A.K. Singh and ors. Vs. Uttarakhand Jan Morcha and ors.

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Court : Supreme Court of India

Decided On : May-13-1999

Reported in : AIR1999SC2193; 1999CriLJ3500; JT1999(4)SC414; 1999(3)SCALE550; (1999)4SCC476; [1999]3SCR624; 1999(2)LC962(SC)

Judge : K.T. Thomas,; D.P. Mohapatra and; U.C. Banerjee, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 197 and 228; Indian Penal Code (IPC), 1860 - Sections 109, 120-B, 300, 302, 304, 341 and 342

Appeal No. : C.A. No. 3027 of 1999 etc. etc.

Appellant : A.K. Singh and ors.

Respondent : Uttarakhand Jan Morcha and ors.

Advocate for Pet/Ap. : D.D. Thakur,; Satish Chandra,; A.S. Nambiar,;A.M. Khanwilka

Judgement :

K.T. Thomas, J.

1. Leave granted.

2. There was a stir in support of the demand for a separate State of Uttarakhand comprising of certain hilly regions of the State of U.P. and some other areas. The

stir collected momentum when the State Government issued a notification in 1994 pertaining to reservation in educational institutions based on region-wise domicile. The agitations fixed up the Gandhi Jayanti day in 1994 for staging a public rally at New Delhi for the twin objective of protesting against the notification and to press the demand for the separate State. The administration took stern measures to resist the protestors' march towards the National Capital as the officials claimed to have received secret information that the proposed rallysts were carrying lethal weapons in violation of the prohibitory orders issued by the Government and might create serious law and order situation. The confrontation which ensued had resulted in lot of blood-shed including loss of many lives, infliction of injuries on persons belonging to both sides, outraging the modesty of women ranging to ravishments.

3. An association styling itself as 'Uttarakhand Sangharsh Samity' (for short 'the Samity') moved a writ petition in the High Court of Allahabad (before the Allahabad Bench) on 6-10-1994, for different directions to be issued to the authorities to meet the consequence of the said confrontation. A Division Bench of the High Court issued certain interim directions on 7-10-1994 one of which was to the Central Bureau of Investigation ('CBI' for short) to enquire into the allegations of 'human rights violations'. The substance of the aforesaid directions is extracted below:

Thus, this Court calls upon the Home Secretary, Government of India and the Central Bureau of Investigation, through its Director General, by a writ of mandamus, to execute the investigation on the incidents which have happened in the regions of Garhwal and Kumaun, between 17 June 1994 (the date of issue of the first order securing reservations in educational institutions including its applicability to these regions) and until the investigation is determined. The investigation will also include the incidents narrated in this petition in the towns of Khatima, Mussoorie, Dehradun and near Muzaaffarnagar. The scope of the enquiry by the Central Bureau of Investigation, on its discretion, will not remain curtailed to these towns relating to deaths and injuries and molestation of women by police.

But, the investigation will be confined to: (a) the agitations in the regions of Garhwal and Kumaun, and to include the Muzafarnagar incident, (b) the matters connected with the agitations for Uttarakhand only, (c) consequential detentions of the agitationists, (d) the agitators detained, (e) details of injuries, deaths and molestation of women, and (f) damage to property, as a consequence of these agitations within the aforesaid regions.

4. The CBI took up investigation pursuant to the said directions and laid charge-sheet against certain officers on 19-1-1995 for offences under Sections 109 and 120-B read with Sections 341 and 342 of the Indian Penal Code. Sanction of the State Government was obtained for launching prosecution in respect of those offences. Some of the accused who were arrayed in the said charge-sheet filed Writ Petitions Nos. 3463 and 3515 of 1995 before the Lucknow Bench of the High Court of Allahabad, in challenge of the validity of the sanction order issued by the State Government for prosecuting them.

