

Kishore Singh Ravinder Dev and Others

Vs

State of Rajasthan

Writ Petition No. 5287 of 1980

(V. R. Krishna Iyer, R. S. Pathak JJ)

04.11.1980

JUDGMENT

V. R. KRISHNA IYER, J. –

1. The moral of this case is poignant : so long as an iron curtain divides the law set by the Constitution and lit by the Supreme Court from the minions of the State, so long shall this Court's writ remain a mystic myth and harmless half-truth making law in the books and law-in-action distant neighbours. This shall not be.

2. The sombre scenario unfurled by this habeas corpus proceeding begins with a telegram (dated October 3, 1980, on behalf of the prisoners - the petitioners - to one of us, complaining, *mamū brevi*, of insufferable, illegal solitary confinement punctuated by periods of iron fetters, a lot shared by two other with him in Jaipur Central Jail. This trauma-laden message read :

Convict Kishore Singh Ravinder Dev Pareek Surjeet Singh Central Jail Jaipur confined in cells with fetters illegally unconstitutionally more than eight months habeas corpus writ prayed order enquiry and save Daulat Singh. This grievance of the prisoners in 'twisted gyves' triggered off judicial action with telegraphic speed, as it were, and the Bench directed that the prisoners be forthwith liberated from solitary confinement and freed from fetters in terms of the law laid down by this Court in Sunil Batra (I) case (Sunil Batra (I) v. Delhi Administration, (1978) 4 SCC 494 : 1979 SCC (Cri) 155). That order dated October 6, 1980 reads :

We appoint Shri P. H. Parekh as *amicus curiae*.

If the petitioner is in solitary confinement, he will be released from solitary confinement forthwith in the light of the decision of this Court in Sunil Batra (I) case (Sunil Batra (I) v. Delhi Administration, (1978) 4 SCC 494 : 1979 SCC (Cri) 155). The Superintendent of the Central Jail concerned will report to this Court on October 21, 1980 the number of cases with particulars of persons in solitary confinement in that prison. He will appear in person on that date. Notice to Shri B. D. Sharma, Standing Council for the State of Rajasthan.

Council's services, under our litigative process, are a necessary facility for remedial justice and so we took this step of appointing Shri P. H. Parekh as *amicus curiae*. The whole Bar, if it has a larger dedication, is *amicus curiae*, because no cause should be dearer to a people-oriented, justice-centred profession, despite its esoteric genes, elitist strands and lucrative slant, than to be a decisive actor in the democracy of judicial remedies so that no man-be he poor man or prisoner, dissenter, delinquent, eccentric or extremist - shall suffer what the law forbids. In this Court, the members of the Bar,

whenever called up by the Bench have kept the door ajar and unfailingly helped the court as free janitors of justice and free forensic functionaries at the service of anyone aggrieved by injustice and seeking legal justice. After all, the great proposition that inspires the calling of justicing - by the Bench and the Bar alike - is best expressed by Dr. Martin Luther King (Jr.) in his letter from Alabama Prison : "Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly affects all indirectly.

3. We must, even here, record our appreciation of Shri Parekh's passion for the prisoners' cause coupled with painstaking presentation of the grievances they had. So too Shri B. D. Sharma's commitment to jail justice, beyond jailor's injustice i.e. his client's brief. In retrospect, we feel it was right that we took quick action to liberate the three prisoners from their callously lonely, barbarously fettered solitary custody. Justice must be instant and it has been wisely said : "Caution, caution, sir ! It is nothing but the word of cowardice !" (John Brown : quoted by Bruce Catton, Life, September 12, 1955) Where human bondage and personal torture are involved, to wait is to defeat. In personal liberty jurisprudence, this Court has not tarried or teetered and shall not. The reason is clear. The writ must right the wrong forthwith or must stand self-condemned as make-believe. Where justice is in jeopardy or freedom is in fetters the court is not nonaligned and acts with sensitive speed. Time is of essence where otherwise torture is the consequence.

4. The order of this Court dated October 6, 1980 brought counsel on both sides into the scene, set free the prisoners from the hateful 'solitary' and summoned before us the presence of the Superintendent of the Prison on October 21, 1980 to answer for his breach of the fundamental law laid down in Sunil Batra (I) (Sunil Batra (I) v. Delhi Administration, (1978) 4 SCC 494 : 1979 SCC (Cri) 155). On that day i.e. October 21, 1980, after a brief hearing, we directed : "The respondent will file a detailed affidavit giving particulars and also produce the proceedings relating to the enquiry held resulting in solitary confinement. The prisoner will be produced on October 24, 1980 in this Court and Shri Parekh will be allowed to interview him." Pursuant to this order, the Superintendent of the Jail submitted his explanation for what in the light of the Batra (Sunil Batra (I) v. Delhi Administration, (1978) 4 SCC 494 : 1979 SCC (Cri) 155) radio, is unlawful. We will presently consider the conduct of the 'delinquent' jailor but the more disturbing episode brought to our painful notice was the violence allegedly used by the escort police on the person of one prisoner, Surjeet Singh, while in transit and testified to by the visible wounds counsel found. Shri Parekh shocked us into shame by seeking to show us the physical injuries inflicted. If the writ of this Court brings a person from the Jaipur prison to judicial presence can it be that a little set of constables in custody during transit violate, with brazen brutality, and criminal immunity the person of their charges and the hands of the law hang limp in the face of such lawlessness ?

