

SUPREME COURT OF INDIA

Beenu Rawat & Ors

Vs.

Union of India & Ors.

W.P.(Civil.)No.446 of 2013

(G.S.Singhvi, Shiva Kirti Singh and C.Nagappan, JJ.)

19.11.2013

JUDGMENT

Shiva Kirti Singh, J.

1. The petitioners claim to be young volunteers of 'Aam Aadmi Party' (AAP) engaged in selfless work for the improvement of democratic institutions of this country and also fight for justice. They have approached this Court under Article 32 of the Constitution of India seeking the following reliefs:

"(a) Issue a writ of mandamus or any other writ or direction to order an independent investigation by a Special Investigation Team into the abovementioned incident of police atrocities which took place on 19.06.2013 at Gokul Puri Police Station against the petitioners and if such allegations are found correct, pass further consequential and necessary directions, including initiation of criminal prosecution as well as disciplinary proceedings against the police officers of the Delhi Police found involved and also against those senior police officers at whose behest this vindictive act of atrocity was done;

(b) Issue a writ of mandamus or any other writ or direction to award monetary compensation to the petitioners for their illegal arrest and torture by the Delhi Police which has resulted in gross violation of their fundamental rights to live with dignity as guaranteed under Article 21 of the Constitution of India;

(c) Pass such other and further order/s as this Hon'ble Court may deem fit and proper on the facts and in the circumstances of the case."

2. The incident of 19.06.2013 at Gokal Puri Police Station in Delhi which is mentioned in prayer no. (a) noted above, occurred in course of a protest by the volunteers of (AAP) at Gokal Puri Police Station since morning hours. The protestors wanted registration of an FIR in respect of an alleged occurrence of rape of a poor woman by two persons in Bhagirathi Vihar. Allegedly the police was reluctant to register the FIR and number of volunteers including the petitioners joined the protest. The FIR was ultimately registered around 2.30 p.m. and the protestors were informed of the same. A demand was made for a copy of the FIR. According to respondents the copy could not be given to others because of the nature of the alleged crime which requires that name of the victim be not disclosed. According to petitioners the copy of the FIR was not given even to victim's husband. It is the case of the petitioners that when they were planning to wind up the protest, they were suddenly rounded up by a large number of policemen and mercilessly beaten by them. The manner of chase and beating by lathi gave an impression to the petitioners that the police action was not to disperse the petitioners but to teach them a lesson. As per allegations, the police also used abusive language and told the protestors that they will be taught a lesson so that they do not indulge in such kind of protests in future. Initially, police arrested seventeen volunteers but three of them were let off as they were minor girls. Subsequently, petitioner Nos. 2 and 10 were also taken into custody and allegedly beaten in police custody although they claimed that they had come to the police station later only to enquire about the incident. The nineteen petitioners claim to have sustained serious injuries on head, back, arm and legs. One of them (petitioner no.17) has sustained fracture in lower ulna but he managed to run away.

3. According to the case of the petitioners the police had indulged in unlawful use of force and inflicted injuries before arrest and also during custody, leading to injuries to the petitioners; the arrest was unlawful which is sought to be justified by fabricated evidence for rioting etc.; by breaking window glasses and tearing of some papers in the police station. According to the petitioners a serious case was attempted to be made out through subsequent statement of one ASI of police, Ms. Sushila. There is no such incident mentioned in the FIR bearing no. 251/2013 dated 19.06.2013 registered at P.S. Gokul Puri and even before the learned Metropolitan Magistrate she had alleged that only her scarf (dupatta) was pulled by protestors. The petitioners have claimed that the Commissioner of police, Delhi, has made an incorrect statement that Delhi police has videos of protestors vandalizing the police station. To decide the case it is not necessary for this Court to delve deep into allegations made by the petitioners or those against them by the police which has lodged a criminal case of rioting etc. as noted above. This is because there is no prayer made in this writ petition seeking any kind of intervention in the investigation of police case registered against the petitioners. Even the first prayer made by the petitioners is to order an independent investigation by a Special Investigation Team (SIT) into the incident of 19.06.2013 to find out the truthfulness of allegations of police atrocities and if such allegations are found right then further consequential orders be passed for criminal prosecution as well as disciplinary action against the concerned police officers. Hence, the issue before the Court is a limited one requiring a careful appraisal of relevant facts and circumstances for coming to a conclusion as to whether the petitioners have made out a

case for issuing a direction to order an independent investigation into the alleged incident of 19.06.2013 at Gokal Puri Police Station, Delhi or not.

