

PETITIONER:
OARAMJIT KAUR

Vs.

RESPONDENT:
STATE OF PUNJAB & ORS.

DATE OF JUDGMENT: 10/09/1998

BENCH:
S. SAGHIR AHMAD, S. RAJENDRA BABU.

ACT:

HEADNOTE:

JUDGMENT:
O R D E R
S. Saghir Ahmad, J.
CRL.M.P. NO. 6674 OF 1997 IN WRIT PETITIONS (CRIMINAL)
NOS. 497 AND 447 OF 1995.

Union of India has filed this petition for clarification of the order dated 12th December, 1996, passed by this Court in Writ Petitions (Criminal) No. 447 of 1995 and 497 of 1995, by which a request was made to the National Human Rights Commission to examine the flagrant violations of human rights on a mass scale in the State of Punjab as disclosed in the CBI Report submitted to this Court in the aforesaid Writ Petitions in pursuance of the earlier order dated 15th November, 1995, in which it was, inter alia, stated as under :

"Mr. M.L. Sareen, learned Adcovate-General, Punjab has very fairly stated that keeping in view the serious allegations levelled by the petitioner against the officers\officials of the Punjab Police, it would be in the interest of justice that the investigation in this matter be handed over to an independent authority. Even otherwise, in order to instil confidence in the public mind and to do justice to the petitioner and his family it would be proper to withdraw the investigation from Punjab Police in this case. We, therefore, direct the Director, Central Bureau of Investigation to appoint an investigation team headed by a responsible officer to hold investigation in the kidnapping and whereabouts of Khalra. We further direct the Director General of Police, Punjab, all concerned Punjab Police Officers, Home Secretary and Chief Secretary Punjab to render all assistance and help to the CBI in the investigation.

The second issue highlighted in this petition is equally important. This Court cannot close its eyes to the contents of the Press Note dated January 16, 1995 stated to be

investigated by Khalra and Dhillon. In case it is found that the facts stated in the Press Note are correct - even partially - it would be a gory tale of Human - rights violation. It is horrifying to visualize that dead-bodies of large number of persons - allegedly thousands - could be cremated by the police unceremoniously with the allegations in the Press Note - horrendous as they are - need through investigation. We, therefore, direct the Director, Central Bureau of Investigation to appoint a high powered team to investigate into the facts contained in the Press Note dated January 16, 1995. We direct all the concerned authorities of the State of Punjab including the Director General of Police, Punjab to render all assistance to the CBI in the investigation. All authorities of the Punjab Government shall render all help and assistance to the CBI team as and when asked by any member of the said team. We give liberty to the CBI to seek any further directions from this Court from time to time as may be necessary during the investigation."

When the matter was taken up by the Commission, preliminary objection were raised as to the jurisdiction with reference to its statutory obligations and limitations, including the prohibition from inquiring into any matter after the expiry of one year from the date on which the act constituting violation of human rights is said to have been committed as set out in Section 36(2) of the Protection of Human Rights Act, 1993, (hereinafter referred to as 'the Act', for short), which provides as under :-

"The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed."

The Commission framed four preliminary issues as under :

"1. Whether the order dated 12 December, 1996 is referable to the plenitude Article 32 and has the effect of designating the National Human Rights Commission, not as a mere statutory authority functioning within the strict limits of the provisions of the Act, but as a body sui-generis to perform functions and determine issues entrusted to it by the Supreme Court.

2. If the answer of issue no.1 is in the affirmative, whether in the discharge of its functions under the said remit, the powers of the Commission are not limited by Section 36(2) and other provisions of the 'Act'.

3. Whether, the order of the Supreme Court, requires the Commission to adjudicate on the compensation and whether such adjudications are binding on the Governments concerned. Whether such empowerment of the Commission amounts to an investiture of a new jurisdiction on the Commission not already existing under law and whether the order of the Supreme Court amounts to a constitutionally impermissible delegation of its own judicial powers.

4. Whether the Commission could, to aid speedy

disposal of the claims for compensation, set-up adjudicatory mechanism under it, subject in each case to its final approval."

On Issues No.1 and 2, the Commission in Paras 10 and 12 of its order dated 4th August, 1997, held as under :

"10. The order of the Supreme Court must be so read as to effectuate it. The Commission, the Governments and the parties are expected to act in aid and effectuation of that order; and not to frustrate it. The order must be construed reasonably and harmoniously. The expression "to have the matter examined in accordance with law" is not necessarily the same thing as "to function strictly within the limitations of the Act." The Supreme Court made the order in exercise of the plenitude of its jurisdiction under Article 32 of the Constitution. That, for the parties and the Commission, has the effect and force of law.