5. On 9-2-1996 the Division Bench of the High Court of Allahabad (Ravi S. Dhawan and A.B. Srivastava, JJ) disposed of the first mentioned writ petition filed by the Samity holding, inter alia, that no sanction of the Government is required under Section 197 of the Cr PC (for short 'the Code') for prosecuting the officials as for any of the offences committed by them while resisting the rallysts. In view of the aforesaid stand adopted by the Allahabad Bench of the High Court, Writ Petitions 3463 and 3515 of 1995 were dismissed by Lucknow Bench of the High Court on the premise that those writ petitions have become infructuous,

6. SLPs were filed by the Union of India and the Government of U.P. as well as some of the aggrieved officials in challenge of the judgment dated 9-2-1996. SLPs are also filed against the judgment by which writ petitions were dismissed by the Lucknow Bench as having become infructuous.

7. We are told that the accused arraigned in the charge-sheet filed by the CBI on 19-1-1995 were discharged by the trial court subsequently. If that be so, SLP(Criminal) No. 1810 of 1996 and SLP (Civil) No. 12485 of 1996 which were filed against the judgment of the Lucknow Bench must be treated to have become infructuous. We do so. However, learned Counsel for the petitioners therein

expressed apprehension that the order of discharge may be set aside and the accused therein may have to face prosecution. A revision petition is pending before the High Court in challenge of the aforesaid discharge order. It is submitted before us that in case the order of discharge is set aside for any reason, dismissal of the aforesaid two SLPs should not debar the petitioners from challenging the validity of the sanction order. We preserve the said right of the petitioners concerned for challenging the validity of the sanction if such a contingency as apprehended would arise in future.

8. The Judgment under attack delivered by the Division Bench of the Allahabad High Court dated 9-2-1996 consists of a lot of directions. Both the judges of the Division Bench wrote separate judgments, each of them is voluminous in size and in the end the directions were catalogued by the Division Bench under 19 heads as per the common judgment.

9. We propose to skip major portion of the judgments as all the learned Counsel who appeared for the parties in this Court were unanimous in expressing that a large chunk of the judgments contains unnecessary deliberations without any nexus with the points in controversy. We too share the view expressed by both sides. It is unfortunate that the judgments under challenge contain a lot of regmorale and learned Judges could have focussed on the core issues without niggling on academic subjects. Shri D.D. Thakur, learned Counsel took strong objection to the following observations made by Dhawan, J:

This court, of the cases which were brought in large scale violations of human rights have been occasioned at the hands of the respondents already named in the reports of the Central Bureau of Investigation and that these violations have also partaken the nature of constitutional torts. Only for demonstrating for fulfillment of the promise formalised by the legislature of the Uttar Pradesh and under discussion with the Union Government that the people of Kumaon and Garhwal should receive statehood the civil rights activities had to suffer what seemed like a direct attack by functionaries of the government aimed at them as a class.

10. Learned senior counsel submitted that High Court should have refrained from making such observations, and such pre-judging of the cases pending before the criminal courts should have been averted.

11. We agree with the said submission of the learned senior counsel that learned judges should have avoided making observations concerning matters which are pending consideration by subordinate courts. The High Court did more than that. Without trial, and even without considering the evidence which may be adduced in the cases, learned Judges ordered the Government to pay Rs. 10 lakhs each to the dependants of all the persons who died in police firing. Rs. 10 lakhs each were given to the victims of molestation, Rs. Fifty thousand each for 398 persons who were detained by the police.

12. All the learned Counsel made scathing attack on the rationale of the High Court in fixing up such huge sum as compensation at a premature stage. They contended that the High Court while imposing such heavy liability on the State has not made any attempt to discuss the relevant questions which are to be answered for fixing liability of compensation and for quantification of the amount of compensation. On consideration we are satisfied that there is ample substance in the contentions raised by the learned Counsel in this regard. The direction for payment of compensation is clearly unsustainable and is liable to be vacated. We are told that pursuant to the directions in the impugned judgment amounts have been disbursed to all those persons who claimed it. We, therefore, make it clear that no further amount need be paid as compensation pursuant to the judgment of the High Court but if any sum has been disbursed to claimants the State will not recover the same from them. We also make it clear that if any person has not made his/her claim or has not received compensation despite making a claim for it, it will be open to him/her to approach the competent Court for compensation in accordance with law.

