

(1995) 06 AHC CK 0011

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 32982 of 1994

Uttarakhand Sangharsh Samiti Mussooria

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 04-06-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 172
Evidence Act, 1872 — Section 123

Citation : (1995) 06 AHC CK 0011

Hon'ble Judges : R.S.Dhavan, J and A.B.Srivastava, J

Final Decision : Dismissed

Judgement

1. The Central Bureau of Investigation, in pursuance of the order of the High Court dated 7 October, 1994, 12 January, 1995 and 12 January, 1995 and 28 February, 1995, had been required to file its final report by 30 March, 1995. The subjectmatter of the report is reflected in the, aforesaid, orders of the Court. In reference to the context, the orders are about appointing the C.B.I. as an investigating agency which even by law it has the sanctioned authority to conduct. The format of investigations was referenced in the order of the High Court of 7 October, 1994.

"The investigation will be confined to (a) The agitations in the regions of Garhwal and Kumaun, and to include the Muzaffarnagar incident, (b) The matters connected with the agitations for Uttarakhand only, (c) Consequential detentions of the agitationists, (d) The agitators detained, (e) details of injuries, deaths and molestation of women, and (f) damage to property, as a consequence of these agitations within the aforesaid regions."

2. The Supreme Court affirmed this order of the High Court when it was sought to be impugned by the State of U. P. whose appeal was rejected. The C.B.I. also sought changes in the order ; the prayer was declined. The cases before the Supreme Court, saw transfer to the High Court as writ petitions under Article 226

of the Constitution of India. The records as came on transfer had more facts, changed circumstances, spoke of more grievances and prayed for diverse reliefs. In the context of all the records the matters of Kumaun and Garhwal. Uttarakhand as politics determines it, the affirmation order of the Supreme Court. In the investigation which the C.B.I. was to conduct, aptly and appropriately summed it up as "an investigation in various allegation of human rights violations resulting in injuries, deaths and molestation of women".

3. These cases, now either always were and now are becoming the story of the cause of disturbances and the ferment, to put it mildly, of the peoples of the regions of Kumaun and Garhwal whom the State of Uttar Pradesh in its legislative intention has preferred to let go and for the federal government to consequentially ponder over the situation,

4. These are matters of regional aspirations where the paradox is that the State agrees with the political craving of the peoples of Uttarakhand and agrees to do so on record and yet is in difference with them, whatever be their content. The people of these areas seek the grant of this promise. A political claim on a political promise. These differences are before the Court, The spark from the differences have taken myraids of complaints, grievances, political, constitutional, humanitarian and legal. Some, within the constraints of the Court are before it.

5. These investigations of the C.B.I., thus, are not a tooth combing operation of a solitary or isolated incidence of a financial scam, espionage, an arms sellers deal or a backwoods but tragic molestation of nuns in a nunnery. These are investigations of victims amongst peoples, who were aggressed by many. It is for this reason that the Court had given complete freedom to C.B.I. to set its style and priorities and had recorded it so in the order of 1211995. "In so far as the investigation undertaken by the C.B.I. is concerned, this Court is not setting any priorities for this investigating agency as the style of its function during investigations ought not to be cramped by the High Court, and the C.B.I. is free to determine its own priorities". In the spirit of this standard set by the High Court, the C.B.I. has not been asked to file on record the case diaries nor the statements recorded during the course of investigations. The merits of investigations being conducted by the C.B.I. are and remain without comment by the Court.

6. The C.B.I. was required to file its report initially by 5 December, 1994, which it did not, instead, a preliminary report was filed on 5 December, 1994. This preliminary report lay sealed with the Registrar, High Court. An extended time was sought by the C.B.I. The prayer was granted and the time was extended, for filing the report, until 28 February 1995. On that day another preliminary report was filed. This joined the first report and continued to lay sealed, as at the filing of both, first and the second report, there, apparently, were no issue between any party to the case, or even the C.B.I. suggesting that until the filing of the final report, the preliminary reports may remain sealed. At that time, even the

petitioners had agreed that the disclosure may not be conclusive to anybody's interest. On 30 March 1995 the C.B.I. presented a report to the Court followed with an oral request or submission by its learned counsel Mr. P. K. Chaubey, that it may be perused by the Court, along with the two preliminary reports, filed earlier. This the Court did in the hope, faith and trust that what was filed on 30 March 1995 is the final report. The Court did permit the parties at the Bar to have access to reading the report. So far the state of the proceedings appeared to have been accepted without any demur from any quarter, C.B.I. not excluded. On reconvening of the Court, after the lunch, session, learned counsel appearing on behalf of the C.B.I. Mr. P. K. Chaubey, desired that the preliminary reports be sealed. In effect, he claimed secrecy. The arguments of counsel went even to this extent that he declared to the Court that if the reports were not kept confidential then the C.B.I. would call off the investigation. For a counsel to make such a submission, unsolicited, was neither fair nor appropriate, and in a case in which the C.B.I. has itself given out to the media that the matter under investigation by it is the largest former ever under investigation. Subsequently, learned counsel (or the C.B.I. retracted his submission that if it were made open, the C.B.I. may call off the investigation, but reiterated the submission that the reports, the two preliminary reports, should be kept sealed. Upon enquiries of him whether what he had contended was done upon instructions, he replied that there was no instructions, but he had done so as "apprehensions of counsel."

