

Raj Kumar Vs. State

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Court : Delhi

Decided On : May-26-1994

Reported in : 55(1994)DLT679

Judge : Jaspal Singh and; Meera Bhatb, JJ.

Acts : [Constitution of India](#) - Article 21

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 2275 of 1993

Appellant : Raj Kumar

Respondent : State

Judgement :

Jaspal Singh, J.

(1) What is the theory of social contract as fund, say. in Locke, Rousseau and Kant? Or the classical doctrine of utilitarianism as formulated by Bentham and Sidgwick and the utilitarian economists Edge worth and Pigou? Or, for that matter the Intuitionist theories of the type found in Brian Barry? And then, which one is perfect or say nearly perfect? While the legal philosopher are busy in their quest to know what justice really means and in the process are propounding theories or demolishing one or the other with an exchange of dialectical firarms, a common man is watching helplessly serious invasions being made upon his rights and

freedom by means known or novel adopted more often advertently and sometimes even inadvertently reducing substance into a shadow. Justice which is the first virtue of social institutions, as truth is of system of thought becomes an easy target. Injustice may ensue on account of failure of judges or others in authority to adhere to the appropriate rules or interpretations thereof in deciding claims. It may even be where already disadvantaged are also arbitrarily treated in particular cases when the rules might give them some security. 'Even what has come to be known as 'imperfect procedural justice may give birth to injustice springing of course from a fortuitous combination of circumstances which defeats the purpose of the legal rules. The present is a case which brings forth how, despite the presence of sound laws, a well-oiled judicial machinery and in array of judges eager to deliver justice, the entire System may be distorted and brought to a grinding halt even by the indifference of a few clerks. In such a scenario the fight of the legal philosophers over their different theories of justice .appears to be comical. As for the common man, who bothers about his dead eyes and. dropping mouth

(2) It all started on the petition of an accused who alleged having already undergone long incarceration of five years with no signs of even commencement of the trial. The report of the trial judge showed that he was greatly handicapped by the non-posting of a regular Public Prosecutor to his court. Nothing that the problem was endemic and that on .its account criminal justice was suffering, I directed title State and the District Judge to furnish within 15 days the number of Prosecutors posted in the courts of Sessions and 'the reason for not providing sufficient number of Prosecutors in the Courts. This was on January 28. 1994. The matter was thereafter adjourned to February 22, 1.994 when the State sought adjournment and assured that it would submit the report within a week's time. On March 8, 1994 which was the next date, the statement filed by the State was found to be at variance with the data supplied by the District Judge and since the counsel for the State wanted to have a fresh look, the matter was ordered to be renotified on April 7, 1994. On April 7, 1994, I passed the following order :

'THE learned counsel for the State submits that she is still looking into the matter and would be submitting a comprehensive statement with regard to the present

position, I have impressed upon her the necessity to look into it more urgently as we are likely to have 10 more courts dealing with N.D.P.S. cases. The need for adequate number of Additional Public Prosecutors and the need for leave vacancy arrangements cannot be lost sight of. Put upon 18th April, 1994 for further appropriate orders. In the meantime the District Judge should be directed to furnish a comprehensive statement with regard to the requirement of Additional Public Prosecutors. Renotify on 18th April, 1994. dusty also.'

Then came April 18, 1994 which saw me passing the order in following terms:

'THE letter of the learned District Judge dated 15th April, 1994 has been brought to the notice of the learned counsel for the State. It goes to show that because of lack of proper arrangement, the Additional Sessions Judges are really feeling handicapped and that at least 10 more additional Public Prosecutors would be required to cope with the situation. The learned counsel for the State prays for short adjournment to look into the matter and make proper submissions. Renotify on 2nd May, 1994.'

(3) On May 2, 1994 the learned counsel for the State placed on record a letter written by the Deputy Secretary (Home) and addressed to their counsel Ms. Meera Bhatia stating that it was for the Central Government to create posts of Additional prosecutors/Senior Prosecutors and that a proposal for creation of 12 additional posts of Additional Prosecutors/Senior Prosecutors had been sent to the Ministry of Home Affair on September 22, 1992 but no sanction had so far been received. It was because, of this that. notice was issued to the Central Government for May 5, 1994 on which date Ms. Bhatia appearing for the NCT. of Delhi and the Union of India assured me that the matter was being looked into and that something could emerge 'within a period of seven to ten days'. I adjourned the matter to May 17 1994 expecting sunshine. I was wrong. This is what I noticed on the order sheet of May 17,1994:

'MS.Meeru Bhatia as drawn my attention to a letter which has been received by her with regard to the creation of posts of Prosecutors. It appears from the letter that the Delhi Administration is still to submit to the Govt. of India a proposal for creation of 10 posts of Prosecutors for N.D.P.S. Courts. I have already granted

repeated adjournments on the assurance of the counsel that matter was being taken up quite seriously by Delhi Administration. The letter, however, presents a dismal picture. She now informs me that she had even personally contacted the Secretary concerned Mr. Anil Baijal and had even forwarded the copies of orders passed by this Court. It seems that the State is still unmoved. Let Mr. Anil Baijal be present in Court in person on 23-5-94 to explain the position.'

