Shri Dinesh Trivedi, M.P. & Ors vs Union Of India & Ors on 20 March, 1997

Equivalent citations: AIRONLINE 1997 SC 304

Bench: Chief Justice, Sujata V. Manohar

PETITIONER:
SHRI DINESH TRIVEDI, M.P. & ORS.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 20/03/1997

BENCH:
CJI, SUJATA V. MANOHAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Ahmadi, CJI.

Democracy in modern India is on the threshold of completing fifty years of existence. Milestones such as this have traditionally been occasions to embark upon wide- ranging assessments to survey the achievements and failures, highpoints and pitfalls, as well as the future prospects of the institution concerned. In our times, it is widely acknowledged that democracy in India has not risen upto the high expectations which heralded its conception. Many reasons have been advanced to explain the causes for the malaise which seems to have stricken Indian democracy in particular, and Indian society in general. The matter which we are presently concerned with professes to identify one of the primary causes for the present state of affairs.

The genesis of the controversy relates to the constitution of a Committee by the Union of India on July 9, 1993, by its order No. S/7937/SS(ISP)/93. An examination of the brief order discloses that the Committee was to be chaired by the Home Secretary and was to comprise the Secretary

(Revenue), the Director of the Intelligence Bureau (IB), the Director of the Central Bureau of Intelligence (CBI), and the Joint Secretary (PP), Ministry of Home Affairs. Later, the Special Secretary (Internal Security and Police) was also included as a member. The erstwhile Home Secretary being Shri N.N. Vohra, the Committee came to be popularly described as the "Vohra Committee". The order further reveals that the Committee was set up "to take urgent stock of all available information about the activities and links of all Mafia organisations/elements, to enable further action". Based on the findings of the Committee, the Union Government would then determine whether there was a need "to establish a special organ/agency to regularly collect information and pursue cases against such mafia elements". To this end, the Committee was declared to be competent to "invite senior officers of various concerned departments (Customs, Revenue, Intelligence, etc.) to gather the required information". The Committee was also required to submit its report within three months.

The Report of the Vohra Committee, authored by its Chairman and containing only his signature, was submitted on October 5, 1993. The Report is essentially a compilation of the responses of its different members and includes the reports of the secretary, Research & Analysis Wing (RAW), the Director, CBI, the Director, IB, and the views of the Secretary (Revenue). In the main Report, these various reports have been analysed and it is noted that the growth and spread of crime syndicates in Indian society has been pervasive. It is further observed that these criminal elements have developed an extensive network of contacts with bureaucrats, government functionaries at lower levels, politicians, media personalities, strategically located persons in the non-Governmental sector and members of the judiciary; some of these criminal syndicates have international links, sometimes with foreign intelligence agencies. The Report recommended that an efficient Nodal Cell be set up with powers to take stringent action against crime syndicates, while ensuring that it would be immune from being exploited or influenced. However, no follow-up action on the findings of the Vohra Committee Report seems to have been initiated over the two years which immediately followed its submission.

During July 1995, a young political activist named Naina Sahni was murdered and one of the persons arrested happened to be an active politician who had held important political positions. Newspaper reports published a series of articles on the criminalisation of politics within the country, and the growing links between political leaders and mafia members. The attention of the masses was drawn towards the existence of the Vohra Committee Report. It was suspected that the contents of the Report were such that the Union Government was reluctant to make it public. As a consequence of the resulting controversy, the Union Government agreed to place the Report before parliament. On August 1, 1995, the Report of the Vohra Committee was tabled in parliament, where it became the subject of a prolonged, intense debate.

Shri Dinesh Trivedi, M.P. (Rajya Sabha), who is the first petitioner in W.P. (Civil) No. 664 of 1995, actively participated in the debates in parliament. On August 16, 1995, he made a written representation to the erstwhile minister for Home Affairs demanding that the Union Government make public the reports which were the basis for the Vohra Committee Report, and that the names of individuals who would become identifiable as a result of studying the various background papers. be released. He also alleged that the Union Government was trying to suppress these background

reports and, without them. the Vohra Committee Report was "baseless".

