

(1989) 08 DEL CK 0047

In the Delhi High Court

Case No : Civil Writ Appeal No. 2451 of 1989

Union of India

APPELLANT

Vs

Delhi Bar Association

RESPONDENT

Date of Decision : 28-08-1989

Acts Referred:

Citation : (1989) RLR 455

Hon'ble Judges : S.B. Wad, J;M.K. Chawla, J

Bench : Division Bench

Judgement

S.B. Wad, J.

(1) The writ petition is filed by the Union of India, representing the Central Bureau of Investigation, against the order of the Judicial Committee (presided by Justice D.P. Wadhwa) on 21.8.1989, directing Cbi "to produce on affidavit copies of statements of S.I. Jinder Singh and Mr. Rajesh Yadav, if any, recorded u/s 161 Criminal Procedure Code . or though not recorded u/s 161 Criminal Procedure Code . but recorded in the case diaries."

(2) Mr. Jinder Singh, S.I., was in-charge of the police post Tis Hazari during the incidents on 21.1.1988 and 17.2.1988. Mr. Rajesh Yadav had admittedly led the mob of about 3000 to 4000 people and had allegedly stormed Tis Hazari Courts on 17.2.1988. It is important to note that these are the last two witnesses in what can loosely be called the prosecution story. Main witnesses such as Mrs. Kiran Bedi and some lawyers, who are described as "S8-B witnesses" are already examined and cross-examined. After the completion of the cross-examination of Mr. Jinder Singh S.I., and Mr. Rajesh Yadav the bulk of the evidence in regard to the said two incidents would come on record. What would remain would be the evidence by way of defense, if any, led by the two sides. The impugned order was passed by the Committee on an application (M.A. No. 21/89) filed on behalf of the Delhi Bar Association and also by the Advocates to whom notices u/s 8-B of the Commissions of Inquiry Act, 1952, had been issued. The obvious purpose in summoning the said Cbi record is the protection of the right to reputation of

the lawyers through cross-examination of the said two witnesses. In the earlier round of litigation against the orders of the Committee, Smt. Kiran Bedi Vs. Committee of Inquiry and Another, the Supreme Court has held that right to reputation is a personal right protected by Article 21 of the Constitution. Apart from the aid to the protection of fundamental right under Article 21, cross-examination is an entrenched judicial method to unearth truth in regard to an incident.

(3) We think that the present round of litigation started by the Cbi is unfortunate. Cbi is only a special investigative agency. It has and should not have any stakes in the results of the said judicial inquiry. If the lawyers and the police officers feel apprehensive about an order of the Committee, however, misplaced it may be, it is understandable. In our judgment, Mrs. Kiran Bedi and Others vs. Delhi administration, (Civil Writ Petition No. 822 of 1989, decided on 4.5.1989), we had held that "frequent interruptions by applications or judicial proceedings in High Court or Supreme Court has serious effect of eroding the said parameters (of Commission of Inquiry) expeditious disposal of inquiry by a Commission is a legislative mandate and is in the public interest and in consonance with public policy. Public memory is short and, Therefore, the life of the Commission should not be long." If the Central Govt. wants a certain investigation to be made by the Cbi and also appoints a Commission under the Commissions of Inquiry Act to ascertain truth by public enquiry in a public case, the role of Cbi, which is only an agency of the Government, would be to act in aid of the Commission of Inquiry. This is because we cannot expect that the Govt., which orders public enquiry on a democratic demand to be conducted by a Judge of a High Court, would permit its own agency like Cbi to delay or thwart the judicial inquiry. The Cbi, perhaps unwittingly, is trying to do the same claiming special powers, immunities and -protections under Cr. P.C. The immediate effect is to take the clock back and the proceedings before the Commission are postponed.

