

Mohammed Anis vs Union Of India on 16 July, 1993

Equivalent citations: 1994 SCC, SUPL. (1) 145, AIRONLINE 1993 SC 573

Author: A.M. Ahmadi

Bench: A.M. Ahmadi, N Venkatachala

PETITIONER:

MOHAMMED ANIS

Vs.

RESPONDENT:

UNION OF INDIA

DATE OF JUDGMENT 16/07/1993

BENCH:

AHMADI, A.M. (J)

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AHMADI, A.M. (J)

VENKATACHALA N. (J)

CITATION:

1994 SCC Supl. (1) 145

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by AHMADI, J.- This writ petition filed by an Inspector of Police (U.P. State Service) is yet another attempt at thwarting the implementation of this Court's order dated May 15, 1992+ passed in Writ Petition (Criminal) No. II 18 of 199 1. An abridged version of the events which led to the passing of that order may first be stated.

2. On July 12/13, 1991, an incident occurred in Pilibhit area of the State of U.P. in which 10 persons were killed on the spot in what came to be officially + Ed.: R.S. Sodhi v. State of U.P., 1994 Supp (1) SCC

143. See also the preliminary order of the Court dated 21-8-1991 at 1994 Supp (1) SCC 142 stated as 'encounters' between the Punjab Militants and the Local Police. The Times of India highlighted the incident on the basis whereof Shri R.S. Sodhi, an advocate practicing in this Court, filed a writ petition under Article 32 of the Constitution alleging infringement of Article 21 and related provisions. The issue figured in the Parliament and two teams of MPs belonging to the Congress (1) and the BJP rushed to the spot for an on-the-spot assessment. Their reports were placed on the record of the proceedings along with the report of the Additional Chief Judicial Magistrate, Pilibhit. Certain local police officers suspected to be involved in the incidents, were immediately transferred and the investigation was handed over to an officer of the level of an Inspector General. The State Government also appointed a one-member Commission headed by a Judge of the Allahabad High Court to inquire into the incident but the work of the Commission did not commence on account of stay obtained in a writ petition. The allegations were mainly directed against the local police by the kith and kin of those who were killed in the alleged encounters. Doubts were expressed regarding the fairness of the investigation as it was feared that as the local police was alleged to be involved in the encounters, the investigation by an officer of the U.P. Cadre may not be impartial. This Court refrained from expressing any opinion on the allegations made by either side but thought it wise to have the incidents investigated by an independent agency, the Central Bureau of Investigation, so that it may bear credibility. This Court felt that no matter how faithfully and honestly the local police may carry out the investigation the same will lack credibility as the allegations were directed against them. This Court, therefore, thought it both desirable and advisable and in the interest of justice to entrust the investigation to the CBI so that it may complete the investigation at an early date. It was clearly stated that in so ordering no reflection on either the local police or the State Government was intended. This Court merely acted in public interest.

3. After this order when the CBI authorities approached the local police as well as officers in the Home Department of the State Government, they did not receive the desired cooperation and the case papers were not handed over to them. This was communicated to this Court. After inquiring into the matter another order was passed on January 11, 1993, directing the Home Secretary, U.P., to take immediate steps to ensure compliance with the order dated May 15, 1992. Direction was also issued to the then DGP, U.P., Shri Prakash Singh, IPS and Secretary, Home, U.P., Shri Prabhat Kumar, IAS to show cause why action for their failure to comply with this Court's order of May 15, 1992, should not be initiated against them. In response to the notices so issued both the officers filed affidavits dated April 7 and 13, 1993, expressing unconditional and unqualified apology for their failure to promptly comply with this Court's order. This Court taking a lenient view acted on the statement that necessary action had already been taken to comply with the order of May 15, 1992 and accepting the apology tendered by the said two officers, discharged the notices by the order of April 16, 1993. As nothing further survived the petition was disposed of. It will thus be seen that unfortunately the U.P. Police did not take the order of this Court dated May 15, 1992, in the right spirit and tried to create hurdles in its implementation, notwithstanding the fact that a Review Petition No. 549 of 1992 was also rejected earlier.

