

A CITIZENS FOR JUSTICE AND PEACE
v.
STATE OF GUJARAT & ORS.
(Writ Petition (C.) No. 219 of 2006)

JANUARY 13, 2009

B **[MR. MARKANDEY KATJU AND V.S. SIRPURKAR, JJ.]**

C *Constitution of India, 1950: Article 32 – Writ petition challenging the appointment and continuation of respondent 3 as Director General of Police (DGP) and for direction to State Government to initiate disciplinary action against him – Allegation that respondent 3 who was Commissioner of Police when communal disturbances rocked the State of Gujarat committed serious dereliction in his duty and committed number of irregularities – Cases were closed*
D *hastily by the then Gujarat Government – On account of direction of Supreme Court, those cases were directed to be reopened – Allegation that continuation of respondent 3 as DGP would adversely affect the cases – Held: Most cases reopened by investigating agency were already dealt with by*
E *Scrutiny Committee – Respondent 3 to retire soon – Writ petition itself thus has become redundant as the continuation of respondent 3 as DGP would be of no consequence insofar as the apprehension expressed by the petitioner – An appointment of a government servant is prerogative of*
F *particular government, particularly, when it is sensitive appointment of DGP – Under doctrine of 'judicial review', such an appointment is not disturbed more particularly, in the factual panorama – As for any disciplinary action against respondent 3, it is for the concerned government to take steps – Administrative law – Judicial review.*

G **Petitioner Organization was started in response to the carnage which took place in Gujarat in 2002 with the main objective to bridge gap between various religious communities. Petitioner filed writ petition under Article 32 of Constitution of India, 1950 primarily challenging**

appointment and continuation of respondent no.3 to the post of Director General of Police, State of Gujarat and for directing the respondent-State to take disciplinary action including prosecuting respondent no.3 for having failed in his duties during Gujarat carnage. The other contentions raised were that during the relevant period respondent 3 was Commissioner of Police when communal disturbances rocked the State of Gujarat. It was claimed that more than 700 persons died and number of irregularities were committed by respondent 3 such as not supplying the reinforcements and serious derelictions of his duties. It was further alleged that on account of the directions issued by Supreme Court, about 2000 cases which were hastily closed by the then Gujarat Government, were directed to be re-opened and a fresh scrutiny into those cases was also ordered. It was expressed that if respondent 3 continued in the highest post of Director General of Police, those cases would be adversely affected and the guilty would be shielded and that would be patent denial of justice.

Disposing of the Writ Petition, the Court

HELD: 1.1. Almost all the cases in the "A" summary, which were recommended by the investigating agency, have already been dealt with by the Scrutiny Committee. Moreover, respondent 3 is going to retire on 31st March, 2009. In fact, Writ Petition itself become redundant as the continuation of respondent 3 as the DGP is of no consequence insofar as the apprehension expressed by the petitioner in the Writ Petition is concerned. [Para 5] [194-G-H]

1.2. The allegation was that if respondent 3 continues to that post, he may be in a position to pressurize the Courts, where, in pursuance of the recommendations of the Scrutiny Committee, the prosecutions are in progress. Such a thing cannot be said either regarding respondent 3 or even the Trial Courts in Gujarat. There are no reasons to believe that respondent 3, in his

A remaining tenure of about three months, would take any such steps. The Trial Courts in Gujarat are not capable of being pressurized in the manner expressed in the Writ Petition. [Para 6] [195-A-B]

B 2. An appointment of a government servant is the prerogative of the particular government, particularly, when it is a sensitive appointment of Director General of Police. Under the doctrine of 'judicial review', this Court would not extend hands to upset such an appointment, more particularly, in the factual panorama which is available today. The present Writ Petition has become redundant and is disposed of as such. As for any disciplinary action against respondent 3, it is for the concerned government. This Court would not enter the fact finding exercise. [Para 7] [195-C-D]

D CIVIL ORIGINAL JURISDICTION : Writ Petition (C.) No. 219 of 2006.

Under Article 32 of the Constitution of India.

P.P. Rao, Aparna Bhat and Sahar Baksh for the Petitioner.

E Hemantika Wahi, Pinky Behera, Sushma Suri and I.H. Syed (for Varinder Kumar Sharma for the Respondents.

The Judgment of the Court was delivered by

F **V.S. SIRPURKAR, J.** 1. This Writ Petition under Article 32 of the Constitution of India has been filed basically challenging the appointment and continuation of respondent No. 3 Shri P.C. Pandey to the post of Director General of Police, State of Gujarat. The other prayer in the Writ Petition is to direct respondent No. 1 – State of Gujarat to take disciplinary action including prosecuting respondent No. 3 for having failed in his duties during the Gujarat carnage of 2002.

