

Subhas Datta vs Union Of India And Ors on 3 February, 2015

Equivalent citations: 2015 AIR SCW 1072, 2015 (11) SCC 324, AIR 2015 SC (SUPP) 833, (2015) 1 WLC(SC)CVL 493, (2015) 2 KCCR 173, (2015) 111 ALL LR 17, (2015) 5 CAL HN 28, (2015) 1 CALLT 43, (2015) 2 SCALE 166, (2015) 151 ALLINDCAS 6 (SC), (2015) 2 RECCIVR 1043, AIR 2015 SC (CIV) 750

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Bench: Adarsh Kumar Goel, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO.252 OF 2004

SUBHAS DATTA
...PETITIONER

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENTS

J U D G M E N T

ADARSH KUMAR GOEL, J.

1. This petition has been filed as public interest litigation on the issue of protection of historical objects preserved at different places in the country particularly in various museums. Prayer in the petition is for a direction for adequate security arrangements and for proper investigation into the incidents of theft and damage to several historical objects and also for making an inventory of available articles for future.

2. Initially, the respondent in the writ petition was the Union of India through Ministry of Human Resource Development but by order of this Court dated 7th July, 2008, the Director General, National Museum, Janpath, New Delhi; the Director General, Archaeological Survey of India, Janpath, New Delhi; the Director, National Gallery of Modern Art, Jaipur House, India Gate, New Delhi; the Director, India Museum, 27, Jawaharlal Nehru Road, Kolkata; the Secretary & Curator, Victoria Memorial Hall, 1, Queen Way, Kolkata; the General Secretary, Asiatic Society, 1, Park Street, Kolkata; the Director, Salar Jung Museum, Hyderabad; the Acting Director, Allahabad Museum, Allahabad; the Director, Nehru Memorial Museum & Library, Teen Murti House, New

Delhi were impleaded as parties as the said respondents are directly concerned with the issue raised in the petition.

3. Immediate trigger for the petitioner appears to be the theft of historical artefacts of Kabiguru Rabindra Nath Tagore, kept in the museum of Viswabharati University at Santiniketan in West Bengal of which Prime Minister is the Chancellor. Reference has been made in the petition to the incident of stealing of golden coins from the Asiatic Society of Calcutta in the year 1990. Further reference has been made to theft from the Nandan Art Gallery of Viswabharati University in the year 1984 and also the incidents of thefts in Victoria Memorial at Calcutta.

4. Case set out in the petition is that the material at various centres like Asiatic Society, National Library, Viswabharati University, Victoria Memorial and other Indian Museums is national asset which needs safety, security, preservation and maintenance. Under Article 49 of the Constitution, the State is under obligation to protect every monument, place or object of artistic or historic interest declared to be of national importance from spoilation, disfigurement, destruction, removal, disposal or export, as the case may be. Under Article 51A(f) of the Constitution, there is fundamental duty to value and preserve the rich heritage of our composite culture. There should be proper inventory of all historical objects preserved at different centres and such inventory should be kept at a central place under the Government of India. There should be periodical stock taking by an independent agency. Ancient Monuments Preservation Act, 1904 requires proper preservation of objects of archaeological, historical, or artistic interest. Reference has also been made to Prevention of Damage of Public Property Act, 1984 to state that any damage to public property is national loss.

5. In response to the writ petition, a counter affidavit has been filed on behalf of the Union of India by the Director, Ministry of Culture, acknowledging that theft of Nobel Prize Medal from Viswabharti University at Santiniketan was a matter of grave concern. It is further stated that the CBI has been entrusted with the task of investigation, but no report has been received. Similarly, incident of theft of golden coins from Asiatic Society of Calcutta has been acknowledged as a fact for which investigation was undertaken but closed. There is no report about the recovery of the lost objects. Theft at Victoria Memorial is also acknowledged and it is stated that the answering respondent was in agreement with the petitioner that all possible steps should be taken by the concerned organizations for the proper safety, security, preservation and maintenance of artefacts under their custody. The Union of India was taking every possible step for safety of artefacts in the custody of Museums/Organizations controlled by them. The artefacts are scattered all over the country in various museums controlled by the State Government and also with Private Museums who have their own security systems. The Government of India had entrusted the security to the CISF wherever it was felt necessary. The security scenario is reviewed from time to time. It was not possible to take responsibility of entire private and State Government owned Museums and it was also not financially feasible to do so. The Ministry of Culture, provides funds for museums to acquire equipments.

A meeting was convened on 8th April, 2004 by the Ministry of Culture on issues relating to security. A Committee was set up under the chairmanship of Director General, National Museum, for assessing the security needs of various museums. The museums under the Ministry of Culture have

been advised to follow security norms suggested by the Committee. It may not be financially viable to deploy a specialized force at all places where the administration and custody of artefacts is either in the State Governments or in private hands, but privately run security agencies could be hired for the purpose. The Museums under the administrative control of Ministry of Culture were keeping the inventory of art objects which were verified from time to time. The state organizations were engaged in the programme of digitization of artefacts. Initiatives were being taken in mission mode for proper documentation of artefacts and monuments. The Antiquities & Art Treasures Act, 1972 is in place to provide legal safeguards.

