

CASE NO.:
Appeal (civil) 3886-3887 of 2007

PETITIONER:
Pramod Kumar & Anr

RESPONDENT:
Bihar Vyavasayik Sangharsh Morcha & Ors

DATE OF JUDGMENT: 24/08/2007

BENCH:
Dr. ARIJIT PASAYAT & ALTAMAS KABIR

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NOS. 3886-3887 OF 2007
(Arising out of S.L.P. (C) Nos.191-192 of 2004)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in these appeals is to the order passed by a Division Bench of the Patna High Court giving certain directions in a Public Interest Litigation filed by the respondent no.1. The prayer in the writ petition was essentially to direct the officials "to stop criminal events against the shopkeepers, dealers, artisans and industrial and industrial units and labourers and industrial units and also to stop their exploitation by the officers and police personnel."

3. The basic grievance was that officials in the police department were continued at one particular station for long period which is undesirable. The High Court disposed of the writ petition inter-alia with the following directions and observations:

(a) Let the Director General Police make out a list of officers from the station House Officer up to the Additional Director General of Police, of whose who have remained in their station for more than four years. This dossier is to be supported with information from service record as to which officer throughout their career has remained at which station and for how long. Officers who have remained at one station for over four years must see a posting out within six weeks from today. These would be officers below the rank of Inspector General of Police. Staff below the SHOs who have remained at a particular station beyond three years will be identified by the District heads of police concerned and their movement will be undertaken by the Director General of Police.

It must be mentioned that the period of four years is set because in the normal course of government service, transfers and postings are made for officers if they have been at a particular posting for more than three years. This order obviously does not preclude the Director General of Police from making any

transfers should an officer have been at a posting for a lesser period, which is within normal administrative powers.

(b) On the monitoring of crime which the law obliges the state to register the court suggests the following measure:-

The State of Bihar will request the National Informatics Centre, Government of India, State unit, to make out a blue print for monitoring the recording of a First Information Report, whether it is registered as an FIR or an entry in the General Diary. Every such record in continuation of the orders of the court dated 5 August, 2003 will be transmitted by the police stations concerned to the district police officer, whether the Superintendent of Police or the Senior Superintendent of Police. This will create a data-base at the district police headquarters. A summary of the FIR or the General Diary containing the offences and the person's name will be transmitted to the District Judgeships (District and Sessions Judge). A periodical report, as the police regulations so require, will also be given on the progress and action taken on a reported crime, whether it has culminated in a final report to be filed or a charge sheet to be filed before the Magistrate concerned.

If common name is occurring of an accused in more than one district, this information will be shared between the police officers who are heads of the districts concerned and intimated to the police headquarters and in terms of the order dated August 5, 2003, as also to the district judgeship.

The National Informatics Centre (NIC) will also draw up a plan (reference orders of the Court dated August 5 and this order) how an FIR may be recorded by computer by the SP/SSP/CJM on the failure of the police station to record it, and to create a data base on crime and criminals in the State. Report to be submitted by the NIC to the Director General of Police for due action on it by the State Government, and the High Court to be informed on the report and progress on it."

4. Learned counsel for the appellants submitted that the directions are contrary to the statutory prescriptions i.e Rule 778 (vii) of the Bihar Police Manual. The averments in the writ petition were extremely vague. Not even one instance was given to substantiate the prayer to direct officials to stop "criminal events" and "exploitations". The High Court instead of dismissing the frivolous writ petition has given directions touching service conditions of large number of officials who were not even parties \026 not even in representative capacity. During the course of hearing, learned counsel for the respondent-State brought to our notice the Bihar Police Act, 2007. It appears that the Bihar Police Act, 2007 has been enacted to give effect to the directions of this Court in Prakash Singh and Ors. V. Union of India and Ors. (2006 (8) SCC 1). Several provisions of the Act need to be noted. They read as follows:

"Chapter III

Superintendence and Administration of Police

23. State Police Board

The Government shall, within six months of the coming into force of this Act, establish a State Police Board to exercise the functions assigned to it under the provisions of this Chapter.

24. Composition of the State Police Board

The State Police Board shall consist of:

- (a) Chief Secretary \026 Chair person
- (b) Director General of Police \026 member and
- (c) Secretary in charge of the Home Department - member-secretary.

25. Functions of the State Police Board

The State Police Board shall perform the following functions:

- (a) frame broad policy guidelines for promoting efficient, effective, responsive and accountable policies, in accordance with the law;
- (b) identify performance indicators to evaluate the functioning of the Police Service. These indicators shall, inter alia, include: operational efficiency, public satisfaction, victim satisfaction vis-à-vis police investigation and response, accountability, optimum utilization of resources, and observance of human right standards; and
- (c) review and evaluate organizational performance of the Police Service in the State as a whole as well as district-wise against performance indicators as identified and laid down and resources available with and constraints of the police.