4. The present petition was filed during the vacation on May 21, 1993. The petitioner is a Police Inspector and claims to have filed this petition in public interest for the enforcement of fundamental rights guaranteed by Articles 14 and 21. In the opening paragraph of the writ petition it is stated that

the petition is being filed in a representative capacity on behalf of the U.P. Police as the interest of the entire police force of U.P. is involved because this Court's order directing the CBI to investigate into the Pilibhit incident is destructive of the exclusive powers of the State of U.P. and is in flagrant disregard of the mandatory provisions of the Code of Criminal Procedure. The basis of the writ petition is an order dated March 10, 1989 of this Court in Writ Petition Nos. 531-36 of 1988, Haryana Mahila Sanghathan v. Union of India wherein the Division Bench of this Court referred the question whether the Court can order the CBI to investigate an alleged offence without the consent and orders of the concerned State Government to a larger Bench, preferably a Bench comprising of five Judges of this Court. The petitioner, therefore, contends that since this issue was awaiting decision by a larger Bench this Court could not have passed the order dated May 15, 1992+.

5. In the first place it is difficult to appreciate what public interest the petition seeks to serve and it is even more difficult to appreciate how the petitioner's fundamental rights under Articles 14 and/or 21 of the Constitution can be said to be violated. Fair and impartial investigation by an independent agency, not involved in the controversy, is the demand of public interest. If the investigation is by an agency which is allegedly privy to the dispute, the credibility of the investigation will be doubted and that will be contrary to public interest as well as the interest of justice. This Court was careful enough to state that its order should not be read as a reflection on either the local police or the State Government but that it was actuated by the sole object of ensuring that the outcome of the investigation, whatever it be, is not suspect in the eyes of the people including the family members of those killed in the incident. Therefore, it is difficult to understand how the petition can be said to be in public interest. What public interest it seeks to subserve? In fact the averment in paragraph 1 betrays that the petition is filed on behalf of U.P., Police to protect "the interest of the entire police force of U.P." The petitioner nowhere alleges that he was serving in that area at the time when the incident occurred. It is, therefore, difficult to understand how his constitutional right under Article 14 and/or Article 21 can be said to have been violated. It is obvious that the petition is misconceived and is merely yet another attempt to frustrate the implementation of the order dated May 15, 1992. In fact such successive attempts on the part of the U.P. Police only strengthens the suspicion calling for an independent investigation. Thus the writ petition is untenable on this preliminary ground.

6. True it is, that a Division Bench of this Court made an order on March 10, 1989 referring the question whether a court can order the CBI, an establishment under the Delhi Special Police Establishment Act, to investigate a cognizable offence committed within a State without the consent of that State Government or without any notification or order having been issued in that behalf. In our view, merely because the issue is referred to a larger Bench everything does not grind to a halt. The reference to the expression 'court' in that order cannot in the context mean the Apex Court for the reason that the Apex Court has been conferred extraordinary powers by Article 142(1) of the Constitution so that it can do complete justice in any cause or matter pending before it. The question regarding the width and amplitude of this Court's power under Article 142(1) came up for consideration before, this Court in Delhi Judicial Service Assn., Delhi v. State of Gujarat¹ and again before the Constitution Bench in Union Carbide Corpn. v. Union of India². In the first case this Court observed that the power conferred by Article 142(1) coupled with the plenary powers under Articles 32 and 136 empowers the Court to pass such orders as it deems necessary to do complete justice to the cause or matter brought before it. This power to do complete justice is entirely of