7. Between 30 March and now this argument which has been presented by learned Counsel for the C.B.I., apparently, has taken a serious turn. The petitioners have reacted very sharply. Regard being had to the circumstances on what the matter is about and notwithstanding the fact that the Court had earlier rejected two aspects raised by the petitioner, again pleas have been raised by moving applications supported by affidavits reiterating a prayer for mandamus that the State Government be dismissed for the human rights violations which now have happened for a fact and the officials holding charge of administration where the incidents occurred be suspended from service. As six months have passed since these tragedies on deaths and molestation of women the petitioners at the Bar, their counsel with them, seem to get as restless and agitated as the agitations by the people of Uttarakhand. The State Government of Uttar Pradesh watches, this situation in abject silence as if the preliminary reports hitherto sealed was a situation to its advantage not its detriment. The pleadings of State respondents, all officials, filed before the Supreme Court before these records were transferred to High Court submit in unison and concert, in effect, that they are not aware of these incidents and tragedies on human rights violations as nothing was reported to them. A whole region, the hills and its peoples were disturbed and a Same with media flashes .and matters in Courts, High Court and Supreme Court, and ignorance is pleaded on record. And this is not all. With all these niceties of oral submissions on secrecy, the Court put it to the learned Advocate General, State of U. P. that he may if he so desires peruse the reports of the C.B.I. he politely declined with a simple answer in the negative. Though he

added that these reports were at best only an opinion of the C.B.I., an investigating agency appointed by the Court in difference to its one man Commission. Suffice it to say on this, the learned Advocate General, U. P., was reminded by the Court that was a matter of the past as the Supreme Court had negatived the plea of the State of U. P. and upheld the order of investigation by the C.B.I., and transferred all record on Uttarakhand matters to the High Court, and this was a closed chapter now.

8. Both on how the State or the State respondents may view the investigations by the C.B.I., in so far as the Court is concerned, it will refrain comment. Even otherwise, regard being had to given circumstances, there is no alternative but only the C.B.I. to probe into these matters.

9. Are proceedings before a Court on Record, whether under Article 226 or 32 of the Constitution and closer home on matters of human rights violation secret, confidential or privileged ? In an age of the right to know and access to public information and a democratic world sensitive to show concern on and enquire into violation of human rights, secrecy is abnormality unless warranted by law. The Supreme Court has reflected on this.

10. On Monday last, the Court enquired of learned counsel for the C.B.I. if he was serious of his submission, and if he was then the formality under the law had to be kept. The formality would not be forthcoming. The formality of seeking secrecy on public documents is now settled under the law. Secrecy in effect, is a claim of privilege which has to be sought by an application supported by an affidavit in a nonpolitical matter by the Head of the Department; in a political matter by the Minister, incharge of the Subject. There is no issue before the Court nor anyone has addressed the Court on it, that the matter before the Court on which the C.B.I. is investigating, is not a political issue. It is on record and political it is. The action or the reaction, that is to say the agitations, the measures to control it and the precipitate in the tragedies being investigated, all spring forth from the seed in whose embryo are the resolutions of the State Legislative Assembly recognising a case of a statehood for the peoples of Kumaun and Garhwal. Suffice it to say that in law a claim for secrecy and confidentiality has been provided clearly. It is a claim which if sought by the State, has to be pleaded in formality.

11. On being reminded repeatedly of this by the Court and despite objections by the petitioners that a plea for secrecy is a formality to be made and considered by the Court, learned counsel for the C.B.I. replied, he was submitting as counsel's submissions. He accepted that there was no application supported with an affidavit claiming confidentiality or secrecy on the report filed on 30th March 1995, a report which was meant to be final. Thus, it was a plea for secrecy on an oral prayer by counsel. A very relevant objection was made by learned counsel leading arguments on behalf of all the petitioners ; Mr. L. P. Naithani, Senior Advocate, Counsel for the C.B.I. referred to the identity of the victims who saw deaths or allegations of bodily injuries, rape and molestations of women not

excluded, Mr. L.P. Naithani, Senior Advocate, contended that this facade of secrecy cannot hold as the petitioners had themselves disclosed the names of those who died, were injured and women who plead that they were raped or molested filed their affidavits on record of the writ petitions now transferred to the High Court. This, the record bears out as correct.