27. Powers and responsibilities of the Director General of Police

As head of the State Police Service, it shall be the responsibility of the Director General of Police to:

- (a) operationalise the policies, the strategic plan and the annual plan prepared by the Government; and
- (b) administer, control and supervise the Police Service to ensure its efficiency, effectiveness, responsiveness and accountability.

30. Transfer & Postings

(i) The transfers and postings of the Police officers and personnel of Supervisory ranks shall be governed by the rules of Executive Business and such rules framed by the Government from time to time.

(ii) The officers shall ordinarily have a tenure of two years.

Provided that any such officer may be transferred from his post before the expiry of the tenure of two years consequent upon:

- (a) promotion to a higher post; or
- (b) conviction, or charges having been framed, by a court of law in a criminal offence; or
- (c) incapacitation by physical or mental illness or otherwise becoming unable to

discharge his functions and duties; or
(d) the need to fill up a vacancy caused by promotion, transfer, or retirement; or
(e) any other administrative reasons, which may be in the interest of efficient discharge of duties."

5. Chapter III relates to superintendence and administration of police.

6. Section 10 of the Act deals with the transfer and posting of certain ranks. The same reads as follows:

"(1) The Police Officers ranging from the rank of Inspector to Constable will be posted to a particular post within the jurisdiction of the District Superintendent of Police by the District Superintendent of Police. They will have a tenure of six years in a District, eight years in a Range and ten years in a Zone. Transfers from one district to another within the Range will be done by a committee consisting of the Range DIG and the District Superintendents of Police of the Range. Transfers from one Range to another Range will be made by a committee consisting of the Zonal IG and all the Range DIGs of the Zone. Transfers from one Zone to another Zone will be made by a committee consisting of the Additional Director General of Police and all the Zonal IGs.

(2) An officer posted as a Station House Officer in a Police Station or as an officer-in-charge of a Police Circle or Sub-Division or as a Superintendent of Police of a district shall have a term of minimum two years:

Provided that any such officer may be transferred from his post before the expiry of the tenure of two years or more consequent upon:

(a) promotion to a higher post; or
(b) conviction, or charges having been framed, by a court of law in a criminal offence; or
(c) incapacitation by physical or mental illness or otherwise becoming unable to discharge his functions and duties; or
(d) the need to fill up a vacancy caused by promotion, transfer or retirement; or
(e) any other administrative reasons, which may be in the interest of efficient discharge of duties."

7. Chapter V deals with effective investigation including use of science and technology in investigation. Sections 36, 38, 42 and 45 read as follows:

"36. Creation of Special Crime Investigations Units

The Government may create, in crime prone areas Special Crime Investigation units, each headed by an officer not below the state cadre rank of Sub-Inspector of Police, with such strength of officers and staff as may be deemed necessary for investigating economic and heinous crimes. The personnel posted to this unit shall not be diverted to any other duty, except under very special circumstances with the written permission of the Director General

of Police.

38. Tenure of Posting in Special Crime Investigation Units

Officers posted to Special Crime Investigation Units will normally have tenure of three years after which they will be rotated to law and order and other assignments.

42. Posting of officers and staff to the Special Investigation Cell

The officers and staff to be posted to this Cell shall also be selected and specially trained.

45. Selection of officers for Crime Investigation Department

The officers posted to the Crime Investigation Department will be selected on the basis of their aptitude, professional competence, experience and integrity. They will undergo appropriate training upon induction, and their knowledge and skills will be upgraded from time to time through appropriate refresher and specialized courses."

8. In Prakash Singh's case (supra), it was held in para 31, so far relevant, as follows:

"Minimum tenure of IG of police and other officers

(3) Police officers on operational duties in the field like the Inspector General of Police in-charge Zone, Deputy Inspector General of Police in-charge Range, Superintendent of Police in-charge District and Station House Officer in-charge of a Police Station shall also have a prescribed minimum tenure of two years unless it is found necessary to remove them prematurely following disciplinary proceedings against them or their conviction in a criminal offence or in a case of corruption or if the incumbent is otherwise incapacitated from discharging his responsibilities. This would be subject to promotion and retirement of the officer.

Separation of investigation

(4) the investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people. It must, however, be ensured that there is full coordination between the two wings. The separation, to start with, may be effected in towns/urban areas which have a population of ten lakhs or more, and gradually extended to smaller towns/urban areas also.

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. Above being the position, the High Court's directions are no longer relevant. The appeals are accordingly disposed of. No costs.