Justice without power is inefficient; power without justice is tyranny.... Justice and power must therefore be brought together, so that whatever is just may be powerful, and whatever is powerful may be just. (Blaise Pascal)

So, we ordered :

We are very disturbed to be told by Shri Parekh, amicus that one of the prisoners, Surjeet Singh while being taken to this Court was manhandled severely. Counsel says that there are bruises and other signs of injuries on his person. The Superintendent of the Jail, who is present in court, will take special care to see that this prisoner is taken to Jaipur safely. The Superintendent will take the prisoner Surjeet Singh to Ram

Manohar Lohia Hospital today for examination of the prisoner and also for proper treatment which may be suggested by the Doctor in the Hospital. In the light of the medical report the Superintendent will lay first information before the police station concerned against the constables who are the escorting police. It will be open to the prisoner himself to lay a complaint and facilities will be afforded by the prison authorities. We make it clear that the investigation should not have the slightest taint of departmental inclination to help a policeman if there is evidence of delinquency. A report will be put into this court about what has been done, by October 31, 1980.

5. Thereafter, the medical report, of which we have been apprised by Shri Parekh, the report against the constables concerned, reported to us by Shri Sharma, are taking their Course. We do not make any observations thereon as that is the subject of a separate enquiry. Even so, no police lifestyle which relies more on fists than on wits, on torture more than on culture, can control crime because means boomerang on ends and refuel the vice which it seeks to extinguish. Secondly, the State must re-educate the constabulary out of their sadistic arts and inculcate a respect for the human person - a process which must begin more by example than by precept if the lower rungs are really to emulate. Thirdly, if any of these escort policemen are found to have misconducted themselves, no sense of police solidarity or in-service comity should induce the authorities to hide the crime. Condign action, quickly taken is surer guarantee of community credence than bruiting about that 'all is well with the police, the critics are always in the wrong'. Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound on our constitutional culture than a State official running berserk regardless of human rights. We believe the basic pathology which makes police cruelty possible will receive government's serious attention. Who will police the police ? What psychic stress and social deprivation of the constabulary's lifestyle need corrective healing ? When will 'wits, not fists' become a police kit ? When will the roots of 'third degree' be plucked out and the fresh shoots of humanist respect put out ? We make these observations in the humane hope that Article 21, with its profound concern for life and limb, will become dysfunctional unless the agencies of the law in the police and prison establishments have sympathy for the humanist creed of that Article.

6. This Court has frowned upon handcuffs save in the 'rarest of rare' cases where security will be seriously jeopardized unless iron restraint is necessarily clamped on the prisoner. We are heartened to know that there are States where escorting is done with civility and humanity. For instance, para 443 of the Kerala Police Manual, 1970, Vol. II, reads :

443. (1) The use of handcuffs or ropes causes humiliation to the person subjected to the restraint, and is contrary to the modern policy regarding the treatment of offenders. Therefore, handcuffing and/or binding shall be restricted to cases where a person in custody is of a desperate character, or where there are reasons to believe that he will use violence or attempt to escape or where there are other similar reasons necessitating such a step.

We mentioned this here since policemen who beat those in their custody may with easy conscience handcuff and footcuff their charges, a course contrary to Article 21.

7. The harrowing facts, in substantial measure emerge even from the statement of the case by the State. The petitioners have admittedly been kept in separate solitary rooms for long periods from 8 months to 11 months - spells long enough to be regarded as barbarous if Sunil Batra (I) case (Sunil Batra (I) v. Delhi Administration, (1978) 4 SCC 494 : 1979 SCC (Cri) 155) is to prevail.