12. A claim of secrecy by the State or a State agency in the affairs of the State, in court proceedings, the law refers to it as privilege. The Court determines such a claim. This is provided for under Chapter IX of the Evidence Act, 1872 under the head ; Of Witnesses, in reference to the context, Section 123. This section relates to evidence as to affairs of State.

13. Now the parameters of the issues raised before the Court, and the guidance available from Supreme Court decisions. In *S. P. Gupta v. Union of India*, AIR 1982 SC 149, the Supreme Court said, "We need not therefore be obsessed with the fact that Section 123 is a statutory provision of old vintage or that it has been interpreted in a particular manner some two decades ago. It is not as if it has once spoken and then turned into muted silence. It is an instrument which can speak again and in a different voice in the context of a different milieu. Let us therefore try to understand what voice this statutory provision speaks today in a democratic society wedded to the basic values enshrined in the Constitution." The Supreme Court even went to the extent of a serving that "So also the effect of the document on the ultimate course of the litigation whether its disclosure would hurt the State in its defence should have no relevance in making a claim for immunity against disclosure." In this case, the Supreme Court reiterated the settled law that immunity against disclosure should be made by the minister who is the political head of the department concerned or failing him, by the secretary of the department and claim should always be made in the form of an affidavit.

14. In the matter of *Amar Chand Butail*, AIR 1964 SC 1658 while the Supreme Court had, in effect, held that the claim should generally be made by the Minister incharge who is the political head of the department concerned, the manner in which such a claim could be addressed was laid down. Before the Supreme Court in the case aforesaid, even the affidavit of the Minister did not meet the requirements of the Court and the plea for secrecy or privilege was rejected. Each aspect on which the claim for secrecy or on which the claim for secrecy is based must be pleaded and it must be shown to the Court that "he seriously applied his mind to the contents of the documents and examined the question as to whether their disclosure would injure public interest."

15. After this chapter of a debate for secrecy as a privilege was over and the Court indicated to counsel for the C.B.I., the settled law and the decisions of the Supreme Court and in addition to giving him the liberty to to file an affidavit as the law obliges and none was forthcoming, counsel, now qualified his submission. In this qualifications his arguments were, in effect, an alternate submission. The Court again for the purpose of the record, enquired of counsel whether he had

instructions to submit on what he had submitted on the basis of instructions. He replied that it was counsel's belief and apprehensions, on the course of the investigation.

16. The alternate submission of C.B.I.'s counsel. It was argued before the Court that in these matters before the Court, of allegations on human rights violations, secrecy was being sought under Section 172 of the Code of Criminal Procedure, 1973. On this also, the Court reminded him of the decision of the Supreme Court, on the point itself, in *Khatri v. State of Bihar*, AIR 1981 SC 1068. Section 172, aforesaid is labelled ; "Diary of proceedings in investigation. The proceedings before the High Court, initially or on the record of Article 32, proceedings transferred by the Supreme Court as proceedings under Article 226 of the Constitution, await investigation reports from the C. B. I., on alleged human rights violations. It is this Court after all which has caused the investigations to be made. Is the Court not entitled to receive the reports of its investigating agency on record ? If these cases were before the Supreme Court would the C. B. I. not place its reports on record ? On this itself in the *Khatri's* case (supra), the Supreme Court clearly expressed "But, this protection is unnecessary in any proceeding other than an inquiry on trial in respect of the offence under investigation and hence the bar created by this section is a limited bar. It has no application, for example in a civil 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 proceeding, provided it is otherwise relevant under the Indian Evidence Act." Thereafter, the Supreme Court went on to add : "Now plainly and unquestionably the present writ petition which has been filed under Article 32 of the Constitution to enforce the fundamental right guaranteed under Article 21 is neither an "inquiry" nor a "trial" for an offence nor is this Court hearing the writ petition a criminal court nor are the petitioners, accused or their agents so far as the offences arising out of their bindings are concerned. Therefore, even if the report submitted by Shri L. V. Singh as a result of his investigation could be said to form part of "case diary", it is difficult to see how now their production and use in the present writ petition under Article 32 of the Constitution could be said to be barred under Section 172."

17. The *Khatri's* case, considered by the Supreme Court, was one of human rights violations ; blinding of undertrial prisoners. The one noticed by this Court is the one reported, as cited, in the same matter during the course of proceedings, the Supreme Court gave three other orders. These are reported in 1981 SCC at pages 623, 627 and 635.

18. The chapter of secrecy as pressed by learned counsel for the C.B.I. drew to a close whether the submissions were made to claim privilege under the Evidence Act or the suggestion of secrecy under Section 172 of the Code of Criminal Procedure. But, now he placed yet another submission. Now he submitted that in the past and on earlier occasions the Court had permitted the preliminary reports

to remain sealed and thus this state of affairs should continue.

