SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Asha Arun Gawali

Crl.A.No.284 of 1998

(Doraiswamy Raju and Arijit Pasayat JJ.)

27.04.2004

JUDGMENT

Arijit Pasayat, J.

1. The concern for reformation of prisoners and improvement of prison conditions has been judicially recognised. But the same does not countenance "holding of darbars in prisons by prisoners", "five star hotel comforts for prisoners" or "free entry to and exit from jail" as surface in these cases, that too by statements of admission marked by abashed inefficiency unbecoming of those who are ordained to strictly carry out their duties and responsibilities i.e., state of jail authorities and the highly placed Governmental functionaries. The Bombay High Court while dealing with the legality of order directing detention of one Arun Gawali (hereinafter referred to as "detenu") gave certain directions, to be noted hereinafter.

2. These three appeals are interlinked and have their matrix to the impugned judgment by a Division Bench of the Bombay High Court. The High Court in addition to quashing of order of detention gave the following directions:

> "The State Government is directed to launch prosecution against S/Shri D.M. Jadhav, M.G. Ghorpade and L.T. Samudrawar and other Jail Officials, in case, if any, for the offences punishable under sections 120-B, 217 and 218 of the Indian Penal Code and also under any other relevant provision of law, either independently or in the prosecution pending against the detenu.
>
> Shri P. Subramaniam, Additional Chief Secretary (Home), Shri S.C. Malhotra, Commissioner of Police Mumbai and Shri M.G. Narvane, Inspector General of Prisons, Pune shall pay exemplary costs of Rs.25, 000/- each.
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> S/Shri D.M. Jadhav, M.G. Ghorpade and L.T. Samudrawar, Superintendents of Jail, shall pay exemplary costs of Rs.15000/- each.
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> The Government of Maharashtra shall deposit the entire exemplary costs payable by

these officers as indicated in this Court within a period of 10 days and the state Government shall thereafter recover the costs so paid from the respective officials, in accordance with law.

The Government shall pay, by way of remuneration, Rs.5000/- to Shri W.G. Charde, Advocate, who acted as an Amicus Curies, within a period of 10 days."

3. Detenu's wife Asha Gowali filed a Writ Petition questioning legality of the order of detention passed under Section 3 of the *National Security Act, 1980* (in short 'the Act'). The directions were given while, as noted above quashing the detention taking note of certain baffling fact situations which came to light while hearing the writ petition and which should sound as 'nightmares' to any law abiding citizen and law enforcing authorities. While the State of Maharashtra questions the directions relating to launching of prosecution, the other two appeals i.e. Criminal Appeal No. 286 of 1998 has been filed by Mr. P. Subramanyam, who was then functioning as Chief Secretary (Home) and Criminal Appeal No. 285 of 1998 has been filed by Mr. Mahadu Govindrao Narvane, who was then functioning as Inspector General of Prisons. Though the judgment has been assailed by the State of Maharashtra no separate appeal has been filed by Mr. S.C. Malhotra, Commissioner of Police Mumbai, Mr. D.M. Jadhav, Mr. M.G. Ghorpade and Mr. L.T. Samudrawar, who were acting as Superintendents of Jail, though the directions given by the High Court also related to them.

4. The High Court noticed some startling features of monstrosity found prevailing and while dealing with the Habeas Corpus application tried to pierce the veils and noticed the actual distressing as well as disgusting state of affairs. This was felt necessary because of certain observations in the detention order to the effect that the detenu while in jail had master-minded killings of certain persons in connivance with the active participation of certain persons who had come to meet him in jail.

5. Certain registers like the visitors' register etc. were called for verification and High Court noticed that there was no entry about the alleged visit of so called co-conspirators and there was no record of their having met the detenu. Certain officials were asked to file affidavits. Finding many inconsistent and irreconcilable statements High Court did not give any credence to the affidavits. In the aforesaid background it was observed that the order of detention was passed on irrelevant materials and was indefensible. In view of the sensitive nature of the matter a learned counsel was appointed as Amicus Curie and his assistance was appreciated by the High Court.

6. Taking note of the sad state of affairs in the jail and the total indifference of the concerned authorities, the High Court felt that there was a need for imposition of exemplary costs on the erring officials and that is how the directions quoted above were made.

7. The legality of the directions has been questioned in the three appeals. Mr. Mukesh K. Giri, learned counsel appearing for the appellant-State submitted that the High Court should not have given direction for launching of prosecution straightaway without adequate material. Further the order of detention was passed bona fide and appropriate actions have

also been taken against erring officials and, therefore, the imposition of costs is uncalled for. Similar is the stand taken by the other learned counsel for the appellants.

8. Though the legality of the order quashing the detention order was questioned that was not very seriously pressed. Mr. M.D. Adkar, learned counsel appearing for the respondent No.1 - writ petitioner submitted that the High Court has taken note of the realities and has passed an appropriate order and no interference is called for.

9. Certain baffling features have emerged on a bare reading of the High Court's Order. The activities in the jail, entry of unauthorised persons and holding of "Darbar" are part of the defensive stand taken by the State Authorities in the affidavits filed before the High Court. We are shocked to find that the norms relating to entry of persons to the jail, maintenance of proper record of persons who entered the jail have been observed more in breach than observance and the rules and regulations have been found thrown to winds. The affidavits filed by the officials amply demonstrate this factor. One used to hear and read about lavish parties being thrown inside the jail. Doubts at times were entertained about the authenticity of such news having regard to the normal good faith to be reposed in the regularity of official activities. But the admissions made in the affidavits filed by the Jail Authorities and the officials, accept it as a fact. What is still more shocking is that persons have entered the jail, met the inmates and if the statements of the officials are seen hatched conspiracies for committing murders. The High Court was therefore justified in holding that without the active cooperation of the officials concerned these things would not have been possible. The High Court appears to have justifiably felt aghast at such acts of omissions and commissions of the jail officials which per se constituted offences punishable under various provisions of the IPC and has, therefore, necessarily directed the launching of criminal prosecution against them, besides mulcting them with exemplary costs.