Admittedly, cross-bar fetters were put on Kishore Singh for several days and on Surjeet Singh for 30 days - counsel for the petitioner has rightly submitted that flimsy grounds like "loitering in the prison", behaving insolently and in an "uncivilised" manner tearing off his history ticket, were the foundation for the torturous treatment of solitary confinement and cross-bar fetters. We have read the affidavit of the Superintendent and feel utterly unsatisfied, that the mandate in Sunil Batra (I) (Sunil Batra (I) v. Delhi Administration, (1978) 4 SCC 494 : 1979 SCC (Cri) 155) has been obeyed. This case and the uncivilised orders of cellular solitude and traumatic fetters compels us to repeat what we stated earlier in Sunil Batra (II) (Sunil Batra (II) v. Delhi Administration, (1980) 3 SCC 488, 494 : 1980 SCC (Cri) 777) : [SCC p : 494, : SCC (Cri) p. 783. para 4]

The essence of the matter is that in our era of human rights consciousness the habeas writ has functional plurality and the constitutional regard for human decency and dignity is tested by this capability. We ideologically accept the words of Will Durant : (Will Durant's Article : WHAT LIFE HAS TAUGHT ME, published in Bhavan's Journal, Vol. XXIV, No. 18, quoted in (1978) 4 SCC 494 at 514, para 42)

It is time for all good men to come to the aid of their party, whose name is civilization.

Likewise, we endorse, as part of our constitutional thought, what the British Government's White Paper (Ibid.), titled People in Prison, stated with telling effect :

A society that believes in the worth of individual beings can have the quality of its belief judges at least in part by the quality of its prison and probation services and of the resources made available to them.

8. We do not accept the Superintendent's version that he had given a hearing to the prisoners before punishing them. It is a self-defensive pretence and perhaps the only veracious alibis available to him are that the vintage Prison Rules (Rule 1(f) Part 16 and Rule 79 of the Rajasthan Prisons Rules, 1951) support the administrative absolutism of the prison boss and more to the point as counsel Shri Sharma candidly stated. The Superintendent was 'innocent' of the benign prescription of Sunil Batra (II) decision (Sunil Batra (II) v. Delhi Administration, (1980) 3 SCC 488, 494 : 1980 SCC (Cri) 777). Indeed, Shri Sharma, convincingly persuaded us to take a lenient view of the delinquency of the Superintendent by emphasising that he had taken the Prison Superintendent through the effective exercise of reading and explaining the Batra (I) (Sunil Batra (I) v. Delhi Administration, (1978) 4 SCC 494 : 1979 SCC (Cri) 155) & (II) (Sunil Batra (II) v. Delhi Administration, (1980) 3 SCC 488, 494 : 1980 SCC (Cri) 777) rulings and assuring us that to more of solitary confinement disguised as "keeping in separate cell" and imposition of fetters will take place, save in the rarest of rare cases and with strict adherence to the procedural safeguards contained in the decisions of this Court relating to the punishment of prisoners. We accept the bona fide of the prison official but emphasise that violation of Article 1 as interpreted by this Court in its recent decision, if repeated, will be visited with more serious consequences. Even so, we will refer to the scripture relied on as absolver of the sin complained of and reiterate tersely the mandatory prescriptions and prescription implicit in Article 21 and elucidated by case-law.

9. Rules 79 and 1(f) of Part XVI of the Rajasthan Prisons Rules, may be extracted here :

79. Special precautions for security - The Superintendent shall use his discretion in ordering such special precautions as may be necessary to be taken for the security of any important prisoner, whether he has received any warning from the Magistrate or not, as the Superintendent is the sole

judge of what measures are necessary for the safe custody of the prisoners; he shall be responsible for seeing that precautions taken are reasonably sufficient for the purpose.

1. (f) Cells may be used for the confinement of convicted criminal prisoners who are in the opinion of the Superintendent, likely to exercise a bad influence over other prisoners, if kept in their association.

These Rules were framed under Section 46 of the Prisons Act which may be read at this stage :

46. The Superintendent may examine any person touching any such offence, and determine thereupon and punish such offence by....

(6) imposition of handcuffs of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the Governor-in-Council :

(7) imposition of fetters of such pattern and weight in such manner and for such period, as may be prescribed by the rules made by Governor-General-in-Council;

(8) separate confinement for any period not exceeding three months;

Explanation. - Separate confinement means such confinement with or without labour as secludes a prisoner from communication with, but not from sight of other prisoner, all allows, him not less than one hour's exercise per diem and to have his meals in association with one or more other prisoners;

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(9) Cellular confinement means such confinement with or without labour as entirely secludes a prisoner from communication with, but not from sight of other prisoners.

10. We cannot agree that either the Section or the Rules can be read in the absolutist expansionism the prison authorities would like us to read. That would virtually mean that prisoners are not- persons to be dealt with at the mercy of the prison echelons. This country has no totalitarian territory even within the walled world we call prison. Article 14, 19 and 21 operate within the prisons in the manner explained in Sunil Batra (I) (Sunil Batra (I) v. Delhi Administration, (1978) 4 SCC 494 : 1979 SCC (Cri) 155), by a Constitution Bench of this Court. It is significant that the two opinions given separately in that judgment agree in spirit and substance, in reasoning and conclusions. Batra in that case was stated to be in a separate confinement and not solitary cell. An identical plea has been put forward here too. For the reasons given in Sunil Batra (I) case (Sunil Batra (I) v. Delhi Administration, (1978) 4 SCC 494 : 1979 SCC (Cri) 155 we must overrule the extenuatory submission that a separate cell is different from solitary confinement. The petitioners will, therefore, be entitled to move within the confines of the prison like other undergoing rigorous imprisonment. If special restrictions of a punitive or harsh character have to be imposed for convincing security reasons, it is necessary to comply with natural justice as indicated in Sunil Batra (I) case (Sunil Batra (I) v. Delhi Administration, (1978) 4 SCC 494 : 1979 SCC (Cri) 155). Moreover, there must be an appeal not from Caesar to Caesar, but from a prison authority to a judicial organ when such treatment is meted out.