13. The serious criticism made by the learned Counsel against the direction issued by the High Court, regarding fund allotment for the development of certain regions, cannot be side stepped. That direction is in the following lines:

Damages and compensation for constitutional wrongs committed subjecting injuries to the class of people of Kumaun and Garhwal for their only fault that they were securing their civil rights on the guarantee already given by the legislature, as discussed in the judgment, the repairment to the people of Kumaun and Garhwal Divisions shall stand related to their population (5,926,146 : Kumaun - 2,943,199, Garhwal - 2,982,947) in the equation of a rupee per month per person for a plan period of five years and this compensation shall be invested amongst the population of Kumaun and Garhwal earmarked specifically for a programme for the upliftment of the woman; 50 paise of this reparation shall come from the State of Uttar Pradesh and the other 50 paise from the Union of India. This would be in addition to the normal plan allocation which this area would receive as what the court is suggesting is damages beyond the normal allocation. The details of the allocation will be chalked out and formalised at a meeting which will be called by the Commissioners of Kumaun and Garhwal representing:

(i) Members of Parliament of the area:

(ii) Members of the Legislative Assembly of the area, and

(iii) the District Magistrates of the district concerned.

14. The magnitude of the financial burden for complying with the said direction has been approximately estimated as amounting to several crores of rupees. The money has to come out of State coffers. A criticism made against such direction is that learned Judges of the High Court did not take into account the financial capacity of the State Government, nor its resources for making up the said amount nor the priorities to be honoured by the State Government nor even the legislative mandates involving State funding, while ordering the Government to incur such huge expenditure of a recurring nature.

15. This is not a case where the High Court was ordering compensation to one individual or even to a limited number of persons de horse its legal liability enjoined by statutory provisions. For Kumaun region the State Government will have to raise a very substantial amount of about 36 crores of rupees, and for Garhwal region another huge amount has to be raised, if the impugned judgment

is in force.

16. As the learned Judges did not indicate how the Government should make up the whopping amounts, we are unable to concur with the aforesaid direction. We cannot ignore the reality that major revenue of the State Government is through taxation. But no taxation is possible without legislative sanction. Government must have other resources to meet the direction.

17. It may be that people of Kumaun and Garhwal require much upliftment. But they are not the only regions to be attended to by the State or Central Government. Every part of the county requires further development. If the High Courts are to issue such directions for each region, using different writ petitions, financial policy may have to be restructured by the Governments. Judicial creativity has, no doubt, expanded to newer dimensions in recent past, but that is no justification for using judicial power for imposing such unbearable burden on the State which in turn would be compelled to extract money out of common man's coffers to meet such massive financial burden. Suffice it to say that the above direction cannot stand judicial scrutiny and it is hereby set aside.

18. The Division Bench of the High Court then proceeded to consider whether sanction of the Government is required for prosecution of Government officials for the offences mentioned in the charge-sheet filed by the CBI. Learned Judges first held that there is no necessity for sanction to investigate into the offences. The following observations were made for that purpose:

The High Court did not need any sanction to require the C.B.I, to inquire and investigate into alleged violation of constitutional torts when citizens brought these petitions to the courts, whether the High Court or the Supreme Court. The Supreme Court had already made it clear that when the C.B.I, is called upon to investigate any matter, the sanction of the Central Government is not necessary. A corollary follows that the C.B.I, would not need any sanction when, acting under the orders of the High Court, after inquiry and investigation, it has come to a prima facie conclusion that as an investigating agency it is obliged to draw up a charge-sheet.