4. In this background a look at the counter affidavit on behalf of the respondents discloses that the version given by the police attempts to portray a picture that when the prosecutrix or the victim of alleged rape came to the police station along with her husband at about 9.00 a.m. on 19.06.2013, the S.H.O. immediately deputed a lady A.S.I., Ms. Sushila to investigate into the matter and a female counselor, Mrs. Dinesh Panchal from a local NGO was also called for the aid of prosecutrix. A Daily Diary entry to this effect bearing no.11-A was made at 9.10 a.m. and a statement of the victim was recorded by the lady A.S.I. in presence of counselor from the NGO. On that basis FIR No. 250/13 was registered under Section 376-D/506 of the Indian Penal Code at 10.05 a.m. and thereafter the victim was sent for medical examination to Guru Teg Bahadur Hospital, New Delhi. The fact of lodging of the FIR was conveyed to the protestors but still by 12.00 noon their number increased to 100-125 which included 20-25 women. A lady ASI was deputed to control the female protestors. Demand for getting a copy of FIR was declined by the S.H.O. with a view not to reveal the identity of the victim.

5. It is found that the counter version does not deny or even refer to the presence of husband of the victim and there is no disclosure of any reason as to why copy of the FIR was not supplied to the victim or her husband. Had that been done, the bone of contention between the rivals could have been totally taken care of.

6. According to the counter affidavit the protestors were all around the compound of the police station and had also entered the corridor thus blocking the entry and exit of the officials and obstructing them in performing their official duties. The protestors climbed the compound walls and shouted slogans. They abused the police officials and some of them pelted stones causing damage to building windows and vehicles. The police staff was trapped inside the police station being out-numbered by the large number of protestors. The violent acts of the crowd allegedly caused injuries to five police personnels. Their injury reports have been annexed as Annexure R.1 (colly). The lady A.S.I. engaged in controlling the women protestors was manhandled by the crowd and sustained injuries. To support the claim that protestors had entered the premises, blocked entry to the police station, pelted stones and damaged public property, some photographs have been brought on record as Annexure R.2 (colly).

7. Paragraph 5 of the counter affidavit is crucial as it relates to the most significant part of the incident in which injuries were caused to some of the petitioners leading to their arrest. Paragraph 5 runs as follows:-

"5. As the crowd had become uncontrollable, the SHO, PS Gokul Puri reported the situation to the senior officers and asked for the deployment of additional police force from adjoining Police Stations, PS Jyoti Nagar and PS Bhajan Pura, to

control the crowd. With the help of the additional force, efforts were made to disperse the crowd and help the officials trapped inside the Police Station Gokul Puri. Arrival of the additional force from the adjoining police stations created panic amongst the protestors and they started dispersing in various directions. Some of the protestors who had climbed the walls of the Police Station fell down on the vehicles parked by the wall and sustained injuries on their own.

There was no lathi charge or any act of beating of the protestors as wrongly alleged by the Petitioners."

8. It has also been disclosed in the counter affidavit that till 3.30 p.m. eighteen persons were apprehended on the spot which included three minor girls, four women and eleven men. FIR was registered against the protestors bearing no.251/13 at 5.35 p.m. The three minor girls were let off at about 7.00 p.m. when their parents arrived. The remaining fifteen were however arrested. They were sent for medical examination to Ram Manohar Lohiya Hospital and then produced before the Duty Magistrate at 2.20 a.m. in the morning and then sent to Tihar jail. Petitioner No. 10-Narender Rawat, brother of minor petitioner no.1 Beenu Rawat and also petitioner no.4-Pushpa is claimed to have been arrested in the morning of 20.06.2013 because he had escaped on the previous date. Petitioner No.17 along with four other persons had also allegedly escaped and they were arrested on 21.08.2013.

9. In paragraph 8 of the counter affidavit a submission has been advanced that petitioners are trying to mislead this Court by making wrong allegations that police used excessive force against them. The defense in this paragraph is that the protestors had outnumbered and over run the police officers at police station Gokal Puri, obstructing them from performing their official duties and caused damage to public property on the pretext of helping a rape victim.

10. According to respondents, there was no lapse on behalf of the police to help the prosecutrix and the police resorted to the minimal use of force only enough to disperse the large violent crowd and safeguard the police personnel trapped inside the police station.

11. As indicated earlier, at the present stage when the criminal case is under investigation it will not be proper for this Court to finally decide any issue relating to that case. The pendency of investigation in that case notwithstanding, this Court has to decide the limited issue whether petitioners have made out a case that their fundamental right to live with human dignity guaranteed by Article 21 of the Constitution of India has been invaded, atleast prima facie, so as to direct for an independent investigation/enquiry so that the perpetrators may not get away scot free if petitioners' case is found true.