The reasonable way to construe the order and effectuate it is to hold that the Commission was referred to only for purposes of identifying it as the body to which the Supreme Court was turning, in this instance, for the protection of fundamental rights. Once the identification was made, it become a body sui-generis as the one chosen by the Supreme Court for carrying out its behests. The shackles and limitations under the Act are not attracted to this body as, indeed, it does not function under the provisions of the Act but under the remit of the Supreme Court. The provisions of the Act do not bind or limit the powers of the Supreme Court in exercise of its powers under Article 32. It is, therefore, reasonable to hold that the Supreme Court designated the Commission as a body sui-generis to carry out the functions and determine issues as entrusted to it by the Supreme Court. To read the order otherwise is to render it otiose.

12. In the light of the foregoing discussion, the Commission holds that the Commission was designated as a body sui-generis to carry out the mandate of the Supreme Court. As a logical consequence, it requires to be held on Issue No.2 that the powers of the Commission in carrying out this mandate are not limited by section 36(2) or other limiting provisions, if any under the Act."

On Issue No.3, the finding of the Commission was as under :

"17. If the order of the Supreme Court, for purposes of these preliminary objections, admits of being construed as not creating any exclusive final adjudicatory jurisdiction in the commission, but is understood as implying (1) that the Supreme Court continues to retain session over the cases; (ii) that the determination by the Commission of the issues arising in the matter may require, wherever necessary or appropriate, the 'approval' of the Supreme Court; (iii) that the stipulation that

"compensation awarded by the Commission shall be binding and payable" shall be subject to such 'approval' and that (iv) that the Commission discharges its functions under the Supreme Court's Order, it does so not as an instrumentality or agency of the Court, then all these objections do not survive. The order of Supreme Court is amenable to and admits of such a construction. For the present stage, this should suffice to reject the preliminary objections as to maintainability.

18. Accordingly issue 3 requires to be and is hereby answered in the negative."

The finding of the Commission on Issue No.4, is as under :

"19. Issue No.4

In order to ensure that the large number of claims that are likely to arise for determination are resolved in an expeditious manner, the Commission does need greatly to augment its logistical capability, including its administrative and judicial personnel. An adequate staff will thus become necessary and will require to be placed in position (limited to the period of pendency of these matters). At a stage just below the level of the Commission, some officers with judicial experience (call them enquiry-commissioner, claims-commissioners may record and process the evidence, conduct enquiries under the directions of the Commission and recommend appropriate compensation subject to their final endorsement by the Commission. The Commission will need to create a separate wing or department, as it were, distinct from the normal staffing of the Commission, to deal with the requirements of this purpose. This work, as is clear, is not the work of the statutory Commission, in a strict sense, but the responsibility and concern of the body designated (selected) for this purpose by the Supreme Court. For all these matter, special administrative and financial allocations would require to be worked out with assistance of the State of Punjab and the Union of India. These are some of the future implications of the case and they will have to be borne in mind fully by the concerned Governments. With the foregoing observations, issue 4 is disposed of."

So far as the requirements of the Commission for special administrative and financial allocations are concerned (as indicated in its findings on Issue No.4), it was stated by learned Addl. Solicitor General, Mr. R.N. Trivedi, that Union of India would not be found failing in its duty to provide necessary, including administrative and financial, assistance to the Commission to carry out the job entrusted to it by this Court.

The findings on all the issues are explicit and clear and truly reflect the intention of this Court as set out in its order dated 12th December, 1996, which was passed in the aforesaid two Writ Petitions under Article 32 of the Constitution.

The matter relating to 585 dead bodies (which were fully identified), 274 partially identified and 1238 unidentified dead bodies, has already been referred to the

Commission which has rightly held itself to be a body sui generis in the instant case.

The Commission headed by a former Chief Justice of India, is a unique expert body in itself. Fundamental Rights, contained in Part III of the Constitution of India, represent the basic human right possessed by every human being in this world inhabited by people of different continents, countries, castes, colours and religions. The country, the colour and the religion may have divided them into different groups but as human beings, they are all one and possess the same right.

The Chairman of the Commission, in his capacity as a Judge of the High Court and then as a Judge of this Court and also as chief Justice of India, and so also two other members who have held high Judicial Offices as Chief Justices of the High Courts, have throughout their tenure, considered, expounded and enforced the Fundamental Rights and are, in their own way, experts in the field. The Commission, therefore, is truly an expert body to which a reference has been made by this Court in the instant case.

The power and jurisdiction of this Court under Article 32 of the Constitution cannot be curtailed by any statutory limitation, including those contained in Section 36(2) of the Act. If this Court can exercise that power unaffected by the prohibition contained in Section 36(2), there is no reason why the Commission, at the request of this Court, cannot investigate or look into the violations of human rights even though the period limitation indicated in Section 36(2) might have expired. In such a situation, the Commission will not be affected by the bar contained in Section 36(2) and it will be well within its rights to investigate the matter referred to it by this Court.