6. According to the guidelines annexed to the counter affidavit there should be four layer coverage for external and internal security for museums by guarding perimeter at entry points, galleries, surveillance through manual and electronic gadgets and intangible intelligence. There should be effective Access Control System (ACS); security should be with a single agency; Standard Operating Procedure (SOP) should be rehearsed at regular intervals; Galleries and Security Points should have Intercom Networking; a Contingency Plan should be prepared to deal with fire/smoke; robbery; power failure; spotting a suspicious person on CCTV monitor; there should be regulation of movements of daily wagers/private workers for repair and maintenance; there should be least number of entry/exit points; preventive and deterrent measures should be increased; Door Framed Metal Detector (DFMD) should be installed at the main entrance; Hand Heed Metal Detector (HHMD) should be provided to security staff; CCTV cameras should be installed at different locations; Walkie-Talkie and Intercom facility should be provided at each security point; there should be Control Room to coordinate functioning of museum and security staff; there should be Auto Camera at the main entrance. Infra-red Alarm system or Punched Taped Concertina or Electric Fencing should be installed at the perimeter of the Museum building. The grills in the windows should be re-enforced. There should be baggage X-Ray machine. There should be Electronic Locks (Magnetic) for all doors of Galleries, Storages and Strong Rooms. Visitor flow should be regulated by Biometric Photography system. Internal intelligence staff should be employed. Every museum should carry out security audit and impart orientation programme in strategic areas. Safe keeping of keys of Museum should be ensured. A Curator should be deputed for opening and closing of the museum. Gallery locks should be installed. Regular drill should be carried out at least once in three months. There should be Spatial Planning for Security which should be aesthetically attractive with a consistent Signage System, service units should not remain in gallery areas. There should be stand-by Automatic Power Back-Up System. There should be bullet-proof glass for vulnerable art objects and jewellery items should be stored in the Strong Room. Infra-red System or painting gallery and Electronic Sensor Tags should be used for displayed objects. 6mm to 8mm thickness of glass should be used for table showcases. Police verification of workers should be carried out. Preventive and Fire Fighting Measures should be adopted, smoke detectors should be installed. Fire alarm system should be installed. Electronic choke should be used in showcases. Tripping system should be strengthened for identification of short circuits. Inspection of fire fighting in the electronic system should be carried out. Minimum wooden items should be used in galleries, fire resistant cloth, cupboard and locker should be used for partition. The Standing Committee of the Museum should ensure that plug points are not broken, conduited electrical wiring should be used and electrical fittings are replaced. The museum should have technical staff for Curatorial/Technical/Official Management. Record should be maintained properly as per detailed

guidelines laid down.

7. Noticing the stand in the counter affidavit, this Court on 12th August, 2005 directed the Ministry to file a better and detailed affidavit about the implementation of the recommendations and the results achieved. The Ministry was also directed to consider giving specialized training in respect of security and also to consider the suggestion of verification being done by outside agencies.

8. Accordingly, an additional affidavit was filed on 9th January, 2006 stating that the matter was reviewed by the Security Committee headed by Director General, National Museum. The recommendation was forwarded to the selected museums and also to the State Governments. The State Governments were also requested to apply for financial assistance for equipment relating to security systems for which a provision of Rs.2500 lakhs was made. The Trusts, Private Bodies and Semi Govt. Bodies have their separate security systems based on their needs and locations and perception of theft. With regard to museums under the control of Ministry of Culture, the status of security arrangements has been indicated. According to the affidavit, recommendations of Security Committee have been implemented by various museums and some recommendations were in the process of implementation. It has been further stated that though the physical verification is regularly done by museum staff, the idea of entrusting physical verification to outside agency has been accepted in principle. As regards specialized training, it is stated that security of National Museum and Salar Jung Museum has been handed over to CISF, while security of IGRMS- Bhopal, NMML, New Delhi, NGMA-Mumbai and New Delhi are being looked after by their own security staff viz. Security Assistant, Gallery Attendant, Chowkidars etc. It is not financially feasible to organize a special force for the security of Museums spread all over the country, as the various museums/sites are under the control of various agencies such as Central Government, State Government, Semi Government Bodies, Trusts, Private Bodies etc.