(4) What are the objections of the Cbi in resisting the production of the statements of the said two witnesses and the relevant case diaries ? The submission of the counsel for the Cbi is that u/s 172(2) of the Criminal Procedure Code . a police diary cannot be used as an evidence, i.e. in the present case for cross-examination of the witnesses. The Cbi submits that their investigation is still going on and would only be complete by submission of the report u/s 173, Cr.P.C. Supply of copies of the statements at this stage is beyond the contemplation of the provisions of the Criminal Procedure Code . Since some advocates are named as accused in Fir No. Rc 4/88- Siu Iii, giving copies of the statements of Shri Jinder Singh would prejudicially affect the prosecution. u/s 175 Criminal Procedure Code . the copies can only be supplied only after the filing of the complaint u/s 173. The impugned order, it is submitted, is without jurisdiction and amounts to interference in the statutory powers of the police to investigate. Disclosure of statements during investigation have vast ramifications and to do so even through a collateral proceeding will jeopardise the entire

concept of criminal, investigation under Cr. P.C. The accused should have no inkling regarding the nature of investigation and till the final report is submitted the investigation is to be kept secret. The Cbi has relied upon the judgment of the Supreme Court in I.J. Rao, Asstt. Collector of Customs and Another Vs. Bibhuti Bhushan Bagh and Another, . That was a case of smuggling under the Customs Act and the Supreme Court held that supply of any information regarding investigation would enable the concerned person to monitor the various clues collected by the Directorate of Enforcement. The counsel for the Cbi submits that in this case also, the lawyers should not be permitted to monitor the secret course of investigation. The counsel for Cbi has referred to some other decisions also, which were cited by them before the Committee. The Committee, in the impugned order, has heavily relied upon the decision of the Supreme Court in Khatri and Others Vs. State of Bihar and Others, , and has held that it was not a criminal court deciding a criminal case in relation to the said incidents. The Committee has held that the provisions of -Sections 161, 162, 172 and 173, Criminal Procedure Code . do not stand in the way of the Committee, empowered under the Commissions of Enquiry Act, to summon the statements recorded by the police or the relevant entries in the police diary even during the course of investigation. The counsel for Cbi submits that the reliance on the Supreme Court decision in Khatri by the Committee was wrong because in that case the Police had already completed their investigation. [In para

(5) Stand of Delhi Admn. is noted as being neutral],

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(7) In our considered view the decision of the Supreme Court in Khatri is a complete answer to the objections raised by the Cbi and the Committee has rightly relied upon the same. We are also of the opinion that the submission of the Cbi that in that case, production of documents was ordered by the Supreme Court because the investigation was complete amounts to erroneous reading of the said judgment.

(8) Khatri is one of the landmark decisions of the Supreme Court, which is popularly known as the Bihar blinding case. Upon widespread complaints of the blinding of undertrial prisoners by the police in jail, the government of Bihar, in exercise of the powers under the Indian Police Act, 1861, directed Shri L. V. Singh, D.I.G. to investigate the offences arising from the blinding .The method and procedure of investigation was under Chapter Xii of the Criminal Procedure Code . Some of his associates had made partial investigations. These officers and Shri L.V. Singh, D.I.G., submitted their reports. But, since the alleged blindings by the Bihar police of the undertrial prisoners raised a nation-wide hue and cry the Central Government directed the Cbi inquiry. It was only after the completion of the Cbi investigation under Chapter Xii of the Criminal Procedure Code ., the charge-sheet, if any, against the police officers was to be filed. In the proceeding under Article 32 of the Constitution before the Supreme Court the counsel for the petitioner prayed for the supply of copies of the reports of Shri L.V. Singh, D.I.G.

and the other officers, and the police diaries maintained during the course of investigation. The counsel for the State of Bihar advanced the same arguments as are now advanced by the counsel for Cbi before us. The argument of the counsel was that the report of Shri L.V. Singh and the police diaries could not be produced in a civil proceeding or some other proceedings "for that would jeopardise the secrecy of investigation and defeat the object and purpose of Section 172." The counsel for the State of Bihar also submitted that until the investigation was complete and the guilt or innocence of the police officers was established the Court should not hear the petition before it as it would tent amount to adjudicating upon the guilt of the police officers. In other words the submission was that the Supreme Court had no jurisdiction to direct the production of the police reports and diaries before the investigation was complete and to adjudicate on the related matters.