12. In part III of the Constitution of India Article 21 enjoys special status. Right to life and Right to liberty are of historical importance. Rise of modern democratic state is

attributable to a long drawn battle waged by ordinary people against the sovereign power. The law is now well settled that the State or its functionaries cannot deprive any person of his life which includes right to live with human dignity except in accordance with law. The maximum threat to such fundamental right is perceptible when any kind of protest or agitation is directed against the police force for reasons which are self-evident. Police is licensed to carry arms for protecting the people. This itself creates a situation where the power of arms may be misused under the mistaken belief in the absolutism of the police power or on account of lack of sensitivity to the democratic rights of the people to register peaceful protest, against wrongs, especially that of public functionaries. The submissions on behalf of respondents that nobody can be permitted to paralyse the functioning of police or other State institutions in a name of public protest cannot be rejected off hand because it is only a corollary of the right to protest peacefully; proverbially the other side of the coin which corroborates the well accepted principle that rights without duties tend to degenerate into license for misuse of rights. In a given case, the facts may lead to such conclusions. Hence facts and circumstances in such cases need to be scrutinized carefully.

13. In the present case also the relevant facts require to be noticed in order to arrive at a conclusion whether the petitioners' prayers deserve to be allowed or not. The petitioners are ordinary persons with clean antecedents. The injuries caused to the petitioners in the incident have not been denied as they are supported by medical reports. So far as injuries to some of the police officers are concerned, instead of forming our own opinion, we may only refer to the order dated 22.06.2013 passed by the Vacation Judge (NE)/Additional Sessions Judge contained in Annexure P.11. While granting bail to 11 applicants, in paragraph 6, the learned Judge had noted that the MLCs of five police officials indicate that they have suffered from minor injuries which were in the form of scratches and abrasion only and the FIR does not indicate that the lady police officials were assaulted or any attempt to outrage their modesty was made by the accused persons.

14. Since a claim was made that unlawful acts of the protestors had been recorded through videography which was available with the respondents, learned Additional Solicitor General Sidharth Luthra made arrangements for screening of the video tape for our perusal. The video footage shown to us revealed that none of the protestors were carrying any arms or even brickbats in course of the protest. The initial part of the incident discloses lack of any bitterness and almost a friendly atmosphere. Thereafter, when copy of the FIR was shown from a distance but not made available to anyone, the slogans increased and the tone could be perceived by some persons as irritating. Barring some protestors rest were pushed out of the gate of police station without any resistance or any untoward incident. The crowd outside the gate apparently did not disperse. The last part of the video footage fleetingly shows use of lathis by the police men upon the protestors. Thereafter, the recording was stopped and appears to have been resumed after lapse of sometime to show some broken glass panes, brickbats in very limited number and some broken spectacles lying on the ground, a grim reminder of use of force.

15. Learned senior counsel for the petitioners Mr. Shanti Bhushan has relied upon some

past incidents, specially one relating to unfortunate death of a police constable in the course of demonstration against the gang rape to a paramedical student "Damini" in December, 2012, followed by another unfortunate case of a five years' old victim "Gudiya" which led to protest by members of AAP and in course of the same petitioner no.1 was slapped by an Assistant Commissioner of Police of Delhi force which led to suspension of the said ACP. He also referred to some allegations against the erstwhile Delhi Police commissioner. On the basis of those incidents and allegation it was submitted that Delhi police cannot be relied for fair investigation in a case of present nature involving members of 'AAP' and therefore the Court should order for fair investigation by an independent agency.

16. On the other hand, Mr. Luthra submitted that police itself acted fairly and did not submit charge-sheet against any of the accused persons arrested for causing death of constable Subhash Tomar. He pointed out that the concerned ACP who had slapped petitioner No.1 was placed under suspension. According to him the allegations that the erstwhile Delhi Police Commissioner was close to a white collared criminal, has no substance and that matter cannot have any effect upon the investigation of the present incident.