Being unsuccessful in securing a satisfactory response to his representation, Shri Dinesh Trivedi, in conjunction with the public Interest Legal Support and Research Centre (PILSARC) and the Consumer Education and Research Centre (CERC), both of which are nongovernmental organisations, filed the present writ petition in public interest. The following were included as respondents: the Union of India, the Ministry of Finance, the Director, RAW, the Director, CBI the Director, IB, and the Special Secretary to the Ministry of Home Affairs.

The petitioners allege that a cursory analysis of the Report reveals the following disturbing aspects: (1) several governmental agencies have, in their written reports, indicated that they are aware of the vast local, national and international links of criminal syndicates; (2) these links are such that they amount to a parallel system of government; (3) the common citizen is unprotected and must live in constant fear of his life and property; (4) even the members of the judicial system have not escaped the embrace of the mafia; and (5) the existing criminal justice system is unable to deal with the activities of the mafia.

The petitioners state that since the Report reveals such alarming trends, it is of the utmost importance that it be made the subject of considerable scrutiny. They allege that the document tabled in the Parliament is not the complete report but betrays an incomplete substitute prepared hurriedly for the purpose of meeting the demand in parliament and suppresses vita information regarding the unholy connections between politicians, bureaucrats, criminals and anti-social elements. They base this assertion on the statement made in the Lok Sabha, a day prior to the publication of the Report, by the erstwhile Minister for Parliamentary Affairs that the Report extended to about 100 pages, and the fact that the document placed before the House numbered only 11.5 pages. In this respect, the petitioners have also pointed out that the Report, as it was tabled in Parliament, is not in the form of continuous paragraphs; on the contrary, after reaching paragraph 3.7, the next recorded paragraph is numbered as paragraph 6.1. The petitioners further state that the Report is itself based on a number of reports that had been placed before it and, without this supporting material, the Report is incomplete. Thus the genuineness of the Report was shrouded in suspicion.

The petitioners aver that the people at large have a right to know about the full investigatory details of the Report. Such disclosure is stated to be essential for the maintenance of democracy and for ensuring that transparency in government is secured and preserved. Towards this end, the petitioners have urged us to direct the Union Government to make public the annexures, memorials and the written evidence that were placed before the Committee. A direction to the Union Government to reveal the names of all bureaucrats, police officials, Parliamentarians and Judicial personnel against whom there is tangible evidence, to enable action to be taken in accordance with law, is also being sought. We are also asked to direct the Union Government to present to us an effective package of the follow-up measures taken in accordance with law, is also being sought. We are also asked to direct the Union Government to present to us an effective package of the follow-up measures taken or that are proposed to be taken with regard to the Report. Lastly, a declaration to the effect that Section 5 of the Official Secrets Act, 1923 is over-broad, unreasonable by the

formulation of a Freedom of Information policy, is also sought.

On October 13, 1996, a Division Bench of this Court, while admitting the present writ petition, issued notice to the Union of India and directed that an authenticated version of the Report of the Vohra Committee be placed before it; the Union of India was also required to apprise the Court of the follow-up measures initiated pursuant to the Report.

The case for the Union of India has been made out in a sworn affidavit filed by Shri K. Padmnabhaiah, the Home Secretary in the Ministry of Home Affairs and the Successor- in-office of Shri N.N. Vohra. In the affidavit, one of the annexures to which is an authenticated copy of the Report, the Home Secretary has stated that the copy of the Report which was tabled in Parliament was the genuine and authentic document. One of the other annexures to the affidavit is a copy of the correspondence upon this aspect between Shri N.N. Vohra, the author of the Report and the present Home Secretary. In his response, Shri N.N. Vohra clarifies that though he had access to the reports, notes and letters furnished by the Director, IB, Secretary (Revenue) and the Director, CBI, while making his final Report, he did not consider it fit to include them as annexures for the Report was meant to be a summary of discussions held and of the contents of the documents which were already on record. As for the incorrect numbering of the paragraphs, Shri Vohra explained that it arose as a result of a typographical error committed by his stenographer and his own omission to detect and correct the error.

