
(2002) 05 CAL CK 0044

In the Calcutta High Court

Case No : C.A.N. No. 95 of 2002 and W.P. No. 16806 (W) of 2001

Sunanda Bose and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 07-05-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 144, 149, 151
Police Act, 1861 — Section 13, 3, 6

Citation : (2003) 1 CALLT 34

Hon'ble Judges : Kalyan Jyoti Sengupta, J

Bench : Single Bench

Advocate : Dilip Kumar Dutta and Arup Chatterjee and P.K. Das, Debal Banerjee, Ranjan Bachwat and Ashoke Basu, for the Appellant; Pulak Ranjan Mondal and Bandana Das and Rafiqul Islam, for the Respondent

Final Decision : Allowed

Judgement

K.J. Sengupta, J.—The petitioners with this application has asked for variation and/or modification of my order dated 10th October 2001 and for setting aside of the Memo bearing No. 7722-E dated 18.10.2001 being annexure "P-2" and the report dated 23rd November 2001 being annexure "P-5" to the application; and further refund of sum of Rs. 15,000/-. The case of the petitioner is appropriately narrated hereunder:

2. The petitioner has a fishery right under the Private Fishery Protection Act, 1889 at a place called "Tentul Berta Jalkar" located at Chak Path Mouza, P.S. Hasnabad, District 24-Parganas (North). She was unlawfully and unduly disturbed by the private respondents and other unidentified persons in assertion of her right of fishery under a licence granted by the Government under the statute. She was unable to operate sluice gate during high tide, which is necessary for pisciculture, rearing and catching fishes. So, she approached local Police Station first and having no redressal for her grievance she thereafter filed

application u/s 144 of the Criminal Procedure Code in the Court of the learned Sub-Divisional Executive Magistrate at Basirhat, 24-Parganas (North). The learned Magistrate on 8th August 2001 passed an order amongst other as follows;-

"Seen the petition u/s 144(2) Cr.PC. O.C., Hasnabad Police Station is asked to cause an enquiry into the matter and submit a detailed report.

In the meantime, the O.C., Hasnabad Police Station is asked to maintain peace and to see that actual possession is not disturbed and breach of peace may take place there and take remedial measure accordingly."

3. The aforesaid order of the learned Magistrate was forwarded to the Officer-in-Charge of the local Police Station concerned. The petitioner herein having found the aforesaid order not being carried out and implemented came to this Court with a writ petition for implementation of the aforesaid order and also for police assistance so that she can run her fishery with her employees and agents.

4. On 19th September, 2001, I passed an order on the writ petition directing the Officer-in-Charge of Hasnabad Police Station to carry out the order of the learned Magistrate "dated 7th August 2001 strictly in terms thereof, provided this order remains valid and subsisting on that date. Thereafter, on 10th October 2001 the petitioner alleged that the aforesaid order of the learned Magistrate has not been carried out by the Officer-in-Charge of the concerned Police Station. So, I directed the Superintendent of Police, North 24-Parganas to see personally that my aforesaid order was carried out by the Officer-in-Charge of the concerned Police Station. I also directed to make an enquiry as to whether the Officer-in-Charge of the Hasnabad Police Station had carried out my order or not. By my aforesaid order I further directed the S.P. to render police assistance at the costs of the petitioner and costs of the police force shall be estimated within 48 hours from the date of communication of this order. It was my specific order that police posting and picket should be done forthwith on depositing of costs by the petitioner, and the Police Officer or personnel so to be deputed shall effectively give protection to the petitioner.

5. On 18th October 2001 the matter was taken up for hearing. No report was submitted by the Superintendent of Police, North 24-Parganas. On 19th October 2001 when the matter was taken up for hearing it was found that the Superintendent of Police did not communicate the assessment of costs, to the petitioner for deployment of the police personnel. So, I passed a specific order directing the S.P. to depute six armed police personnel and one Officer to lead them on depositing a sum of Rs. 5,000/- by the petitioner without prejudice. The S.P. was also asked to show cause as to why the order passed by this Court was not carried out by him. By this order dated 19th October 2001 I also directed the S.P. to see that the Officer-in-Charge of local Police Station shall supervise assistance of the police personnel so to be deputed in terms of the order of this Court.

6. On 26th November 2001 the matter was taken up for hearing again and on that dated I found that the costs of Rs. 5,000/- was deposited with the treasury by the petitioner. The S.P. as well as the Officer-in-Charge of the concerned Police Station did not carry out my earlier orders. So, I directed them to file affidavit.