19. Nobody raised a contention that sanction of the Government is required for ordering investigation. Therefore, the aforesaid exercise of the High Court was one in futility. But the High Court further proceeded and held that no sanction is necessary for prosecuting the Government officials as 'it is not part of any official duty to fire on unarmed political activists, exhume dead bodies of agitators shot in an agitation, loot or plunder unarmed people, and rape and molest women.'

20. Learned Counsel who argued for all the appellants seriously assailed the findings of the High Court, firstly, on the ground that question of sanction under Section 197 of the Code should not have been considered in a writ petition filed by the Samity and secondly, on the ground that even otherwise the High Court's reasoning is absolutely faulty.

21. It is doubtful whether learned Judges would have meant that no sanction is required for the court to take cognizance of the offences as the observations were confined to the stage up to laying the charge-sheet. But we agree that the effect of the observations of the learned Judges is to convey the message that High Court is of the view that no sanction is required for such prosecution.

22. We are told that the magistrate before whom the charge-sheets were laid has taken cognizance of offence under Section 302 of IPC among other offences. Learned senior counsel appearing for the respondents argued that no sanction under Section 197 of the Code can be contemplated as for the offence of murder, for, that offence cannot, by any stretch of imagination, be regarded as committed in the discharge of official duties. In reply thereto it was argued that the magistrate had gone completely wrong in taking cognizance of the offence under Section 302 of the IPC because the entire allegations, even assuming that they are true, would only fall within the contours of Exception No. 3 of Section 300 IPC. Counsel contended that the offence on which cognizance could have been taken was only Section 304 IPC and not Section 302 IPC.

23. We do not think it necessary to decide the question regarding the offences to be included in the charge which may be framed against the accused persons because that work has to be done by the Sessions Judges concerned after hearing both sides, as provided under Section 228 of the Code. Appellants can

raise their arguments regarding what offences can be included in the charge at the appropriate stage.

24. The question of necessity of sanction need be considered by the Sessions Judge if and when raised by the accused. We have no doubt that the High Court should not have embarked upon a discussion regarding sanction at such a premature stage, that too in the writ petition filed by the Samity. If the finding of the High Court is that no sanction is required such finding has to be treated as bad mainly because that question has to be decided after taking into account various considerations including the fact situation in each case.

25. Learned Judges issued the following directions regarding the venue of the trial of different cases:

Trial for offences within the districts of Kumaun region is to be held by the court in sessions Division at Nainital and for the offences within the districts of Garhwal region, Haridwar and Muzzafarnagar, to be held in the court in Sessions Division at Dehradun. Where a special court does not exist, in any of the two sessions divisions, as above, it shall be established by the State of U.P. in consultation with the High Court, within one month and until so established, the charge sheet, in context, shall be submitted into the court of the Chief Judicial Magistrate, and deal with in accordance with chapter XVI of the Cr PC.

26. The jurisdiction of the Court can be decided on the factual foundation in each case 'for offences within the districts' seems to be true with an expression incorporated in the aforesaid directions. We are of the view that the High Court should not have pre-empted the Court, before which, each case would come up in the normal course, to determine the question of jurisdiction, if it is raised by any of the parties. It is difficult for us to comprehend what the learned judges would have meant by 'special court' to be established by the State Government. There is; no suggestion in the impugned judgment as to what are the offences alleged to have been committed by the officials under any special enactment. The aforesaid direction (extracted above) if allowed to remain in force would create only confusion and provide room for procrastination of the trials.

27. When the above mentioned directions of the High Court are unsustainable nothing further survives, because the remaining directions in the judgment are only ancillary or incidental to those main directions. When the main pillars are to be removed, the edifice cannot be allowed to remain.

28. On careful consideration of the entire matter we have no hesitation to hold that the judgment of the High Court is unsustainable and has to be set aside. The appeal is accordingly allowed and the impugned judgment dated 9.2.1996 is set aside. There will however, be no orders as to costs.