9. An affidavit has also been filed by Under Secretary, Government of India, Ministry of Culture on 22nd October, 2007 in response to additional affidavit of the petitioner annexing the status report on implementation of recommendation of Security Committee at various organizations. It is stated that physical verification has been done by outside agency in the case of National Museum and such verification was in progress in certain other museums. Museums under the control of Ministry of Culture were in the process of computerizing the details of the artefacts. There are internal physical verification systems under which artefacts are verified at regular intervals in museums under the control of Ministry of Culture. Physical verification is specialized job which should be done only by experts. A Committee for physical verification was constituted under the Chairmanship of Shri M.N. Deshpande, retired Director General, ASI which was reconstituted by substituting Shri M. Varadarajan, former Secretary (Culture) in April, 1999. National Museum had more than 2 lakhs works of art, which were physically verified by the Committee in a phased manner. Physical verification of art objects in Indian Museum, Kolkata was being done by outside experts. Verification of art objects in Victoria Memorial Hall was being done by internal verification agency. Theft of Nobel Prize Medal from Viswabharti Museum and Fifth Century Buddha Head from Indian Museum, Kolkata were being investigated by CBI. The issues emerging in the observations of audit were being addressed. The modalities for relocation of all the administrative and other service units outside the museum premises were being worked out. Affidavits have also been filed on behalf of the

Salar Jung Museum, Hyderabad, Allahabad Museum, Archaeological Survey of India, in response to directions of this Court.

10. On 10th January, 2013, the CBI was directed to apprise the Court about the progress of investigation relating to missing of Budha Bust and other cases in question. The Ministry of Culture was also directed to respond to the affidavit of the Director, Indian Museum that due to shortage of manpower and absence of scholars and experts in Indian Museum, Kolkata, the work of verification which was started in the year 2005 could not be completed even in seven years. The Ministry of Culture was directed to look into the matter and provide resources so that substantial progress could be achieved. The Ministry was also directed to look into the paucity of sufficient place as the Museum was not in a position to display its items and to maintain their museum. Directions were also issued for completion of verification of the remaining items by the Victoria Memorial Hall. The Government of India was directed to look into the requirement for residential accommodation for the CISF staff near Victoria Memorial Hall. The State Government was also directed to look into this aspect.

11. Thereafter affidavit dated 2nd April, 2013 has been filed on behalf of the Minister stating that a meeting was held in the Ministry to discuss the issue of physical verification of objects at Indian Museum, Kolkata and Victoria Memorial Hall and CISF had agreed to provide necessary staff for security subject to accommodation being provided. Affidavits dated 21st September, 2013 have also been filed on behalf of the Victoria Memorial Hall and the Indian Museum stating that verification of all items available with it had almost been carried out and that the issue of security was also being sorted out.

12. We have heard the petitioner in-person and learned counsel for the respondents.

13. The petitioner in person submits that inspite of various directions of this Court during pendency of this petition for the last more than ten years, the situation is still not satisfactory. Neither the stolen articles have been recovered nor adequate security measures fully adopted. The updating of inventory and its cross checking needs to be ensured.

14. Learned Additional Solicitor General and the learned counsel for the respondents fairly stated that the concern of the petitioner is genuine and there is every need to review the security measures and to update the inventory. They assured the Court that the concern will be addressed and necessary steps in the matter will be taken.

15. It can hardly be gainsaid that preservation of rich heritage and culture of the country is a constitutional mandate. In UNESCO Convention on the means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property adopted in the General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 12th October to 14th November 1970, at its sixteenth session, which has been duly ratified by India, the spirit of the said mandate has been reiterated. The International Council of Museums (ICOM) (working with the support of UNESCO) has issued guidelines for disaster preparedness in Museums which are well known to those concerned with the management of

Museums. The UNESCO in its quarterly journal "Museum" has suggested measures for security of museum objects in the light of studies undertaken by it. Performance audit of preservation and conservation of Monuments and Antiquities is also conducted by the Comptroller and Auditor General of India (CAG).

In its 18th report of 2013, various observations have been made by the CAG. Learned counsel for the respondents accept the legal position and also submit that the security and maintenance of historic artefacts requires serious and continuous efforts by technically trained persons. The challenges pointed out by the respondents, who are running and managing museums, in their affidavits that there are space constraints, manpower shortage and lack of other resources need to be looked into by the Ministry of Culture and other concerned authorities and appropriate monitoring mechanism needs to be put in place. Requisite funds have to be allocated so as to ensure safe keeping of the valuable artefacts.

16. In view of assurance of learned Additional Solicitor General and other counsel for the respondents, it may not be necessary to give any specific direction at this stage. There is no reason to doubt the stand of the Central Government and the other respondents that all necessary steps will be taken and reviewed from time to time. This Court expects that the Secretary, Ministry of Culture will review the matter and take such necessary steps as may be identified within one month from the date of receipt of a copy of this order. Thereafter, review meetings may be held at least once in every six months to consider further course of action. If any grievance survives, it will be open to any aggrieved person to take legal remedies in accordance with law.

17. With the above observations, the writ petition is disposed of.

.....J. (T.S. THAKUR)J.
(ADARSH KUMAR GOEL) NEW DELHI FEBRUARY 3, 2015