

SUPREME COURT OF INDIA

The Committee for The Protection of Democratic Rights

Vs.

The Chief Minister of The State of Maharashtra

(B.P. Jeevan Reddy and K.S. Paripoornan JJ.)

20.11.1996

JUDGMENT

B.P.JEEVAN REDDY.J.

Leave granted.

This appeal is preferred by the Committee for the Protection of Democratic Rights against the order of the Bombay High Court summarily dismissing the writ petition. In the writ petition filed in the High Court the appellant had asked for the following two relief:

"(a) that this Hon'ble Court be pleased to declare that the Commission of Inquiry appointed by the Government of Maharashtra by its Notification No. FIR/5693/Bombay-1/Appointment/SPL- 2, dated 25th January, 1993, is not a Court of law and there are no cases pending before the said Commission concerning the riots on and after 6th December, 1992, and on and after 6th January, 1993, and therefore, the question of subjudice does not arise in the way of the Government of launch prosecutions against the culprits responsible for the said riots;

(b) that this Hon'ble Court be pleased is issue a writ of mandamus or a Write in the nature of Mandamus or any other appropriate Writ, direction or order under Article 226 of the Constitution of India directing the Respondents that they should carry out investigation as required under the law against the culprits responsible for the said riots which occurred on the after December 6, 1992 and on the after January 6, 1993, in the City of Bombay and its environs and of launch prosecution against those found prime-facie responsible for the said riots;"

The appellant had filed the writ petition with the following averments. The appellant-organisation is formed for protecting the human rights of the citizens of the country. It believes in Rule of Law and in upholding it. There were widespread and violent riots in the city of Bombay and its environs on and after December 6,1992 and again on and after January 6,1993 in which a large number of people were killed and injured and properties worth crores of rupees destroyed. There were allegations that the law and order machinery has either failed or was colluding with the perpetrators of violence and destruction. Though about 3,000 criminal cases were registered in connection with the said riots, no effective investigation has been carried out into those cases, no one has been arrested and no prosecution has been launched. The reason given by the respondents for this inaction is that a Commissions of Inquiry Act, 1952 (Justice Srikrishna Commission) is enquiring into various aspects of the said riots and that they are awaiting the Commission's report. This is a

totally unacceptable and impermissible reason. Amnesty international has also submitted a report to the Hon'ble Chief Minister of Maharashtra stating that the appointment of the Commission is not an impediment to the Government proceeding against the guilty according of law. In spite of the said report, the respondents are not taking any action in the matter. The appellants submitted that the aforesaid Commission is neither a criminal court nor can it punish the guilty persons and that the respondents has been merely making an excuse of the said Commission for not taking any steps against the guilty. It is on the above allegations that the aforementioned two reliefs were asked for.

The High Court dismissed the writ petition under a short order which reads:

"Rejected. We are not inclined to exercise writ jurisdiction and give directions in a very sensitive matter."

When this SLP came up for orders before this Court, notice was issued to the respondents under the following order:

"Exemption allowed.

Mr. Tarkunde says that though 3000 criminal cases were registered in the different police stations in Bombay, none of them has resulted in actual prosecution being launched in a criminal court. In view of the said averment and other allegations made in the writ petition and special leave petition, notice shall go to the respondents".

In response to the notice issued, a counter affidavit was filed by an Inspector of Police on behalf of the 4th respondent (Commissioner of Police). On 26th February, 1996 we expressed our unhappiness that in a matter of such gravity, the counter affidavit has been filed by an inspector of Police and not by any responsible persons on behalf of the Government of Maharashtra. The Government of Maharashtra was directed to file an affidavit of either the Home Secretary or the Additional Secretary in-charge of this matter with full particulars. Accordingly, Shri S.K. Iyengar, Secretary (Special), Home Department, Government of Maharashtra has filed an affidavit stating the following facts: the allegation that the Government has evaded its responsibility to prosecute the persons involved in the said riots is not correct. A total of 2,267 criminal cases were registered and 8,673 persons were arrested in connection with the riots of December 1992 and January 1993. A total of 864 cases are still pending trial before the various courts. Alongwith the affidavit, two statements have been filed setting out the particulars of the cases registered, persons arrested, cases pending investigation, cases charge-sheeted, persons charge-sheeted, cases convicted, cases acquitted and other relevant particulars. With respect to the report submitted by Amnesty International, it is stated that the Government had ordered an inquiry into the allegations of violation of human rights contained in the said report, to be held by a Special Inspector General of Police. However, when the said Officer was in the midst of recording statements of witnesses, some of them made applications before Justice Srikrishna Commission objecting to the inquiry by the Special Inspector General of Police contending that a parallal inquiry by Inspector General of Police was not permissible in view of the pendency of the matter before the Justice Srikrishna Commission. In the light of the said development, the inquiry by Special Inspector General of Police was deferred. It is true that the State Government has by its Notification dated 23rd January, 1996 discontinued the inquiry by Justice Srikrishna Commission but High Court. Depending upon the decision of the High Court, the State Government "might consider revival of inquiry". This affidavit was sworn to on 3rd April, 1996. In the light of the averments made by the special Secretary of the Government of

Maharashtra it would not be correct to say that the Government of Maharashtra has not taken any action against by culprits. A good number of cases have been charge-sheeted after investigation. Most of them are pending trial. A few have resulted in conviction and a few have resulted in acquittal. It is also not correct to say that because of the appointment of the Justice Srikrishna Commission, the Government and its authorities are not taking any action against the persons responsible for the said riots. May be that in some cases no charge- sheets have been filed so far but there is no material before us to say that this is on account of any negligence or deliberate inaction on the part of the authorities. There is also no material before us to say that the Government machinery is deliberately refusing to investigate into the incidents which took place during those unfortunate riots or to prosecute the culprits identified as responsible for any of the offences. We are sure that, if any, specific evidence is brought to the notice of the investigating authorities about any incident or against any person or persons, the authorities will look into the same and take necessary action. If any person feels aggrieved that inspite of bringing specific material to their notice, the authorities are not taking action according to law, it shall be open to him to approach the Bombay High Court for necessary directions. We are sure that the High Court would deal with any such grievance according to law.

So far as the inquiry by the Special Inspector General of Police into allegations of violation of human-rights is concerned, we see no justification for deferring it on account of the proceeding before the Justice Srikrishna Commission. The scope of inquiry before the special Inspector General of Police is not identical, though in some respects there may be an amount of over-lapping. In the circumstances we direct that the said inquiry should proceed. In fact, we think it more appropriate that the appellants should approach the National Human Rights Commission to look into the alleged violations of human contained in the report of the Amnesty International. If the appellants make such a request and if the National Human Rights Commission agrees to under take an inquiry into those allegations, it is obvious that the inquiry into those allegation, it is obvious that the inquiry by the Special Inspector General of Police would be superflous. It is also made clear that if the National Human Rights Commission has already inquired into the said allegations and has arrived at a conclusion- one way or the other-the inquiry by Special Inspector General of Police would equally be unnecessary. We, therefore, direct the Special Inspector General of Police, who was appointed to inquiry into the said allegations (or his substitute, who may have been, or who may be, appointed hereafter) to ascertain whether National Human Rights Commission has already inquired into the allegation and proceed with his inquiry if he finds that it has not. It is equally obvious that if, in future, the National Human Rights Commission takes up the said inquiry before the Special Inspector General of Police submit his report to the Government, he shall defer his inquiry awaiting the report of the National Human Rights Commission. With the above observations the appeal is disposed of. No costs.