While apprising the Court of the follow-up measures initiated pursuant to the Vohra Committee Report, the Home Secretary, in his affidavit, stated that the Vohra Committee was set up with a view to facilitating the establishment of a nodal agency to supervise and coordinate the functioning of enforcement and intelligence agencies towards controlling the crime syndicates existing in the country. After the Report was placed in Parliament on August 1, 1995, and as a result of the views expressed by the Members of Parliament during the debates, the Union Government set up a Nodal Agency on August 2, 1995, in conformity with the recommendation of the Vohra Committee Report and was to be chaired by the Home Secretary. The Committee also comprises the Secretary (Revenue), the Director, IB, the Director, CBI and the Secretary (RAW). This Nodal Agency was assigned the task of coordinating, directing and supervising the activities of the central and State investigative agencies responsible for controlling the growth of crime syndicates without purporting to be a substitute for them. Thereafter, the Nodal Agency met and considered issues of inter-agency cooperation and support. At the first meeting of the Nodal Agency, it was decided to hold a discussion with the leaders of different political parties with a view to evolving a code of conduct for politicians and bureaucrats which would help expose the links developed by the mafia syndicates. In this regard, an All party Meeting was convened by the erstwhile Home Minister on September 15, 1995 which was attended by parliamentarians representing the major political parties. From the minutes of this meeting, it appears that several issues of grave importance relating to the findings of the Vohra Committee Report were discussed at length. On January 5, 1996 the Union Government issued a further order appointing the Cabinet Secretary as the Chairman of the Nodal Group, while retaining the Home Secretary and all the other Members in the Nodal Agency.

The affidavit further points out that under our constitutional scheme, the maintenance of law and order is essentially the responsibility of the State Governments. The role of Central Intelligence Agencies, such as the CBI, the IB and of the Revenue Department is, therefore, limited cases, consisting of cases transferred by the State Governments to the CBI, cases in Union Territories, and the cases being investigated by Central Revenue Agencies. Much of the investigatory work in the country falls within the purview of CID and Intelligence Agencies within State Governments. The task of the Nodal Group is, therefore, limited to ensuring that the investigative efforts of all these separate agencies are synchronized towards their smooth functioning.

During the hearing of this matter, we asked the learned counsel appearing for the parties before us to put forth their suggestions in respect of the options open to this Court. Shri Ram Jethmalani, learned senior counsel appearing for the petitioners contended that the plea of the Home Secretary that 95% of crimes are within the purview of State Governments is an attempt to dilute the finding of the Vohra Committee Report. He averred that the Vohra Committee Report essentially addresses itself to those cases which, fall, not within the Entry of "Public Order", but, instead, with those cases involving narco-terrorist elements and smuggling of arms and ammunitions into the country, which are properly and wholly within the domain of the executive power of the Union. Shri Jethmalani urged us to direct that the details of the reports and events mentioned in the Vohra Committee Report be fully and completely disclosed. In his view, setting up a Nodal Agency would serve no purpose for it would be as prone to failure as the agencies it sought to supervise had proven themselves to be. Instead. he urged us to set up a Committee consisting of two retired Judges of the Supreme Court with sufficient experience of criminal matters, to probe into the disclosures that would be made consequent to our directions; further legal action could be pursued by this Court once such a Committee had submitted its complete report. A similar suggestion, which was been canvassed before us, if for the establishment of a Special Authority, headed by a retired Supreme Court Judge, to get matters involving the aforesaid nexus to be investigated by an independent agency which would the empowered to exercise all the statutory powers of investigation under the Code of Criminal Procedure. Such a Special Authority would be able to launch prosecutions against politicians, bureaucrats, police officers and criminals on the basis of evidence collected in the investigations, for offences under the Indian Penal code and other penal laws under the prevention of corruption Act. Thereafter, it was suggested, Special Courts, could be designated to expeditiously try all such cases.