7. On 4th December 2001 the matter was taken up for hearing once again. On that dated when the petitioner complained that though the police personnel and the Officer were deputed but they did not render any assistance and they were staying far away from the actual place of dispute and/or disturbance. But such fact was disputed and denied by the police officials. So, appointed Mr. Udayan Roy, learned advocate of this Court as a Special Officer to enquire into this matter and to submit a report with photographs as to whether the sluice gate located in the middle of fishery near embankment of river can be guarded by the police or not and for this purpose whether the permanent police posting is possible or not near the sluice gate. On that date, for the first time, learned lawyer appearing for the private respondents had alleged that they were unnecessarily being harassed and implicated in the proceeding. The police authority by this time submitted a bill amounting to Rs. 97,088/- and after giving adjustment of Rs. 5,000/- a sum of Rs. 92,088/- was demanded on account of police assistance. The Special Officer thereafter submitted a report. He found that police assistance was not given to the petitioner at all and they stationed themselves at a distant place. He reported also that the actual place of dispute and disturbance, viz., sluice gate could be guarded by police personnel.

8. On 20th December 2001, I directed the petitioner to deposit ad hoc costs of Rs. 10,000/- on account of police assistance. By my aforesaid order dated 20th December 2001, I directed the Special Officer to see that my previous orders are effectively implemented. I also granted liberty to the petitioner to take out appropriate application. Hence present application has been taken out.

9. On 8th January 2002 when I heard this matter again I was told not only by the learned lawyer for the petitioner but the Special Officer as well that all orders passed by me and the order passed by the learned Magistrate have been frustrated by a mob who prevented and/or obstructed the Special Officer as well as the petitioner from entering the actual location and they took forcible control of sluice gate. The police personnel and Officer stationed there had no option but remained silent spectators, as they were unable to control and tackle the mob who overwhelmingly out-numbered them. As a result whereof the petitioner had to pay a sum of Rs. 15,000/- on account of costs of the police assistance in vain and has further been saddled with a bill of Rs. 92,088/- for which no service has been received at all. That is why the present application has been taken out for granting appropriate relief as mentioned hereinabove. I gave opportunity to the police to file affidavit-in-opposition on two occasions. No affidavit-in-opposition has been filed.

10. Mr. Dilip Kumar Dutta, learned senior advocate appearing with Mr. P.K. Das,

Mr. Debal Banerjee, learned senior advocates, Mr. Ranjan Bachwat and Mr. Ashoke Basu, learned advocates, submits that it is the paramount duty of the State Government to protect the lives and properties of the citizens since maintenance of general law and order is the State subject under List-II of the State List in Schedule-VII of the Constitution. It will appear from various provisions under Criminal Procedure Code, Police Act 1861 and Regulation 669(ii), the police will take action deploying police force without realization of costs from private individual save and except in extreme situation, the petitioners are women and citizen of this country and their right to run a fishery for which a valid and appropriate licence has been granted under the Private Fishery Protection Act was unlawfully interfered with or affected by some antisocial elements, in operating sluice gate. Complaint was lodged and all forums concerned were approached by the petitioner in vain. They could not exercise their right of fishery. Their employees and agents were driven away and beaten up. No protection could be given by the State Government. They even voluntarily paid costs with the hope of getting police assistance. Curiously, the police officials did not come forward with the assistance, which they were bound to do and law under as a matter of course even without any cost being paid, Mr. Dutta has drawn my attention to the Police Regulation of Bengal and relevant provision of Criminal Procedure Code and Police Act. He submits that even if the costs are paid by the petitioners the police officials and personnel should have been placed at the disposal of the petitioners.

11. He submits that it will appear from the report of the Special Officer that the police personnel and officials concerned remained at a distant place to facilitate the troublemakers to continue with disturbance and commit cognizable offence. There cannot be any glaring example of police inaction or indifferent attitude in discharging their statutory duties towards the citizens while they and each of them flouted order of this Court. No step was taken by the police officials to disperse the mob, which formed and assembled at the said place. The police personnel did not even make any attempt whatsoever.

12. Under such circumstances, Mr. Dutta submits, the demand for payment of costs should be set aside, as it is wholly unjust under law. So, he submits that the costs already paid by the petitioners shall be directed to be refunded.