17. In our considered view it is not necessary to examine the effect of earlier incidents for the purpose of deciding the present writ petition. There is no dispute that petitioners have received injuries but according to counter affidavit, these were due to some of the protestors falling down on the vehicles parked along the walls of the compound and there was no lathi charge or any act of beating of the protestors. Such statement in paragraph 5 of the counter affidavit cannot be accepted in view of the last part of the video footage already noted earlier. A glimpse of action taken by the police is available in paragraph 8 of the counter affidavit wherein it is claimed that Police resorted to minimal use of force which was only enough to disperse a large violent crowd and safeguard the police personnel. No part of the video footage shows the crowd to be very large or indulging in any physical violence. Even if this version in the counter affidavit is accepted in part, one is left to wonder why the petitioners who had injuries on their bodies had to be arrested instead of allowing them to disperse with the crowd which was allegedly large and violent. It is also intriguing as to why the FIR bearing No.251/13 for rioting etc. was registered at 5.35 p.m. after eighteen persons were apprehended at 3.30 p.m. and not before their arrest if they had vandalized the police station and caused damage to the public property.

18. In the light of the aforesaid discussions and the fact that the video footage recorded at the instance of the police does not show acts of rioting or any arms or brickbats in the hands of the protestors and the recording was stopped as soon as police started using lathis upon the protestor, we are left with no option but to hold, at least prima facie, that in the incident in question, peaceful protestors were subjected to beating by lathis etc. by the police force which included policemen from the concerned police station as well as force called from adjoining police station, P.S. Jyoti Nagar and P.S. Bhajanpura. The

counter version of the respondents that the petitioners indulged in rioting and damaged public property is neither supported by photographs contained in Annexure R.2 (colly) nor by the video footage shows to this Court. In that view of the matter, the whole incident of 19.06.2013 at Gokul Puri Police Station, District North-East, Delhi requires to be investigated/enquired by an independent agency or by a Special Investigation Team. Considering the possibility of our arriving at this opinion we had requested learned counsel for the rival parties to provide us proposals containing names of some persons who could be entrusted with conducting investigation in the said incident. On behalf of the petitioners two names have been proposed which are as follows:

1. Sh. I.C.Dwivedi, IPS (RTD.), Former Director General of Police, Uttar Pradesh, Address: 9/26, Vishal Khand, Gomati Nagar, Lucknow.

2. Sh. N.Dilip Kumar, IPS (Retired) Special Commissioner Delhi Police also worked as Joint Commissioner of police (Vigilance) Delhi Police Worked in CBI for seven years Address: 16 A, Rajpura Road, Civil Lines, Delhi.

19. On the other hand, on behalf of the respondents only a letter addressed to Sh. Sidharth Luthra, leaned Additional Solicitor General along with copy of an order dated 31.10.2013 issued from the office of Commissioner of Police, Delhi, has been submitted to us to show that since during the course of hearing of this matter this Court had expressed the need for an impartial or fair investigation by some other competent setup, the Commissioner of Police Delhi has approved for formation of a Special Investigation Team headed by Sh. Bhisham Singh DCP/Crime to work under close supervision of Joint Commissioner of Police, Crime, Delhi.

20. So far as investigation of the FIR No. 251/13 is concerned, in our considered view it has rightly been transferred from police station Gokal Puri to a Special Investigation Team. However that cannot take care of the petitioners' grievances that they have been subjected to excessive use of force and abuses etc. and that the force used was not at all justified and hence they have been deprived of their fundamental right to a life of dignity. In view of our prima facie findings noted above, we are of the view that the grievances of the petitioners require investigation by an authority having statutory jurisdiction in such matters. If the State had itself suggested names of the persons who could constitute Special Investigation Team for the purpose, the matter would have been different and we could have considered to direct for formation of such a team by the State by selecting persons from the names suggested by the parties. But in the absence of such option, we direct the National Human Rights Commission to enquire into the complaint of the petitioners regarding violation of their fundamental rights particularly one under Article 21 of the Constitution of India. Such direction is granted in view of Section 12(A) of the Protection of Human Rights Act, 1993. Under that Act the definition of "Human Rights" is large enough to include rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution. In that view of the matter, the writ petition is disposed of with the following directions:-

(1) Investigation of FIR No.251/13, as per order of the Commissioner of Police, Delhi, dated 31.10.2013 shall be carried out by Special Investigation Team and not by the police officials of P.S. Gokul Puri.

(2) The complaint of the petitioners as made before this Court regarding violation of their fundamental right to life and liberty shall be enquired into by the National Human Rights Commission expeditiously. For that purpose the Commission may use its statutory powers including those under Sections 13 and 14 of the Protection of Human Rights Act, 1993.

(3) The Commission shall take further required steps and action as per law after concluding the enquiry/investigation so that persons(s) found guilty may be subjected to required penalty according to law, without undue delay.

21. The writ petition is allowed to the aforesaid extent.