We may first deal with the assertion based on the petitioners right to freedom of information. It has been contended before us that the citizens of India have a right to be informed not only of the contents of the report, but also of the details of the various reports, notes, letters and other forms of written evidence that was placed for the consideration of the Vohra Committee.

In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognised limitations; it is, by no means, absolute. This Court has had many an opportunity to express itself upon this issue. In the case of State of U.P. v. Raj Narain, (1975) 4 SCC 428, Mathew, J. eloquently expressed this proposition in the following words:

> "In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption."

(Emphasis added) Implicit in this assertion is the proposition that in transaction which have serious repercussions on public security, secrecy can legitimately be claimed because it would then be in the public interest that such matters are not publicly disclosed or disseminated.

The case of S.P. Gupta v. Union of India, 1981 SCC Supp. 87, decided by a seven-Judge Constitution Bench of this Court, is generally considered as having broken new ground and having added a fresh, liberal dimension to the need for increased disclosure in matters relating to public affairs. In that case, the consensus that emerged amongst the Judges was that in regard to the functioning of government, disclosure of information must be the ordinary rule while secrecy must be an exception, justifiable only when it is demanded by the requirement of public interest. The Court held that the disclosure of documents relating to the affairs of State involves two competing dimensions of public interest, namely, the right of the citizen to obtain disclosure of information, which competes with the right of the State to protect the information relating to its crucial affairs. It was further held that, in deciding whether or not to disclose the contents of a particular document, a Judge must balance the competing interests and make his final decision depending upon the particular facts involved in each individual case. It is important to note that it was conceded that there are certain classes of documents which are necessarily required to be protected, e.g. Cabinet Minutes, documents concerning the national safety, documents which affect diplomatic relations or relate to some State secrets of the highest importance, and the like in respect of which the Court would ordinarily uphold Government's claim of privilege. However, even these documents have to be tested against the basic guiding principle which is that wherever it is clearly contrary to the public interest for a document to be disclosed, then it is in law immune from disclosure. (Paras 73 and 74 at pp. 284-286).

What then is the test? To ensure the continued participation of the people in the democratic process, they must kept informed of the vital decisions taken by the Government and the basis thereof. Democracy, therefore, expects openness and openness is a concomitant of a free society. Sunlight is the best disinfectant. But it is equally important to be alive to the dangers that lie ahead. It is important to realise that undue popular pressure brought to bear on decision-makers is Government can have frightening side-effects. If every action taken by the political or executive functionary is transformed into a public controversy and made subject to an enquiry to soothe popular sentiments,

it will undoubtedly have a chilling effect on the independence of the decision-maker who may find it safer not to take any decision. It will paralyse the entire system and bring it to a grinding halt. So we have two conflicting situations almost enigmatic and we think the answer is to maintain a fine balance which would serve public interest.

This then is the test which we must now apply to the facts of the present case. Having examined the copy of the Report which has been placed before us, the allegations regarding its authenticity, the explanation forwarded in this behalf by the Home Secretary and the copy of the communication with Shri N.N. Vohra in this respect, we find that there is nothing on record to raise a doubt that the Report, as tabled in parliament and as presented to us, is not genuine, authentic and unabridged. We are of the view that the erstwhile Minister of Parliamentary Affairs, in making the statement that the Report was 100 pages long, may have been either misinformed or misled. That apart, there is no other ground for doubting the genuineness of the Report. Since it has been tabled in Parliament, it now enjoys the status of a public document. We will, however, have to consider whether the supporting material placed before the Vohra Committee can be disclosed for the benefit of the general public.