13. Mr. Mondal, learned advocate submits that the police assistance was given not in terms of the Police Regulation of Bengal or Criminal Procedure Code or for that matter under the Police Act. It was provided in terms of the order of this Court and in the Court's order it was not specifically mentioned that the same should be given at a place where the petitioner needed or at the disposal of the petitioner. The police rendered all possible assistance in that situation. When a strong mob came and disturbed it was not possible for the official and personnel with small contingent to tackle them, as there could have arisen serious law and order problem and riot. He submits that the petitioner in terms of the Court's order shall pay balance sum of Rs. 92,088/- and question of refund by the

respondents does not and cannot arise. He argues that when the petitioner has taken benefit of orders of this Court and having acted thereupon, question or recalling and/ or variation of my earlier order does not and cannot arise.

14. In the context of the aforesaid arguments and the case made out by both the parties the following are the issues which have fallen for my consideration and decision thereon:-

(i) Whether the police protection and assistance was given to the petitioners strictly in true and proper sense of my order or not.

(ii) If not, whether the costs already paid by the petitioners shall be refunded and the demand for payment of the balance amount of the costs shall be set aside or not.

15. I find there is considerable force in the argument of Mr. Dilip Dutta senior advocate that under Criminal Procedure Code read with the Police Act it is the power coupled with duty of the State Government to ensure public peace, safety and tranquility and maintenance of law and order and under entry-I in List-II being the State List of the Constitution of India. The citizen is not supposed to pay costs for protection and assistance ordinarily. Sometimes, however, if any necessity arises, any individual citizen may make requisition for deputing additional police force at his/her own costs, this can be done when police assistance and protection provided by the Government in ordinary course are found to be inadequate, this will appear from the provision of Section 13 of Police Act, 1861. Under Chapter XI of the Criminal Procedure Code the police is authorized in order to maintain public order and tranquility, to prevent the commission of cognizable offence, u/s 149. u/s 151 of Cr.PC the Police Officer is also empowered to arrest a person without orders of Magistrate or even without warrant, if it appears that such person has a design to commit any cognizable offence. In addition to the above Section 13 of the Police Act 1861 provides that additional police forces may be employed at the cost of individuals and such special posting shall only be made on application of the concerned person for whom it is indispensable to show that there is an extreme necessity for additional Police Officers. I find Regulation 669 of the Police Regulation, Bengal envisages a few guidelines which should be taken into account while dealing with applications of private parties u/s 13 of the Police Act, 1861.

16. So, it appears from the aforesaid provision of Police Act, 1861 and Police Regulation of Bengal that the police force so deputed at the cost of any citizen has to be placed at the disposal of the applicants. Undisputedly the petitioner had right to run fishery pursuant to licence granted by the Act under the Private Fishery Protection Act. Any disturbance and interference with this right tantamount to commission of cognizable offence as defined in Section 3 read with Section 6 of the said Act. Ordinarily, the Police Officers on receipt of the complaint should have intervened in the matter taking action against those persons who are committing offence under the aforesaid section. The petitioners

herein approached the Officer-in-Charge of the local Police Station at the first instance. In spite of complaint no action was taken. Then the learned Sub-Divisional Executive Magistrate concerned passed an order, directing the Officer-in-Charge, local Police Station to take action. Having found the police being inactive, the petitioners approached this Court, by a writ petition. This Court passed order asking the S.P. concerned to give police assistance to the petitioners at their costs. The S.P. initially despite knowledge of the order was reluctant or rather indifferent to estimate costs or to give police protection. However, on judicial pressure such police force was supplied.

17. It is contended on behalf of the petitioners that this police force was placed not intending to help the petitioners but to facilitate the private respondents to fulfill their evil design. I find from the report of the Special Officer as well as a supporting affidavit of one Rabindra Nath Singh dated 9th January 2002 that the police personnel with their Officer instead of reporting to the petitioner, took forcible and wrongful shelter occupying a portion of the house of one Mahadeb Singh despite his objection. This objection was recorded in writing and was communicated to the S.P. on 29th October, 2001. It is appropriate to record that the house of the said Mahadeb Singh situates far away from the concerned fishery, viz., "Tentul Beria Jalkar". My order granting police protection was very clear that the police assistance should be given to the petitioners effectively so that they could run their fishery. In spite of the said complaint being lodged with the S.P. concerned no action was taken by him to set the thing right, on the contrary, the S.P. went on writing frivolous letters contending that the police forces had been given at the appropriate place. He did not think fit to enquire into the matter personally or get inquiry to be made by any subordinate Officer as to whether the complains and allegation of the writ petitioner and that of Mahadeb Singh whose house was forcibly occupied by the police force were correct or not. Significantly, the S.P. concerned went on raising bill for costs of alleged police protection taking advantage of my order for payment of costs by the petitioners.

