

Shankar Mahadev Bidari

v.

State of Karnataka & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE AFTAB ALAM HON'BLE MR. JUSTICE CHANDRAMAULI
KR. PRASAD

Civil Appeal No. 3799 Of 2012 (Special Leave Petition (Civil) No. 13144 Of 2012) With
Civil Appeal No. 3800 Of 2012 (Special Leave Petition (Civil) No. 12193 Of 2012) | 24-04-
2012

1. Leave granted. Heard Mr. Gopal Subramaniam, learned Senior Advocate appearing for the appellant in Civil Appeal No. 3799 of 2012. Mr. U.U. Lalit, Senior Advocate appearing for the appellant State of Karnataka in Civil Appeal No. 3800 of 2012, and Mr. Altaf Ahmed, learned Senior Advocate appearing for the respondent, A.R. Infant, Respondent 4 in CA No. 3799 of 2012 and Respondent 1 in CA No. 3800 of 2012.

2. By the judgment (State of Karnataka v. A.R. Infant, WP No. 8788 or 2012, decided on 30-3-2012 sub nom Shankar Mahadev Bidari v. State of Karnataka, WP No. 9655 or 2012 (KAR)) coming under appeal, Karnataka High Court dismissed the writ petitions filed by the appellants and affirmed the judgment and order passed by the Central Administrative Tribunal. Bangalore Bench in OA No. 545 of 2011 setting aside the appointment of the appellant. Dr. Shankar Mahadev Bidari, as Director General of Police (DGP), Karnataka.

3. The judgments of the Tribunal and the High Court are based on the finding that the panel prepared by the Union Public Service Commission (in short "UPSC") (from which the appointment of Dr. Bidari was made) was vitiated on account of the State Government withholding certain materials relevant for the appraisal of Dr. Bidari regarding his suitability for appointment as DGP. The materials, the non-production of which, according to the High Court, was fatal to the empanelment of Dr. Bidari is the report of Justice Sadashiv Panel (for the sake of brevity "Panel") and NHRC proceedings/orders passed on the basis of the report of the Panel.

4. The Panel was constituted by NHRC to enquire into the allegations of rape and many other kinds of atrocities committed upon the tribals in the States of Karnataka and Tamil Nadu by the Joint Special Task Force (STF) set up by the two States to apprehend the notorious forest brigand and sandalwood smuggler, Veerappan. The task force operated jointly under the Command of one Walter Devaram, who was at that time the ADGP, Law & Order, Tamil Nadu and Dr. Bidari, as its Deputy Commander.

5. The presumption that runs through the judgment of the High Court is that the report of the Panel indicted and/or adversely commented upon the role of Dr. Bidari as the Deputy Commander of the STF in regard to the atrocities and rape, etc. committed upon the tribals in the two States.

6. It is an admitted position that the report of the Panel and the proceedings/orders of NHRC passed on the basis of that report were not before the High Court. As a matter of fact, in the impugned judgment (State of Karnataka v. A.R. infant, WP No. 8788 of 2012, decided on 30-3-2012 sub nom Shankar Mahadev Bidari v. State of Karnataka, WP No. 9655 of 2012 (KAR)), the High Court commented more than once that the report and NHRC proceedings were not produced before it. We are told that the observations of the High Court (that are nothing short of a concluded finding!) regarding the presumed indictment of Dr. Bidari are based on a representation filed by a certain NGO called "Vimochana", a copy of which was one of the annexures to the OA filed by A.R. Infant before the Central Administrative Tribunal.

7. The appellant Dr. Bidari has presented before us the full report of the Panel and the proceedings/orders of NHRC passed in the case and we have been taken through the report and the proceedings of NHRC both by Mr. Subramaniam and Mr. Altaf Ahmed.

8. Prima facie, we find it difficult to hold that there is any adverse comment personally against Dr. Bidari, much less, his indictment concerning the atrocities committed against the tribals in either the report or in the proceedings of NHRC. The presumed finding and the observations of the High Court in that regard, thus, appear to be quite unfounded.