(9) The Supreme Court turned down both the contentions of the counsel for the State of Bihar, viz. that until the investigation was completed the copies of the statements/reports and police diaries cannot be directed by any Court to be produced and also the submission that the said course of action will jeopardise the secrecy of investigation. The Supreme Court held "we have adopted the adversary system of justice and in order that truth may emerge from the clash between contesting parties under this system, it is necessary that all facts relevant to the inquiry must be brought before the Court and no relevant fact must be shut out, for otherwise the Court may get a distorted or incomplete picture of the facts and might result in miscarriage of justice.....it would not, Therefore, be right to extend the prohibition of Section 172 to cases not falling strictly within the terms of the Section, by appealing to what may be regarded as the principle or the spirit of the Section. That is a feeble reed which cannot sustain the argument of the learned Advocate appearing on behalf of the State. It would, in fact, be inconsistent with the constitutional commitment of this Court to rule of law." (Page 1073). The Supreme Court then pointed out that the proceedings under Article 32 being quite different from a criminal case and since its decision would not have a binding effect in any criminal proceeding, there is no bar precluding the Court from proceeding with the inquiry before it "merely because the investigation or prosecution is pending". In other words the Supreme Court held that neither the alleged fear of secrecy nor the incompleteness of the inquiry can be the grounds for denial of the production of any material collected, statements recorded and interim reports made during the course of investigation by police under Chapter Xii of the Criminal Procedure Code . The only question that has to be answered is whether such material is relevant for the inquiry or not.

(10) It may further be noted that the Supreme Court treated the investigation made by any agency or agencies under Chapter Xii of the Cr. P.C. as one and indivisible. It starts with the-recording of the statement u/s 161 of the Cr. P.C. and is completed by a report u/s 173, resulting into either the filing of the charge-sheet or .dropping proceedings. Intervention of one or more agencies for

investigation do not change the legal character of investigation under Chapter Xii of the Cr. P.C. Indeed, the submission of the counsel for the State of Bihar assumes that the investigation is complete after filing of the charge-sheet, as in (hat case it was to be done after the Cbi completed its investigation. The submission of the counsel for the Cbi in this case viz. that they will furnish the statements recorded by the Delhi Police only is contrary to the law laid down by the Supreme Court and is, Therefore, rejected.

(11) The Supreme Court has also clarified the meaning and scope of investigation under Chapter Xii of the Dr. P.C. and the prohibitions mentioned in the Chapter. The Supreme Court has held "by the express terms of the Section this bar is applicable only where such statement is sought to be used at any "enquiry" or "trial" in respect of any offence under investigation at the time when such statement was made. If the statement made before a police officer in the course of an investigation under Chapter Xii is sought to be used in any proceeding other than an inquiry or trial or even at an inquiry or trial but in respect of an offence other than that which was under investigation at the time when such statement was made the Bar of Section 162 would not be attracted."....." It has no application for example, in a civil proceeding or in a proceeding under Article 32 or 226 of the Constitution and a statement made before a police officer in the course of investigation can be used as evidence in such proceedings, provided it is otherwise relevant under the Indian Evidence Act," (Page 1070).

(12) Applying the ratio of the Supreme Court decision, the bar u/s 161, 162, 172 & 173 or other provisions of Chapter Xii, Cr. P.C. do not apply against any production of the statements or police diaries ordered to be produced by Commission/Committee of Inquiry. It is not a criminal court nor even a civil court. There is no "inquiry" or "trial" of an "offence" before a Committee acting under the Commissions of Inquiry Act. It is merely a fact finding body whose function is to establish truth on matters of public importance through all relevant material. Even the Evidence Act is not applicable to these proceedings. It has all the powers of summoning the witnesses and production of documents similar to the civil court. But a Commission/Committee is the master of its own procedure.