19. The Court is afraid, the logic does not hold. While reiterating the observations of the Supreme Court in *S. P. Gupta v. Union of India* and *Khatra v. State of Bihar*, a veil of secrecy cannot continue inordinately. The Court has already noted in its earlier order, that preliminary reports had not been anticipated by the court, that the C. B. I. chose to file them as such is another matter and the Court has kept its mind open on the aspect. Counsel for the C. B. I. accepts that between the order of the High Court, 7 October, 1994 (upheld by the Supreme Court) directed the C. B. I. to enquire to the alleged human rights violations, there was a period of inactivity by the C.B.I. for long spells, particularly when the matter was pending before the Supreme Court and again during the early part of this year when C. B. I.'s request for further time to complete the investigations was being considered by the High Court. There should not have been a let or lull in the investigations.

20. In these circumstances, the Court did not consider, it appropriate to open preliminary reports when the Court was assured by the C, B. I. that the final Report would be filed on 30 March 1995.

21. The reports of the C. B. I. in these proceedings alleging human rights violations, is not evidence in a trial; this has been made clear by the Supreme Court Secrecy and simultaneous request of a long adjournment by the C.B.I. in a matter whose origins are intertwined with political agitations and overtones, should not reflect on court proceedings as & mystery. Without the reports of the C. B. I. the proceedings cannot proceed for hearing and considering other aspects of the cases : Plea for compensation, detentions and remand orders and other multiprayers and reliefs sought. The proceedings before this Court would stand frustrated in secrecy and adjournments.

22. If it yet takes the C. B. I. to seek further time to complete the investigations then, the Court has already left it free to determine its priorities. In the penultimate, the C. B. I. would be filing charge sheets before the appropriate courts as a prelude to a trial. The charge sheet has been permitted flexibility by the law and rigidity does not contain its parameters. An investigation is a continuing process and the law tampers this adjustability in the report of a police officer on completion of investigation. This is contained in Section 173. A statement which is not relevant on a request made to the Magistrate, can be excluded. On a further investigation a further report to a Magistrate can be forwarded. In principle the parameters cannot be different before this Court.

23. The C. B. I. is not enquiring an isolated incident of misdemeanours or felony in public administration. All these matters, before the Court are arising out of a mass upsurge of agitating peoples of a particular region of the country who see a vision of a State identity assured by no other phenomenon than the State itself. There is no issue on this as this stares nakedly on record. And in this tussle between the peoples of the region concerned and the State of these very people,

the conflict, it is alleged and claimed, has seen deaths, injuries, detentions of agitators, molestation and rape of women who were agitating. The inquiry at the expense of repetition it may be said, is on violation of human rights. It may again be repeated that for what we will not investigate on such matter of violation of human rights, there are other agencies in the world waiting to pick up threads and information and burst it into a curious inquisitive media. As long as the nation will inquire the tragedies on its soil it will give us an image that this nation is not lacking in its will to investigate allegations of human rights violations. In such circumstances, shrouding examination of complaints with veils of secrecy and putting Court proceedings into oblivion with long adjournments will not reflect with credibility on our redressal system.

24. All these oral submissions of learned counsel for the C. B. I. has left the Court wondering why the formality of such address of secrecy within law was not kept and why counsel despite the Court drawing his attention to Supreme Court decisions, continued.

25. The Court has refrained both comments or interference of the manner in which the C.B.I. conducts the investigation. On the contrary, the court has granted this investigating agency full freedom to determine its priorities. The Court has neither disclosed in its orders the contents of any statement recorded relating to investigations as under the law a very curtailed use can be had of such statements during trial. All that this Court desires is that the prima facie assessment of the C. B. I. based on its investigation is reported to the Court so that the allegations on human rights violations if they hold, move from the realm of fiction, and gossip to fact and reality. In this age of a right to know, in an age of the right of access to public information, the people have a right to know and in a cause before the Court. The Court is obliged to have itself informed. The charge, the trial, the mens rea and guilt and the indictment beyond a reasonable doubt, will be before the Court. Which tries, not the High Court.

26. Let the reports of the C. B. I. all three filed as of date, 5 December 1994, 28 February, 1995 and 30 March, 1995, be brought on record. The oral "request of adjournment to C. B. I. for filing "final" report after four months is not accepted for reasons already given in this order as this would mean adjourning proceedings to August next. Let the C. B. I. file a statue report on its investigations hereinafter on 15 April, 1995. 1 May, 1995, 15 May, 1995 in Court. During the summer vacations on 1 June, 1995, 15 June, 1995, and 1 July, 1995 in a sealed cover before the Registrar for being placed before the Court on the opening day on 3 July, 1995.

27. Let this order be sent to the Director, Central Bureau of Investigation, New Delhi, for information.