11. Sobraj in the same case [Sunil Batra (I) (Sunil Batra (I) v. Delhi Administration, (1978) 4 SCC 494 : 1979 SCC (Cri) 155)] was kept in fetters and reasons more persuasive than in the present case

were put forward in defence. This Court, however, directed "such fetters shall forthwith be removed". Of course, we do not place any absolute ban but insist that in extreme cases of compelling necessity for security of other prisoners or against escape can such fettering be resorted to. Human dignity is a dear value of our Constitution not to be bartered away for mere apprehensions entertained by jail officials. The latter decision of this Court in Sunil Batra (II) (Sunil Batra (II) v. Delhi Administration, (1980) 3 SCC 488, 494 : 1980 SCC (Cri) 777) clothes with flesh and blood the principles laid down in Sunil Batra (I) (Sunil Batra (I) v. Delhi Administration, (1978) 4 SCC 494 : 1979 SCC (Cri) 155). In Rakesh Kaushik (Rakesh Kaushik v. B. L. Vig, 1980 Supp SCC 183, 192 : 1980 SCC (Cri) 834, 843) the position has advanced further and concrete directions have been issued which we extract here because the law laid down by this Court applies not to one State or the other but to all national institutions in the count : [SCC p. 192 : SCC (Cri) p. 843, para 22]

(2) He will further enquire, with specific reference to the charges of persons assault and compulsion for collaboration in canteen swindle and other vices made by the prisoner against the Superintendent and the Deputy Superintendent.

(3) He will go into the question of the directive issued in the concluding portion of Sunil Batra case (Sunil Batra (II) v. Delhi Administration, (1980) 3 SCC 488, 494 : 1980 SCC (Cri) 777) with a view to ascertain whether these directions have been substantially complied with and to the extent there is shortfall or default whether there is any reasonable explanation therefor.

(4) Being a visitor of the jail, it is part of his visitatorial functions for the Sessions Judge to acquaint himself with the condition of tension, vice and violence and prisoners' grievances.....

We hold that the jail authorities in Rajasthan will comply with the principles so laid down. We read down Sections 46 and Rules 1(f) and 79 of the Rajasthan Prisons Rules and sustain them in this limited fashion.

12. We direct the respondents to act accordingly. Further, we remind that the Sessions Judges in the Stage of Rajasthan to remember the rulings of this Court in Sunil Batra (I) (Sunil Batra (I) v. Delhi Administration, (1978) 4 SCC 494 : 1979 SCC (Cri) 155) & (II) (Sunil Batra (II) v. Delhi Administration, (1980) 3 SCC 488, 494 : 1980 SCC (Cri) 777) and Rakesh Kaushik (Rakesh Kaushik v. B. L. Vig, 1980 Supp SCC 183, 192 : 1980 SCC (Cri) 834, 843) and act in such manner that judicial authority over sentences and the conditions of their incarceration are not eroded by judicial inaction.

13. We find that the old rules and circulars and instructions issued under the Persons Act are read incongruously with the Constitution, especially Article 21 and interpretation put upon it by this Court. We, therefore, direct the State Government of Rajasthan - and indeed, all the other State Government in the country - to convert the rulings of this Court bearing on Prison Administration into rules and instructions forthwith so that violation of the prisoners' freedoms can be avoided and habeas corpus litigations may not proliferate. After all, human rights are as much cherished by the State as by the citizen.

14. Since the petitioners have been released from separate confinement and from cross-bar fetters and since counsel for the State has assured us that nothing will be done in violation of the

propositions set out in the catena of cases of this Court Sunil Batra (I) (Sunil Batra (I) v. Delhi Administration, (1978) 4 SCC 494 : 1979 SCC (Cri) 155) & (II) (Sunil Batra (II) v. Delhi administration, (1980) 3 SCC 488, 494 : 1980 SCC (Cri) 777) and Rakesh Kaushik (Rakesh Kaushik v. B. L. Vig, 1980 Supp SCC 183, 192 : 1980 SCC (Cri) 834, 843), we deem it unnecessary to give any further directive pursuant to this habeas corpus application.

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