The supporting material consists of reports, notes and letters furnished by the other members of the Vohra Committee to its Chairman who made them the basis of his report. Before taking a decision on this aspect, we must record the perceptions of the author of the Report as to the manner in which it was to be treated. We have already noted Shri Vohra's statement that he had conceived of his Report to serve only as a summary of the discussions and reports before the Committee. In addition, the following paragraphs extracted from the concluding portion of the Report are also relevant for this purpose:

> "15.1 In the normal course, this Report would have been drafted by the Member Secretary and finalised by the Committee. Considering the nature of the issues involved, I did not consider it desirable to burden the Members of the Committee with any further involvement beyond the views expressed by them.
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> Accordingly, I decided to personally dictate this Report.
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> (Note that the Report is not signed by the other Committee-members.) 15.2 I have prepared only three copies of this Report. One copy each is being submitted to MOS (IS) and HM, the third copy being retained by me. After HM has perused this Report, I request him to consider discussing further action with Finance Minister, MOS (IS) and myself. The emerging approach could thereafter be got approved from Prime Minister before being implemented. At that stage other concerned officers would be taken into confidence."
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> (Emphasis and comments added) It is, therefore, evident that Shri N.N Vohra had himself drafted and signed the Report in the belief that it would be read by a select few high-ranking officials who would then take necessary action. It is doubtful whether the candour exhibited and the liberal mentioning of intelligence reports

would have been forthcoming if he had not felt assured of complete confidentiality. Indeed, much of the information contained in the Report, which has now become publicly available might well have adversely affected the various intelligence agencies involved.

We are reluctant to direct the disclosure of the supporting material which consists of information gathered from the Heads of the various Intelligence Agencies to the general public. To so direct would cause great harm to the agencies involved and to the conditions of assured secrecy and confidentiality under which they function. Furthermore, it must be noted that not all of the information collected and recorded in intelligence reports is substantiated by hard evidence. Often on the basis of unverified suspicion names are thrown by people to save their own skins. Intelligence Agents are not obliged to adhere to the principles of natural justice before they compile reports of possible suspects; quite frequently, individuals are shortlisted based purely on the investigators' hunches and surmises or on account of the past background of the suspects. The disclosure of these reports would lead to a situation where public servants and elected representative who, though entirely innocent, are compelled by virtue of their offices to associate with individuals whose culpability is beyond doubt, will also find themselves mired in suspicion. Such a situation would, in the long run, prove to be disastrous for the effective functioning of government. This is because it would make every governmental functionary overcautious about taking the simplest of decisions.

We may now cite an illustration to give shape to the afore-mentioned apprehension. In the entire Report, apart from the reference to mafia gangs of Bombay, only one person has been specifically named as being a prominent beneficiary of the nexus which is the focus of the Report. The individual concerned is a certain Iqbal Mirchi whose name is mentioned as having been disclosed by the Director, CBI. Shri Jethmalani has objected to this lone disclosure by stating that when the government sought to pursue extradition proceedings against Iqbal Mirchi in London, it could not produce even "an iota of evidence" against him. We think that this assertion by the learned Senior Counsel for the petitioners themselves adds great support to our apprehension that the full scale disclosure of these Intelligence reports will, in the absence of properly conducted inquiries, lead to the harassment and victimisation of individuals who might well be entirely innocent of my blame.

Alternatively, such full scale disclosures would undoubtedly act to the advantage of those individuals who are actually the central figures in the nexus mentioned in the Report. Warned in advance of their complicity being suspected, they would initiate rearguard measures to exonerate themselves.

We are, therefore, of the view that the disclosure of the supporting material placed before the Vohra Committee to the public at large would, instead of aiding the interest of the public, be severely and detrimentally injurious to it. In that view of the

matter, we think there is no necessity for us to express ourselves on the constitutionality of Section 5 of the Official Secrets Act, 1923.

We may now turn our focus to the Report and the follow- up measures that need to be implemented. The Report reveals several alarming and deeply disturbing trends that are prevalent in our present society. For some time now, it has been generally perceived that the nexus between politicians, bureaucrats and criminal elements in our society has been on the rise, the adverse affects of which are increasingly being felt on various aspects of social life in India. Indeed, the situation has worsened to such an extent that the president of our country felt constrained to make references to the phenomenon in his Addresses to the Nation on the eve of the Republic Day in 1996 as well as in 1997. The matter is, therefore, one that needs to be handled with extreme care and circumspection.

