

Prakash Singh & Others

v.

Union of India & Others

(Supreme Court Of India)

HON'BLE CHIEF JUSTICE MR. S.H. KAPADIA HON'BLE MR. JUSTICE AFTAB ALAM HON'BLE MR. JUSTICE K.S.P. RADHAKRISHNAN

Prakash Singh & Others v. Union of India & Others

Writ Petition (Civil) No. 310 Of 1996 | 06-12-2010

In re: State of West Bengal

1. Mr. Tara Chandra Sharma, learned counsel appearing on behalf of the State of West Bengal, on instructions from the Chief Secretary, who is present in the Court today, states that, within four weeks from today, the State will issue an appropriate notification/government order to make the composition of the State Security Commission in line with the recommendations made by the Thomas Committee. It may be mentioned that, as of date, the State Security Commission is headed by the Health Minister. The learned counsel for the State of West Bengal states that this error will be corrected within four weeks from today.

2. We also give the State of West Bengal four weeks' time to submit the action-taken report with regard to the recommendations/directions on which the Thomas Committee has commented in the matter of non-implementation of the judgment of this Court in Prakash Singh v. Union of India (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417). The State is further directed to submit the proposed timetable within which it will implement, in a phased manner, the directions regarding separation of investigation from law and order in the action-taken report to be filed within four weeks.

3. As far as appointment to the post of DGP is concerned, the learned Solicitor General states that, within one week, he will revert to this Court with proper instructions. Accordingly, one week's time is given to examine the question as to whether the relevant rule/regulation needs amendment by the Union of India. As far as other steps at the ground level are concerned, the matter shall stand over for four weeks.

4. Presence of the Chief Secretary of the State of West Bengal is dispensed with.

In re: State of Karnataka

5. The learned Advocate General for the State of Karnataka states that the State Security Commission is now duly constituted and the first meeting has been convened to be held on 14-12-2010. Thus, the Commission will now become functional as the composition of the Commission is now complete. The learned Advocate General further states that the State of Karnataka, in future, will consult the Union Public Service Commission from time to time in the matter of appointment of DGP, and IGP. He further states that the State of Karnataka has agreed to provide two years' tenure, subject to superannuation.

6. In our view, that is not possible. It goes against the spirit of the judgment of this Court in Prakash Singh. (Supra) However, we adjourn this case on this aspect for four weeks to enable the learned counsel for the State to take instructions. In the meantime, the Central Government will also consider amending the relevant rule/regulation dealing with the Cadre Management Rules. On this aspect, the learned Solicitor General will take instructions within one week. He also states that, by Order dated 3-12-2010, the State of Karnataka has also constituted the State Level Police Complaint Authorities and the District Level Police Complaint Authorities. He further states that on 24-8-2009, the Police Establishment Board has also been constituted. Since then, the same has become functional.

7. The learned amicus curiae points out that fixed tenures are not being provided for SPs, Range DIGs and IGs (Zone). However, the learned Advocate General states that two years of posting is fixed for police officers on operational duties in the field, like the Inspector General of Police incharge range, Superintendent of Police of Districts and SHOs of police stations, subject to reasons to be recorded by the Chief Minister in writing to transfer these police officers before the expiry of two years.

8. Presence of the Chief Secretary of the State of Karnataka is dispensed with.

In re: State of Maharashtra

9. Mr. U.U. Lalit, learned Senior Counsel appearing for the State of Maharashtra, states that the State of Maharashtra has opted for Sorabjee model. There is some discrepancy as to whether a retired Judge should be a member of the State Security Commission. We are of the view that, in order to maintain uniformity in the composition of the State Security Commission, a retired Judge should be a member of the Maharashtra State Security Commission.

10. Accordingly, we direct the State of Maharashtra to incorporate the retired Judge of the High Court as one of the members in the State Security Commission within a period of six

weeks from today. Needless to add that the State would move the Chief Justice of the High Court for nominating a retired Judge to be a member of the State Security Commission.

11. As far as institutionalization and appointment of members to the State Security Commission are concerned, this Court will examine that aspect at a later state and arguments in that regard are expressly kept open.

12. As far as appointment of the DGP is concerned, the problems narrated earlier still persist. However, the learned Solicitor General has sought one week's time to take instructions with regard to amendment of relevant rule/regulation as regards appointment and tenure of the DGP. We direct the State of Maharashtra to submit a status report on the action taken with regard to non-implementation of the Thomas Committee Report, as indicated in the chart, within a period of six weeks.

13. Presence of the Chief Secretary of the State of Maharashtra is dispensed with.

In re: State of Uttar Pradesh

14. The State of Uttar Pradesh was directed to file its affidavit. We are informed that the affidavit was to be submitted today.

15. However, learned Senior Counsel, Mr. Harish N. Salve, states that he is not satisfied with the affidavit. Mr. Salve states that the State of Uttar Pradesh will comply with the recommendations/directions suggested by the Thomas Committee and the State will file the compliance report in the form of an affidavit within six weeks from today. It is made clear that compliance by the State of Uttar Pradesh would be subject to the Central Government taking its decision to amend the rule/regulation in the matter of appointment and tenure of the DGP.

16. Presence of the Chief Secretary of the State of Uttar Pradesh is dispensed with. Place the matter on 10-1-2011, regarding compliance to be given by the State of Uttar Pradesh.

17. Place the matter regarding amendment of relevant rule/regulation in respect of appointment of the DGP in consultation with the Union Public Service Commission also on 10-1-2011.

18. As regards formation of the Directorate of Prosecution and issue of selection and minimum tenure of the DGP in consultation with the State Security Commission, place the matter on 17-1-2011.

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