18. In order to ascertain true and correct picture of the incident, I appointed a Special Officer. From his report dated 13th December, 2001, I find the petitioner's version is absolutely correct that no police assistance was given in terms of my order at the concerned fishery rather the police personnel and Officer were loitering and/or passing their days in a third person's house that too was occupied without any payment to the third party. The appropriate authority for such occupation passed no order for requisition. It seems to me the police personnel and the Officer had forgotten to do for what they were deputed at the costs of the petitioner. From the report of the Special Officer I also find that at the actual place where the disturbance and/or trouble created, sufficient open was there to set up make shift shelter, even a covered accommodation was available where the police force could have been deployed from the very first day, which, however was done subsequently.

19. Under such circumstances I am of the view that the police assistance was not really given to the petitioners under the law. On the contrary, taking advantage of my order the police authorities have demanded payment of costs of rupees 92 thousand and odd apart from realizing a sum of Rs. 15,000/- from the petitioners. I accept argument of Mr. Mondal that my order for payment of costs should not be recalled and/or varied, but when I find in reality no assistance was given to the petitioners, the petitioners cannot be saddled with the costs for such payment. Court's order is not meant for frustrating but for meaningful and effective implementation. I am amazed to see how Officer and police personnel with ingenuity could frustrate order of the Court aiming at to help commission of offence instead of preventing the same. This Court records with strong displeasure that the S.P. concerned and his subordinate police Officer including the Officer-in-Charge of the local Police Station under his command have miserably failed to protect rights of the petitioner and have been unable to prevent cognizable offence being committed.

20. I appointed a Special Officer to see that the order of this Court was implemented to. However, because of callousness of the Police Officers a strong mob could enter in that area to frustrate the order of this Court and to commit cognizable offence. The Executive Magistrate and the Officer-in-Charge of the local Police Station all remained as silent spectators though the machinery of the law is very strong and effective to deal with the situation in appropriate manner. Instead, a group of criminals having been encouraged by indifference and callousness of police officials could effectively take the law in their own hands. Subsequently, no step is reported to have been taken to apprehend those persons who dare commit such cognizable offence and to flout the order of this Court.

21. Therefore, I believe the version of the petitioners that the police personnel and their official brazenly sided with the local hoodlums. So, I set aside and quash the demand for payment of costs of rupees 92 thousand and odd. This is not only a fraudulent act on part of the police officials but to subserve their hidden unholy objective to help some antisocial elements. I record that the Officer-in-Charge of the local Police Station as well as the Officer who was deputed in terms of my order were inept and unmindful to their duties and not having least regard to law. Even the S.P. concerned is not as responsible as an Officer of the status of S.P. should be in a situation like this one to tackle the situation. He even did not try to explain away or meet complain made in the petition by filing affidavit, simply he has none.

22. Therefore, I direct the Director General of Police, West Bengal to make an In-depth enquiry and to take step if warranted in accordance with law for lapses and failure because of this callous and indifferent approach of all the police officials as above. I direct the State Government to refund the costs to the petitioners amounting to Rs. 15,000/- which has already been paid by the petitioners for police assistance. Over and above I grant liberty to the petitioners to initiate

appropriate proceedings against the State Government as well as police officials for loss and damage suffered by them. The petitioners are also entitled to costs of the writ petition and incidental of the proceedings assessed at Rs. 10,000/- to be paid by the State Government within a period of one month from the, date of communication of this order. It would be open for the State Government to realize all costs and loss suffered by it by reason of callous, negligent and indifferent act and action of the S.P. concerned, Officer-in-Charge of the local Police Station and the police personnel who were deputed in terms of order of this Court proportionately if so advised.

23. The main writ petition should be heard, as it is still kept pending.

Mr. Mondal's client, namely. State Government wants to file affidavit-in-opposition. Let the affidavit-in-opposition be filed within one week after summer vacation and reply thereto, if any be filed within one week thereafter.

Let this matter be listed for hearing 3 weeks after summer vacation.

The learned Registrar is directed to communicate this judgment and order to the Director General of Police for appropriate action

Let a xerox certified copy of this judgment be made available to the parties as early as possible.

Stay of operation of the judgment is prayed for by Mr. Mondal. I am of the view, that there are some points, which need consideration. Therefore, operation of this judgment and order is stayed for a period of one week after summer vacation. However, interim orders already passed staying demand made by the State Government shall remain stayed.