10. The High Court noticed and in our view correctly that when the names of visitors who allegedly were a part of the conspiracy warranting detention of the detenu were not in the list of visitors during the concerned period, there is a patent admission about people getting unauthorised entry into the jails without their names being recorded in the official records something which would be impossible except with the connivance of those who otherwise should have prevented such things happening. It was noted by the High Court that there was no explanation as to how somebody could gain entry in the jail and meet the detenu and yet no entry would be made therefor. It is not possible unless the jail officials are themselves a party to the same.

11. On one hand the detaining authority was referring to the activities of the detenu inside the jail and the conspiracies hatched, and at the same time official records belied their version. In respect of certain officials' misconducts explanations were called for regarding involvement of jail officials, their negligence or connivance relating to Yerwada Central Prison. The High Court noticed that after taking some initial disciplinary action, nothing concrete was really done. It felt that the Inspector General of Prisons, other high placed officials and the Chief Secretary acted with unwarranted casualness and indifference and there was total lack of any seriousness or sensitivity exhibited in the matter. If the criminal activities of the detenu were

to be prevented and the recurrence of lapses which are serious on the part of those concerned were to be averted, firm action was necessary which yet was not even taken for reasons best known to themselves. In the aforesaid background the concern exhibited by the High Court as a necessary corollary by imposition of costs cannot at all be found fault with.

12. In the background of what has been noticed by the High Court, one thing is very clear that there is a total casualness by the jail authorities. In the matter of maintaining records of persons who meet the inmates, the factual position as admitted in the affidavit filed is that the authorities themselves were conscious of the prevalent position but yet allowed to go scot free with impunity, except a pretended lip service. The purpose for which the jails are set-up have been totally destroyed by the manner in which the jail officials have acted. If the real purpose for setting up jails is to keep criminals out of circulation in the society and to ensure that their activities are restricted or curtailed, the same appears to have remained only a pious wish on paper and what happens in reality is just the reverse. High sounding words like "Writ of police runs beyond stone wall and iron bar", used in the affidavits have not been reflected in the action of the authorities and does not do real justice to the situation which only apparently necessitated, a hardline of action by the High Court. On the contrary the High Court came to hold on the basis of indisputable material placed before it that the jail officials rendered support to the criminals in their crimes by completely disregarding the mandate of law and this was done with a view to save them and in particular the detenu from punishment. An officer is supposed to act for protection of people, and prevent their criminal activities. Such activities are not merely lapses or omissions but more dangerous than the crimes and criminals who commit them for insulation it officially provides as alibi for avoiding and escaping from actual liability, under law, for those crimes . If they themselves become a party to the crimes by directly or indirectly helping the criminals to carry out their criminal activities using their incarceration as a protective shield to go scot free for their crimes , the credentials of the police officials are bound to suffer severe beating beyond repair and redemption. That is precisely what the High Court has observed and attempted to activate and rectify.

13. The High Court noticed that the Maharashtra Prisons Facilities to Prisoners Rules, 1962 prescribed the modes of interview of relatives etc. It was noticed that these provisions were not prima facie observed. The under- trial detenues and prisoners locked in different prisons are in the custody of the jail officials, and they are responsible for the safety of the prisoners, maintenance of the prisons and the enforcement of discipline amongst the prisoners. In the affidavit dated 2.5.1997 the common plea of the Jail Superintendents was in the following words:

> "That absence of entry in the gate register is not conclusive proof to establish that the so called persons have entered the jail. The statement before the Police during investigation is not admissible. It is further stated that First Information Reports in the respective crimes were recorded after long time."

14. If what is stated in the affidavit is the reality one need not probe further to find out the nature and extent of infractions.

15. But we feel a further detailed enquiry was necessary in the matter. Therefore, the matter should be elaborately enquired into by the State Government. We are conscious that the officials have exhibited a total lack of seriousness and urgency but in the peculiar circumstances of the case where the entire system is under scrutiny, a detailed study of the factual position is necessary. What has happened in the jail to which this case relates, may or may not be different from other jails and that there is no guarantee that such things are now not happening . But a doubt lingers about the position being no better in other jails also.

16. We, therefore, dispose of the appeals with the following directions:

> "(1) The State Government shall cause enquiry into the matter in depth and whatever action has to be taken departmentally or in accordance with the criminal laws shall be taken within six months from today. The directions for imposition of costs on the appellants - Mahadu Govindrao Narvane and P.Subramanyam personally are waived for the present.
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> (2) Since the other officials in respect of whom costs were imposed have not questioned the imposition, the directions of the High Court in relation to such officers remain unaltered.
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> (3) So far as the two appellants before this Court i.e. P.Subramanyam and Mahadu Govindrao Narvane are concerned, it shall be open to the Government to initiate actions against them if felt necessary even if they have retired on the basis of enquiry as directed.
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> (4) Judicial officers go for inspection of jails periodically. The disturbing features noticed in the case at hand shall be kept in view by them while they make the inspections and appropriate remedial measures and actions shall be taken on the basis of the reports, if any, submitted by the concerned officers.
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> (5) The Government may consider the appointment of a Commission headed by former Judge of the Supreme Court to be assisted by a former Inspector General of Prisons and DG Police to probe into the nature of such lapses and explore the possibilities of effectively curbing their recurrence and devising methods and means to prevent them by appropriate statutory Provisions or Rules, to sufficiently meet the exigencies of the situation."

17. The appeals are disposed of on the aforesaid terms.