(4) On May 23, 1994 Ms. Bhatia placed on the record two letters. One is dated May 19, 1994 and relates to creation of 10 posts of Additional Prosecutors/Senior Prosecutors for the newly created ten special courts under the Narcotic Drugs and Psychotropic Substances Act and the other dated May 20, 1994 with regard to the proposal sent as far back as in the year 1992 for creation of 12 posts of Additional Public Prosecutors. I feel compelled to reproduce both the letters. Here is the letter of May 9. 1994.

'THE Director (Delhi), Government of India. Ministry of Home Affairs, New Delhi.
Sub : Creation of 10 posts of Addl. Public Prosecutors/ Special Prosecutors in the scale of Rs. 2375-3500 for the newly created ten special courts under Ndps Act.

I Sir,

I am directed to inform you that Ministry of Law, Justice and Company Affairs vide their letter No. D-17014/13/93-Jus. dated approval of the President for the creation of ten 'post.'- of Addl. 13-12-1993 (copy enclosed for ready reference) has conveyed the PP/Special Prosecutors in Delhi Higher Judiciary Service for the trial of cases under Ndps Act. All supporting staff like stenographers, readers, Ahlamads, Copists, Order lies' and peons were also created simultaneously except the post of Addl. Pp / Special Prosecutors without which the very purpose or creating these courts gets defeated. These special courts were created in pursuance of Delhi High Court's judgment delivered in Crl. M.M. No. 1129193 dated 09-02-1993.

2.As already explained above there is compelling necessity to create these posts with in immediate effect to ensure that the courts are made functional. The posts will be created under non-plan and the total financial involvement comes to Rs. 6.6

lac per annum. The Finance Department of Government of Delhi had concurred to this proposal vide their U.O. No. 102-A dated 12-05-1994..

3. Therefore, it is requested that approval of the Government of India for creating 10 posts of Add. PP/Special Prosecutors in the pay scale of Rs. 2375-3500 may kindly be conveyed to this Government on top priority. This has the approval of Chief Minister of Delhi also.' Copy of the order may be handed over duly to Ms. Meera Bhatia.'

Coming to the letter of May 20, 1994 this is how it reads :

'THE Director (Delhi), Government of India, Ministry of Home Affairs, New Delhi.
Sub : Creation of 10 posts of Addl. Public Prosecutors in the Directorate of Prosecution.

Sir,

IN response to your letter No. U-14014/5/92-Delhi dated 22nd March, 1994 and in continuation of our letter of even number dated 16-03-1994, I am directed to inform you that we have requested our Finance Department to make budget provisions for creating these posts from the overall allocation of the budget of the Delhi Government. This suggestion of the Home Department has not been accepted by the Finance Department and Finance. Deptt.. has agreed to make a reference to Government of India for creation of these posts with the request that the Government of India should allocate additional fund to the tune of Rs. 7.25 lacs., required for the creation of these posts.

2. It is requested that approval of competent authority for creation of these 12 posts may be communicated to this Government on top priority.'

(5) At this stage a little sprinkling of the recent history is needed. On July 9, 1993 this Court directed the constitution of 10 Special Courts under the Narcotic Drugs and Psychotropic Substances Act within a period of two months. We all know that these Courts have since been constituted. We expected that the Delhi Administration having already proposed the creation of 10 posts of Additional Public Prosecutors/Senior Prosecutors way back in 1992 would immediately

realise that with the constitution of 10 more Special Courts, at least 10 more such posts would have to be created. We were wrong. It is unfortunate that even the letter of the Director of Prosecution addressed to the Deputy Secretary Home, Government of N.C.T. of Delhi pointing out that ten more Additional Public Prosecutors would be required for the newly constituted special courts and his warning that in the absence of the additional hands the 'NDPS Courts will remain unattended' had no effect. Even the order of this court dated January 28, 1994 and which has been already referred to above and the subsequent orders so passed did not stir the authorities reminding one of Rip Van Winkle.

(6) It is, however, heartening to note that though belated, there is realisation that 'there is compelling necessity to create those posts with immediate effect to ensure that the courts are made functional' (letter of May 19). I hope they are not 'words dressed in evening clothes for drawing rooms' [Nissim Ezekiel, 'Collected Poems'].

(7) We must overcome the failure, More so when hundreds and hundreds of persons are undergoing excruciatingly long periods of incarceration away from sunlit existence eating away their precious life in a desert where there is only sand and a sordid thirst. Their long bereavement must end. The Union of India and the Government of N.C.T. of Delhi are directed to provide 22 more Additional Public Prosecutors 'Senior Prosecutors to the District Courts within three months from today.

FRESH Directions Issued.

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