The Report, while recording the widespread development of crime syndicates within the country, points out that under the existing system, there is no provision by which the various intelligence agencies can coordinate with each other in properly utilising the information relating to the links developed by crime syndicates which comes their way. Sharing of such information is rare, and much of it is discarded without being put to any productive use. The Report, therefore, recommended the setting up of a Nodal Agency to which all existing intelligence and enforcement agencies (irrespective of the Department under which they are located) shall promptly pass on any information relating to crime syndicates which they may come across. The Report also contains recommendations as to the manner in which the Nodal Agency should be set up while simultaneously emphasising the need for ensuring that the information available with the Nodal set-up is used strictly and purely for taking stringent action against the crime syndicates, without offering any scope whatsoever of its being exploited for political gain. The need for complete confidentiality was also emphasised.

The Nodal Agency set-up by the Union Government pursuant to the Debates in Parliament upon the Report, conforms to the recommendations contained in the Report. Later, presumably to add greater weight to the body, the Cabinet Secretary was included in the Nodal Agency as its Chairman. However, as we have already noted, the Nodal Agency suffers from certain limitations. Being only a supervisory body, without having clearly delineated powers, it cannot effectively control the pace and thrust of investigative efforts.

We are of the view that the grave nature of the issue demands deft handling by an all-powerful body which will have the means and the power to fully secure its foundational ends. The Nodal Agency, in its present form, comprises senior bureaucrats of the highest level. While it is suited to coordinate an exchange of information between different investigating agencies, its composition is such that it may not be viewed by the public as completely independent or immune from

pressures of every kind. It is, therefore, not suitable for pursuing an investigation of this kind and taking it to the state of prosecution where may be nexus between the persons under investigation and powerful persons such as those referred to in the Vohra Committee Report. In view of the seriousness of the charges involved and the clout wielded by those who are likely to become the focus of investigation, it is necessary that the body which is entrusted with the task of following the investigation through to the stage of prosecution, be such that it is capable of enjoying the complete trust and confidence of the people. Moreover, in view of the suspicion that those involved may well be individuals who occupy, or have occupied, high positions in Government, it is necessary that the body be able to obtain the sanctions which are necessarily required before any prosecutions can be launched. In the case of public servants, sanctions are required, for instance, under Section 197 of the Code of criminal procedure and under Section 6 of the prevention of corruption Act, 1947. The Nodal Agency, in its present form, may not command the confidence of the people in this regard; this is a serious handicap for, in such matters, people's confidence is of the essence. An institution like the Ombudsman or a Lokpal, properly set up, could command such confidence and respect.

We are, therefore, of the view that the matter needs to be addressed by a body which function with the highest degree of independence, being completely free from every conceivable influence and pressure. Such a body must possess the necessary powers to be able to direct investigation of all charges thoroughly before it decides, if at all, to launch prosecutions. To this end the facilities and services of trained investigators with distinguished records and impeccable credentials must be made available to it. The Report, the supporting material upon which it is based and the unequivocal assistance of all existing intelligence agencies must be forwarded to this body. In time if the need is so felt, the body may even consider the feasibility of designating Special Courts to try those who are identified by it, which proposal may then be considered by the Union Government. To this end, and in the absence of any existing suitable institution or till its creation, we recommend that a high level committee be appointed by the president of India on the advice or the Prime Minister, and after consultation with the Speaker of the Lok Sabha. The Committee shall monitor investigations involving the kind of nexus referred to in the Vohra Committee Report and carry out the objectives described earlier.

Such a direction by us would not be without precedent. In Balaji Raghavan v. Union of India, (1996) 1 SCC 361, a Constitution Bench of this Court had recommended the establishment of a high level Committee to examine the guidelines relating to the conferment of the National Awards. (See paragraph) 33 of the judgment of Ahmadi, CJI speaking for the majority).

We dispose of the Writ petition in the above terms with no order as to costs.