

CASE NO.:
Transfer Case (civil) 22 of 2001

PETITIONER:
Brij Mohan Lal

RESPONDENT:
Union of India & Others

DATE OF JUDGMENT: 31/03/2005

BENCH:
S.B. Sinha & S.H. Kapadia

JUDGMENT:
J U D G M E N T

O R D E R

WITH

[T.C. (C) No.23/2001, SLP (C) No.7870/2001, SLP (C) No.10645/2001
AND W.P. (C) No.140/2005]

The Fast Track Courts Scheme was recommended by the XIth Finance Commission for setting up 1734 Courts to dispose of long pending cases, particularly on the criminal side in the subordinate judiciary. In that regard, Rs.502.90 crores was allocated. The allocations recommended by the XIth Finance Commission covered the period 2000-01 to 2004-05.

By affidavit dated 8th July, 2004 filed on behalf of Union of India, this Court was informed that the matter of continuation of the above Scheme beyond five years has been taken up with XIIth Finance Commission. By the said affidavit, this Court was further informed that the Law Ministry had written a letter on 17.4.2003 to the Chairperson of the XIIth Finance Commission to favourably consider the proposals for the upgradation of judicial infrastructure including continuation of Fast Track Courts Scheme and also for creation of another 1500 Fast Track Courts of Magistrates for dealing with non-sessions cases and other criminal matters.

A further affidavit was filed on behalf of Union of India on 13.10.2004 by which this Court was further informed that in the joint conference held at Vigyan Bhawan, New Delhi on 18.9.2004, attended by Chief Ministers and Chief Justices, it was resolved that Fast Track Courts Scheme be continued for a period of five years beyond 31.3.2005 and that Fast Track Magistrate Courts on similar lines be established.

The period of five years in terms of the said Scheme comes to an end on 31.3.2005. Till 28.3.2005, when the matter came before us, there was no indication as to whether the Fast Track Courts Scheme would continue beyond 31.3.2005. In the circumstances, we called upon the learned Solicitor General to look into the matter and inform the Court by 30.3.2005 as to whether the said Scheme would continue beyond 31.3.2005.

The learned Solicitor General stated before us that although the Union of India was keen to continue the Scheme, no financial sanction has been accorded by the XIIth Finance Commission. The learned Solicitor General of India, however, stated that out of the sanctioned allocation of Rs.502.90 crores, till date the amount disbursed is Rs.420.03 crores leaving an unspent amount of Rs.82.87 crores, lying with the Central Government.

All accused are entitled to speedy justice in terms of Article 21 of the

Constitution of India. The question has been raised as to whether the State can deny its obligation to set up such number of courts as are necessary for fulfilling its constitutional obligation on the ground of financial constraints or otherwise. In this connection, it is relevant to note that in terms of the Annual Report of the Ministry of Law for the year 2003-04, the total number of pending cases runs into the figure of 2.27 crores (approximately). Further, in the year 2000, the XIth Finance Commission had allocated Rs.502.90 crores under Article 275 of the Constitution to set up 1734 courts. The allocation stipulated time bound utilization. Suffice it to state at this stage that the funds have been utilized effectively. We have examined the statistics and the status reports submitted by the States which indicate success of the Scheme and time bound utilization of funds. Therefore, the question which arises for determination before us is of importance. Is it open to the State not to fulfill its obligation with regard to speedy justice on the basis of financial crunch, particularly when the judge- population ratio of 10.5 judges per 10 lakh people in India is the root cause for huge backlog of undecided cases.

In the case of All India Judges' Association & others v. Union of India & others reported in (2002) 4 SCC 247, this Court has held that an independent and efficient judicial system is one of the basic structures of our Constitution and if sufficient number of judges are not appointed, justice would not be available to the people, thereby undermining the basic structure. In the said judgment, it has been observed that the expense on administration of justice in the States is incurred by the respective States. It is for the States to approach the Finance Commission or Union of India for more allocation of funds. In the conference held on 18.9.2004, the States have agreed to continue the Scheme for a further period of five years beyond 31.3.2005.

As can be seen from the above facts, this Court has been repeatedly assured that the said Scheme will continue beyond 31.3.2005. The said Scheme has two components, namely, financial and infrastructural. Having introduced the Scheme under which Fast Track Courts have become operational, the Scheme should not be disbanded all of a sudden. Judges have been appointed at Fast Track Courts from three sources, viz., by way of promotion, direct appointment from advocates and retired District Judges. If the entire Scheme has to be disbanded now, a chaos will be created inasmuch as not only services of several officers who had been promoted on an adhoc basis will have to be reverted to their substantive post. Similarly, if corresponding promotion had been given to others, it will be necessary also to pass orders of reversion in such cases. Thousands of cases are pending adjudication before Fast Track Courts and some of them might have been heard in part. Witnesses in many cases might have been summoned. The State Governments have also appointed Special Public Prosecutors. The requirements to continue the Scheme, furthermore, may vary from State to State. In some States, there may not be many session cases pending requiring continuation of the Scheme, as earlier proposed. In some States, the requirement may not be of such magnitude to appoint the number of officers specified in the earlier Scheme. All these questions must be worked out and the views of the respective State Governments should also be ascertained.

As stated above, speedy justice is an obligation of the State. As held in the case of All India Judges' Association & others (supra), administration of justice is a State subject. Therefore, maintenance of Fast Track Courts has to be looked after by the States. They cannot disown their responsibility of providing speedy justice by pleading financial crunch. At the same time, we expect Union of India and the States to treat this venture as a joint-venture, particularly in providing funds to the States.

We expected the Scheme to continue beyond 31.3.2005 as we were repeatedly assured that the Scheme would continue. We cannot allow the Scheme to be disbanded suddenly. We, therefore, direct Union of India to continue the said Scheme for a period of one month pending hearing and

final disposal of Writ Petition (C) No.140 of 2005 & other cases. For the said purpose, we direct that the said unspent amount of Rs.82.87 crores lying with the Central Government will not lapse on 31.3.2005 and the disbursement under the said Fast Track Courts Scheme (including the salary payable to the Judges and other staff) shall continue as in the past in accordance with the terms and conditions of the said Scheme. This order shall, however, be subject to any other or further orders which may be passed and subject to orders for adjustment of necessary fund by and between the Union of India and the concerned States. In the meantime, we would also like to know from Union of India the current monthly expenditure/costs State-wise in respect of the administration of the Scheme as we are informed that the establishment costs now stands considerably reduced, particularly on and from 1.4.2005. We would also like to know simultaneously from the respective States and respective High Courts to whom notices have been ordered to be issued, as to their estimate of expenditure/costs for administering the Scheme after 1.4.2005. Lastly, we would also like to know from Union of India whether any portion of Plan-expenditure of Rs.1,72,500 crores for 2005-06 (including Rs.26000 crores under the new pattern of financing the States as recommended by XIIth Finance Commission) has been allocated for upgradation of judicial infrastructure as was done by the XIth Finance Commission in its report.

Office is directed to forward copy of this order to the Registrar Generals of concerned High Courts for compliance.

List the matters on 29th April, 2005.