutes of the Board, which approved the transfer of the Respondents herein, has prima facie come to the conclusion that the Board has not applied its mind.

2. We have heard Sri S.G. Hasnain, learned Additional Advocate General appearing for the Appellant and Sri Vijay Gautam, learned Counsel appearing for the Respondents and have perused the order dated 7.5.2010 passed by the learned Single Judge giving rise to the present appeal, grounds taken in the memo of appeal as also the documents filed along with it.

3. Sri S.G. Hasnain, learned Additional Advocate General appearing for the Appellant submitted that the transfers have been effected on administrative ground after the decision of the Board constituted for that purpose and, therefore, the learned Single Judge was not justified in staying the same.

4. Sri Vijay Gautam, learned Counsel appearing for the Respondents, on the

other hand, submitted that the Board has not been duly constituted in terms of the direction given by the Hon"ble Supreme Court in the case of Prakash Singh and Others Vs. Union of India (UOI) and Ors, He submitted that necessary foundation has been raised in paragraphs 19 to 25 of the writ petition wherein it has been specifically stated that the direction given by the Hon"ble Supreme Court regarding the constitution of the Board in a particular manner is binding under Article 142 of the Constitution of India and cannot be ignored. According to him, the Board was presided over not by the DGP but ADGP/IG Establishment, who had no authority to preside over the said Board in view of the direction given by the Hon"ble Supreme Court in the case of Prakash Singh (Supra).

5. Sri S.G. Hasnain, learned Additional Advocate General, submitted that this issue was not raised before the learned Single Judge and the learned Single Judge has stayed the transfer order on the ground of non-application of mind by the Board.

6. Sri S.G. Hasnain, learned Additional Advocate General has relied upon a decision of a learned Single Judge of this Court in the case of Rishi Pal Singh v. State of U.P. and Ors. 2009(10) ADJ 381, wherein the Board presided over by the Inspector General of Police (Establishment) was held to be validly constituted Board. Reliance has been placed on paragraphs 9, 10 and 14, 15 of the aforesaid judgment.

7. We have given our thoughtful consideration to the various plea raised by the learned Counsel for the parties. We find that even if the learned Single Judge has stayed the order of transfer of the Respondents on the ground that the Board has not applied its mind and has acted mechanically, the issue raised by Sri Vijay Gautam, learned Counsel for the Respondents that the Board was not properly constituted, goes to the very root of the matter and if this Court comes to the conclusion that the Board was not properly constituted in terms of the direction given by the Hon"ble Supreme Court, the entire order of transfer stood vitiated. The order passed by the learned Single Judge would be justified, though on a different ground.

8. We find that the Apex Court in the case of Prakash Singh (Supra) has considered the growing and rampant interference by the State Government in the Police administration and taking into consideration various materials submitted before it, had decided to constitute a Police Establishment Board in the following terms:

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 the 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 postings 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 promotions/transfers/disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the Police in the State.

9. The order constituting the Police Establishment Board for considering the transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police has been passed in exercise of power under Article 142 of the Constitution of India and is binding upon the State of U.P. However, if the State of U.P. wants to deviate, then it is incumbent upon it to obtain necessary permission from the Hon''ble Supreme Court, which in the present case, has not been done so far.

10. Sri Hasnain, learned Additional Advocate General contended that the proposal for constitution of the Board was submitted by the State of U.P. before the Hon''ble Supreme Court and the Hon''ble Supreme Court had not objected to the same nor it had modified the same and, therefore, it should be treated that the proposal submitted by the State of U.P. has been accepted and the constitution of the Police Establishment Board as envisaged by the order referred to in the case of Prakash Singh (Supra), stood modified.

11. The submission is wholly misconceived. Mere submission of proposal and non-objection by the Apex Court would not mean that the same has been accepted and the express direction given by it in the case of Prakash Singh (Supra), stood modified.

12. So far as the decision of the learned Single Judge in the case of Rishi Pal Singh (Supra), is concerned, we may mention that the learned Single Judge has proceeded to decide the issue and upheld the constitution of the Police Establishment Board on the ground that the Apex Court had appointed a Committee under the Chairmanship of Hon''ble Mr. Justice K.T. Thomas, a retired Judge of the Hon''ble Supreme Court to supervise the implementation of the guidelines laid down in the case of Prakash Singh (Supra). The said Committee has not pointed out any difficulty in its implementation in the State of Uttar Pradesh. We may mention here that whether this issue was brought to the notice of Hon''ble Mr. Justice K.T. Thomas or not, is not clear. If there is a specific direction by the Hon''ble Supreme Court for constitution of the Police Establishment Board with the Director General of Police, who is the Head of Department as its Chairman, in our considered opinion, the same cannot be modified unilaterally by the State Government by appointing Addl. DGP or I.G. Establishment as its Chairman when neither under the Police Act nor under the Police Regulations the post of DGP and the Addl. DGP has been equated. In this view of the matter, we are of the considered opinion that the order passed by the

learned Single Judge does not suffer from any legal infirmity.

13. Sri Hasnain, learned Additional Advocate General referred to Section 4 of the Police Act and submitted that the Inspector General of Police has been authorized to take care of law and order situation along with the DGP and, therefore, the Addl. DGP and I.G. Establishment should be treated to be person also authorized to take care of the law and order situation.

14. The above submission neither helps nor advances the cause of the State inasmuch as the constitution of the Police Establishment Board has been specifically directed by the Hon''ble Apex Court with the persons mentioned therewith and any deviation from it can only be after obtaining due permission from the Hon''ble Supreme Court.

15. In view of the foregoing discussions we are of the considered opinion that the Board which had considered and approved the transfer order in question was not constituted in accordance with the specific directions given by the Hon''ble Supreme Court and, therefore, the transfer order has not been passed in accordance with law.

16. The appeal lacks merit and it is accordingly dismissed.