(13) The Supreme Court in Khatri judgment has categorically held that the statements before the police diaries can be used as an evidence. In the present case they are required for tile cross-examination by the lawyers whose right to reputation under Article 21 is at stake. It appears that the Union of India has not advisedly claimed any privilege in the production of the said documents. After the decision of the Supreme Court in S.P. Gupta Vs. President of India and Others, it would not be possible for the government to claim privilege of non-production unless it is able to demonstrate that the public interest would be harmed more by disclosure as against non disclosure The inquiry before the-committee is a public inquiry on a matter of public importance of a clash between the police officials and the lawyers. From the neutral stand taken by the

Administration all along it is clear that they are interested in bringing the truth in broad day light. [In para 13, case of 1J Rao is discussed as irrelevant .

(14) A grievance is made in the writ petition of certain "directions" given by the Committee in its order dated 31.7.1989. On the miscellaneous application moved by the counsel for the Delhi Bar Association (MA No. 22/89) the Committee, directed, "after some hearing Bawa Gurcharan Singh, learned counsel for the Delhi Bar Association wishes to withdraw the application. Dismissed as withdrawn. However, keeping in view the terms of the Committee, I would like to know both from Mr. S K. Saxena and Mr. R.P.Lao, learned counsel respectively appearing: for the Cbi and Delhi Administration, if final report u/s 173 of Cr. P.C. could wait till I give my report. Mr. Saxena has stated that the investigation is still going on. He would, Therefore, seek instructions if filing of the final report could wait and in any case he would inform this Committee when the final report is ready. Mr. Lao will also take similar instructions. This is more a question of propriety which has been raised during the course of arguments of the application. Mr. Lao agrees that propriety would demand that final report should not be submitted till the Committee concludes its proceedings, subject, of course, to any jaw of limitation or otherwise. Both Mr. Saxena and Mr. Lao would intimate on the date of hearing the instructions as received by them."

(15) The attack on this "direction" is that it is perverse, bad in law and in excess of the jurisdiction. It appears to us that the Cbi is under some erroneous impression about its exclusive powers and immunities under the Cr. P.C. The myth, if at all, stands completely exposed with the judgment of the Supreme Court in Khatri case, as noted above. Under rule of law and particularly when a fundamental right under Article 21 is involved in any enquiry such enquiry should always have primacy over the police investigation even if it is by an agency like CBI. It was really for the administration/Union of India to stay the investigation by the police and in the meantime to make all efforts to see that the completes its inquiry within the stipulated period of three months or soon thereafter. We cannot presume that the a administration/UOI would permit the Cbi to complete the enquiry and to file charge-sheets u/s 173 of the Cr. P.C. Such an action on the part of the police agency will not only forestall but completely stultify the public inquiry ordered under democratic response by the government. Credibility, balance and independence should illuminate the organisations like CBI. It would have been better if the Cbi had not characterised the. simple direction, more meant as a propriety, as being perverse or bad in law or in excess of jurisdiction.

(16) We have already noted the stand of the Delhi Administration, viz. that the Committee has special powers under the Commissions of Inquiry Act to summon any document and that that propriety demands that the final report should not be submitted by the Cbi till the Committee concludes its proceedings. In para 8 of its decision in Khatri case the Supreme Court has adverted to the necessity of deferring one set of investigation when a parallel inquiry is going on.

(17) Apart from the question legal competence of the Committee to summon the

documents ordered by it, we find that the order has been made with due circumspection and care. Mr. Jinder Singh and Mr. Rajesh Yadav are the last two witnesses to be cross-examined. At the earlier stages when Mrs. Kiran Bedi and other senior officers were cross-examined the counsel for the Delhi Bar Association did not pray for the copies of the statements or the police diary being made available. Perhaps the counsel thought that it was unnecessary to do so. The Committee has restricted its order only to the statements, made before the police by the said two witnesses and the relevant references in the police diary in regard to their role. The Committee has not permitted a fishing or roving inquiry by directing all the police statements recorded during the investigation and every page of police diary to be made available, to the counsel for cross-examination. Dismissed, in limini.