Shri R.N. Trivedi in support of the application for clarification submitted that the order of this Court by which matter was referred to National Human Rights Commission for disposal does not enable National Human Rights Commission to function sui generis. If the effect of the order is that the National Human Rights Commission can function sui generis, this Court could not create a new kind of jurisdiction in view of the decision in Antulay's case.

The concept of sui generis is applied quite often with reference to resolution of disputes in the context of International Law. When the Conventions formulated by compacting nations do not cover any area territorially or any subject topically, then the body to which such power to arbitrate is entrusted acts sui generis, that is, on its own and not under any law.

In the present case this Court in exercise of the jurisdiction under Article 32 of the Constitution entrusted the National Human Rights Commission to deal with certain matters in the manner indicated in the course of its order. All authorities in the country are bound by the directions of this Court and have to act in aid of this Court. National Human Rights Commission is no exceptions issued by this Court and not under the Act under which it is constituted. In deciding the matters referred by this Court, National Human Rights Commission is given a free hand and is not circumscribed by any conditions. Therefore, the jurisdiction exercised by the National Human Rights Commission in these matters is of a special nature not covered by enactment or law, and thus acts sui generis.

In the decision in Antulay's case, this Court was dealing with a situation arising under the Prevention of Corruption Act which provided a special court for trial of case thereunder. When this Court ordered that the trial be

conducted by the High Court instead of the Special Court, it was found that such a course cannot be adopted so as to create a new jurisdiction. The situation arising in that case is altogether different. In exercise of powers under Article 32, the powers of this Court are unfettered and if this Court has chosen to exercise such powers through National Human Rights Commission as indicated in the order referring matters to it, it cannot be said that a new jurisdiction is conferred on National Human Rights Commission. On the other hand, National Human Rights Commission acts in aid of this Court in exercise of the powers under Article 32 of the Constitution. Thus the contention of the applicant is misconceived.

The Commission is also a body sui juris created under an Act made by the Parliament for examining and investigating the questions and complaints relating on the part of any public servant in preventing such violations. In the order dated 22.7.1996 in Writ Petition (Criminal) No. 447 of 1995, it was, inter alia, stated as under :

"As stated above the enquiry by the C.B.I. is continuing. Since large number of dead bodies have been allegedly disposed of by the police it may be necessary to seek assistance from the public at large. We direct the C.B.I. in the course of enquiry to issue a general direction to the public at large that if any person/authority/Government office has any information/material which may be of any assistance to the C.B.I. in the enquiry in this matter, the same shall be placed before the C.B.I. immediately. Any delay in this matter shall be taken to be violation of this Court's order which will attract the provisions of Contempt of Court. Mr. M.L. Sarin, Advocate General, Punjab is present in Court. We request Mr. Sarin to personally see that all assistance in this matter is rendered to the C.B.I."

It is in the background of the above order that the order dated 12th December, 1996 is to be read, in which this Court had stated as under :

"Without going into the matter any further, we leave the whole matter to be dealt with by the Commission."

At another stage, it was stated in the same order as under :

"While the CBI is investigating the matter, we are of the view that the remaining issues involved in this case be left for the determination of the Commission which is the appropriate body for this purpose."

The investigation by the CBI has been ordered and is being done to determine and establish some other facets, including culpability of those responsible for violation of human rights. The remaining issues have been referred to the Commission. They obviously relate to violation of human rights. If on a publication of general notice, as proposed by the Commission, which incidentally was also done by the CBI in pursuance of our Order dated 22.7.96, complaints relating to violation of human rights are filed before the Commission, it will investigate into those complaints in

accordance with the provisions of the Act, specially Section 17 thereof and will also take such steps, after enquiry, as are deemed fit by it in the light of the provisions contained in Section 18 of the Act.

The various objections raised before the Commission, which had to frame preliminary issues and dispose them of, indicate the attitude of the parties appearing before the Commission, which we are constrained to say, is not a healthy attitude and does not represent the effort to assist the Commission for a quick conclusion of the proceedings so that if there have been any violations of human rights, the families affected thereby may be rehabilitated and adequately compensated. We also do not approve of the conduct of the parties in approaching this Court for clarification of the order of the Commission by way of a Misc. Petition which was filed on 3.10.1997 and has remained pending in this Court for ten months, during which period the Commission could have had disposed of the whole matter.

The Petition for clarifications is disposed of in the manner indicated above.

CRL.M.P. No.4808 OF 1998 IN WRIT PETITIONS (CRIMINAL) NOS.497 AND 447 OF 1995.

We have heard Dr. A.M. Singhvi, Senior Counsel, on this petition which is rejected as no intervention can be permitted in a petition filed on behalf of Union of India for clarification of this Court's order dated 12th December, 1996.