9. This leads to another question regarding the relevance of the report of the Panel and the proceedings of NHRC for preparation of the panel by the UPSC.

10. Mr. Altaf Ahmed contended that though there might not be any personal indictment of Dr. Bidari, the Panel's report found and held that 66 persons were killed in encounters and 36 persons lost their lives in suspicious encounters. It is, thus, clear that at least some members of the STF had acted in a highly lawless manner and Dr. Bidari being the Deputy Commander of the Force could not escape the liability. He contended that in any event, the Panel's report and NHRC proceedings/orders were clearly very relevant materials for consideration by the UPSC to judge the suitability of Dr. Bidari for appointment as the DGP, Karnataka.

11. Mr. Altaf Ahmed invited our attention to Schedule I of the All India Service (Performance Appraisal Report) Rules, 2007, relating to the documents to be maintained in the performance Appraisal Dossier. Serial No. (v) of the Schedule mentions:

“(v) ‘Appreciation letters’ from Government or Secretary or Head of Department or special bodies or commissions.”

According to Mr. Altar Ahmed, the report of the Panel and NHRC proceedings would fall in this category and would, thus, not only be a relevant material but would be required to be taken into account by the UPSC in terms of the Rules.

12. Mr. Subramaniam strongly rebutted Mr. Ahmed’s contention and submitted that since there was nothing adverse against Dr. Bidari in the Panel’s report or in the proceedings of NHRC, the report or the orders of NHRC had no relevance in the matter and as a matter of fact its inclusion in the performance appraisal dossier would amount to consideration of an extraneous material which would vitiate the proceedings of preparation of the Panel.

13. Mr. Subramaniam further pointed out that though in the light of the report of Panel NHRC deemed fit to award certain compensation to some or the victims of the atrocities, it did not issue any notice in terms of Section 16 of NHRC Act against any police officer, including Dr. Bidari and eventually closed the proceedings.

14. Prima facie, we find it difficult to accept the submission of Mr. Altaf Ahmed that the Panel’s report or the proceedings of NHRC would come under any of the items enumerated in Schedule I of the All India Service (Performance Appraisal Report) Rules, 2007. But, we refrain from making any final pronouncement on the issue, as we propose to remit the case to the High Court after setting aside the impugned judgment (State of Karnataka v. A.R. Infant, WP No. 8788 of 2012, decided 30-3-2012 sub nom Shankar Mahadev Bidari v. State of Karnataka, WP No. 9655 of 2012 (KAR)). We order accordingly. The High Court shall now consider the entire matter afresh in light of the Panel’s report and the proceedings of NHRC.

15. One of the reasons for remitting the matter to the High Court is that on account of the coming summer vacation, it is unlikely for this Court to be able to render a decision on merits on all the issues arising in the case before both Dr. Bidari and A.R. Infant superannuate from service on 31-5-2012.

16. We hope that on remand the High Court will be able to take up the matter giving it precedence having regard to the date of superannuation of the two contesting parties and hear and finally dispose of the two writ petitions before 31-5-2012.

17. It is made clear that all the observations in this order are of tentative and prima facie nature. In the light of the Panels report and the proceedings/orders of NHRC, which are now available, the High Court shall be at liberty to form its own view both on the question whether ill the Panel's report and/or the proceedings/orders of NHRC there is any adverse comment on Dr. Bidari and in case it comes to the finding that there are no adverse comments against him in the reports and the proceedings/orders, whether those materials would still be relevant for consideration by the UPSC for preparing the panel for appointment as DGP, Karnataka.

18. All the contentions from both sides are expressly left open. Till the matter is finally disposed of by the High Court, the operation of the order passed by the Central Administrative Tribunal dated 16-3-2012 in OA No. 545 of 2011 shall remain stayed.

19. Since the judgment of the High Court is set aside and the order of the Central Administrative Tribunal is stayed, it is open to the State Government to make the posting of an officer of its choice as the DGP, Karnataka, subject, of course, to the final order passed by the High Court. The appeals are disposed of.