H 2. Notice was issued by this Court on 11.5.2006 to the respondents, whereupon, the State of Gujarat has come up with a Counter Affidavit, denying most of the contentions raised in

the Writ Petition. This Writ Petition was filed on 1.5.2006 and notice thereof was issued on 11.5.2006 and ever since then, number of interim orders in nature of directions came to be passed.

3. Shortly stated, the petitioner claiming itself to be an organization, which was started as a response to the alleged carnage which took place in Gujarat from 27.2.2002 onwards with the main objective to bridge the gap between the various religious communities, as also to ensure that justice is done to those who are the victims of communalism. It is claimed that it had set up a Citizens Tribunal to go into the causes and extent of communal violence in Gujarat headed by two retired Hon'ble Judges of this Court. The petitioner has filed the Report of the said Tribunal, which published in two volumes. The other contentions which are raised are that the respondent No. 3 Shri P.C. Pandey was the Commissioner of Police, Ahmedabad during the period when the communal disturbances rocked the State of Gujarat. It is claimed that more than 700 persons died and number of irregularities were committed by Shri Pandey such as not supplying the reinforcements and serious derelictions of his duties. Number of other allegations have been made that Shri Pandey was sent on deputation to CBI, which appointment was challenged before this Court by the petitioner by filing Writ Petition (C) No. 147 of 2004, wherein, the Union of India had given an undertaking that he would not handle any cases relating to Gujarat riots of 2002. He was accordingly not allowed to handle those cases. It has also come in the allegations that on account of the directions issued by this Court, about 2000 cases which were hastily closed by the then Gujarat Government, were directed to be re-opened and a fresh scrutiny into those cases was also ordered. It was expressed that if Shri Pandey continued in the highest post of Director General of Police, those cases would be adversely affected and the guilty would be shielded and that would be patent denial of justice.

4. In its Counter Affidavit, the State of Gujarat opposed

A most of the claims and pointed out that the claim that the
appointment of respondent No. 3 as a Director General of
Police would be detrimental to the cause of justice, is not
correct. It is pointed out that the Review Committee constituted
under the direction of this Court earlier vide order dated
B 17.8.2004 was required to look into all 2020 riot cases,
wherein, the investigating agency had filed "A" Summary. It is
further pointed out that Shri Pandey was not in any manner
connected with the Review Committee nor was he in a position
to influence the same. It is further pointed out that up to the
C quarter ending 30th April, 2006, as many as 1989 cases out
of the aforesaid 2020 cases had already been reviewed in
respect of which periodic reports were filed by the Committee
before this Court. It is claimed that in all, hardly 30 "A" summary
cases had remained and it was, therefore, argued before us
D by the Learned Counsel appearing on behalf of the State of
Gujarat that there was no point in now taking exception to the
appointment and continuation of the third respondent as the
Director General of Police. Learned Counsel also informed us
during the debate that even those 30 "A" summary cases have
E already been decided upon and, therefore, there is no scope
for those cases being affected by Shri Pandey in his
continuation as the Director General of Police. It is further
submitted at the Bar that Shri Pandey is going to retire on 31st
F March, 2009 and under the circumstances, this Writ Petition
itself has become redundant.

5. Considering the overall situation, firstly, the fact that
almost all the cases in the "A" summary, which were
recommended by the investigating agency, have already been
dealt with by the Scrutiny Committee and secondly that Shri
G Pandey is going to retire on 31st March, 2009, we do not
propose to continue with this Writ Petition. In fact, this Writ
Petition has itself become redundant as the continuation of Shri
Pandey as the DGP is of no consequence insofar as the
H apprehension expressed by the petitioner in the Writ Petition
is concerned.

6. Shri P.P. Rao urged that if Shri Pandey continues to that post, he may be in a position to pressurize the Courts, where, in pursuance of the recommendations of the Scrutiny Committee, the prosecutions are in progress. We do not think that such a thing can be said either regarding Shri Pandey or even the Trial Courts in Gujarat. We do not have any reasons to believe that Shri Pandey, in his remaining tenure of about three months, would take any such steps. We do not think that the Trial Courts in Gujarat are capable of being pressurized in the manner expressed in the Writ Petition.

7. An appointment of a government servant is the prerogative of the particular government, particularly, when it is a sensitive appointment of Director General of Police. We, under the doctrine of 'judicial review', would not extend our hands to upset such an appointment, more particularly, in the factual panorama which is available today. We hold that the present Writ Petition has become redundant and we dispose it of as such. As for any disciplinary action against Shri Pandey, it is for the concerned government. We will not enter the fact finding exercise.

8. Shri Rao further expressed that the Government of Gujarat might extend the appointment by giving extension to Shri Pandey. We do not think any such contention can be entertained at this stage, without there being any basis for the same.

9. In the result, the Writ Petition is disposed of in the light of observations made hereinabove.

D.G.

Writ Petition disposed of.