different level and of a different quality which cannot be limited or restricted by provisions contained in statutory law. No enactment made by the Central or State Legislature can limit or restrict the Court's power under Article 142(1) though while exercising it the Court may have regard to statutory provisions (See paragraphs 50 and 51 of the judgment). In the second case this Court clarified that the expression "cause or matter" must be construed in a wide sense to effectuate the purpose of conferment of power. This power has been conferred on the Apex Court only and the exercise of that power is not dependent or conditioned by any statutory provision. The constitutional plenitude of the powers of the Apex Court is to ensure due and proper administration of justice and is intended to be co-extensive in each case with the needs of justice of a given case and to meeting any exigency. Very wide powers have been conferred on this Court for due and proper administration of justice and whenever the Court sees that the demand of justice warrants exercise of such powers, it will reach out to ensure that justice is done by resorting to this extraordinary power conferred to meet precisely such a situation. True it is, that the power must be exercised sparingly for furthering the ends of justice but it cannot be said that its exercise is conditioned by any statutory provision. Any such view would defeat the very purpose and object of conferment of this extraordinary power. In the Union Carbide case² this Court observed as under: (SCC p. 634, para 83) "It is necessary to set at rest certain misconceptions in the arguments touching the scope of the powers of this Court under Article 142(1) of the Constitution.... The proposition that a provision in any ordinary law irrespective of the importance of the public policy on which it is founded, operates to limit the powers of the Apex Court under Article 142(1) is unsound and erroneous."

Proceeding further, the Court observed: (SCC p. 635, para

83) "The power under Article 142 is at an entirely different level and of a different quality. Prohibitions or limitations on provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142." That is so for the obvious reason that statutory provisions cannot override constitutional provisions and Article 142(1) being a constitutional power cannot be limited or conditioned by any statutory provision. It, therefore, seems clear to us that the power of the Apex Court under Article 142(1) of the Constitution cannot be diluted merely because the statute, namely, the Delhi Special Police Establishment Act, stipulates that the State Government's permission will be 1 (1991) 4 SCC 406 2 (1991) 4 SCC 584: 1991 Supp (1) SCR 251 necessary if the CBI is to investigate any offence committed within the territorial jurisdiction of a State Government. That may be a statutory obligation governing the relations between the Central Government and the State Government but it cannot control this Court's power under Article 142(1). In both the aforesaid cases reference was made to the decision in A.R. Antulay v. R.S. Nayak³ and it was distinguished by pointing out that the violation of constitutional provisions and constitutional rights was in issue. Here as pointed out earlier no such right is infringed. Besides the decision in that case turned on its peculiar facts. The statute does not prohibit investigation by CBI but only requires certain formalities to be completed which have no relevance when the Apex Court makes an order in exercise of its power under Article 142(1). Therefore, we do not think that merely because a question is referred to a larger Bench this Court is prohibited from exercising the powers conferred on it by Article 142(1) of the Constitution. In any case so far as the powers of the Apex Court under Article 142(1) are concerned, the position in law is now well settled by the aforementioned Constitution Bench rulings and hence if the reference

includes the Apex Court it must be taken as impliedly answered.

7. We do hope that the U.P. Police will reconcile to the fact that the factual situation arising from the incident in Pilibhit had persuaded this Court to pass the order of May 15, 1992 not only in the interest of fair and impartial investigation but also in the interest of the U.P. Police so that there may not remain any lingering doubt regarding the credibility of the investigation. The U.P. Police, we hope, will give up its obstructionist attitude and cooperate with the investigation entrusted to the CBI in its larger interest.

8. It is also unfortunate that the petitioner who was nowhere in the picture has permitted himself to be used for preferring this petition, and that too after two of the high ranking officers had assured this Court that they would ensure compliance with this Court's order of May 15, 1992. It was on that assurance that this Court had accepted their apology and dropped the proceedings by discharging the notices. We do hope that a situation will not be created which may compel us to initiate similar proceedings once again. The petitioner will also be more circumspect and careful in future and not become a tool in the hands of others.

9. For the above reasons, we see no merit in this petition and dismiss the same.