

THE COMMITTEE FOR THE PROTECTION OF
DEMOCRATIC RIGHTS

v.

THE CHIEF MINISTER OF THE STATE OF
MAHARASHTRA AND ORS.

NOVEMBER 20, 1996

[B.P. JEEVAN REDDY AND K.S. PARIPOORNAN, JJ.]

Constitution of India, 1950 : Articles 226 & 136:

Mumbai riot case—Allegation of Government's in action against culprits—Held: it would not be correct to say that Government had not taken any action against culprits—If any person fell aggrieved that inspite of bringing specific material about any incident or against any person in connection with the riot to the notice of the investigating authorities, the authorities were not taking action according to law, it would be open to him to approach the High Court for necessary directions—Further, inquiry by the Special Inspector General of Police, appointed by the Government to inquire into allegation of violations of human rights contained in report of Amnesty International, need not be deferred on account of pendency of proceedings before Justice Sri Krishna Commission (appointed under Commission of Inquiry Act, 1952), scope of inquiry by the two not being identical—Appellant could approach National Human Rights Commission to look into alleged violation of human rights—Special Inspector General of Police directed to ascertain whether the National Human Rights Commission had already inquired into allegations and proceed with his inquiry if he found that it has not— If, in future, National Human Rights Commission took up the said inquiry before Special Inspector General of Police submitted his report to Government, he should defer his inquiry awaiting report of National Human Rights Commission—Human Rights Violation.

The appellant-Organisation was formed for protecting the human rights of the citizens of this country. It believed in Rule of Law and in upholding it. There were widespread and violent riots in the city of Mumbai and its environs in which a large number of people were killed and injured and properties worth crores of rupees destroyed. There were allegations that the law and order machinery had either failed or was colluding with perpetrators of violence and

- A** destruction. Though about 3,000 criminal cases were registered in connection with the said riots, no effective investigation had been carried out into those cases, no one had been arrested and no prosecution launched. The reason given by the respondents for this inaction was that a Commission of Inquiry appointed under the Commissions of Inquiry Act, 1952 (Justice Sri Krishna Commission)
- B** was enquiring into various aspects of the said riots and that they were awaiting the Commission's report. In spite of the report submitted by Amnesty International, the respondents were not taking any action in the matter. The appellant filed a writ petition before the High Court for a direction to the respondents to launch prosecution against those found prima-facie responsible for the said riots. The
- C** High Court dismissed the writ petition on the ground that it was not inclined to exercise its writ jurisdiction and give directions in a sensitive matter. Hence this appeal.

- On behalf of the respondents it was contended that the State Government had not evaded its responsibility to prosecute the persons involved in the said riots; that the State Government had appointed a Special Inspector General of Police to inquire into the allegations of violations of human rights contained in the report submitted by Amnesty International; and that in view of the pendency of the matter before the Justice Sri Krishna Commission the said inquiry was deferred.
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Disposing of the appeal, this Court

- F** **HELD: 1.1.** It would not be correct to say that the Government has not taken any action against the culprits. It is also not correct to say that because of the appointment of the Justice Sri Krishna Commission, appointed under the Commission of Inquiry Act, 1952 the Government and its authorities are not taking any action against the persons responsible for the riots. [854 CD]

- G** **1.2.** If any person feels aggrieved that inspite of bringing specific material about any incident or against any person in connection with the riot to the notice of the investigating authorities, the authorities are not taking action according to law, it shall be open to him to approach the High Court for necessary direction. Further, inquiry by the Special Inspector General of Police, appointed by Government
- H** to inquire into the allegations of violations of human rights contained

in the report of Amnesty International, need not be deferred on account of the pendency of proceedings before the Justice Sri Krishna Commission, scope of the inquiry by the two being not identical. However, it is more appropriate that the appellant should approach the National Human Rights Commission to look into the alleged violations of human rights. The Special Inspector General of Police is directed to ascertain whether the National Human Rights Commission had already inquired into the allegations and proceed with his inquiry if he finds that it has not. If, in future, the National Human Rights Commission takes up the said inquiry before the Special Inspector General of Police submits his report to the Government, he shall defer his inquiry awaiting the report of the National Human Rights Commission. [854 F-H, 855 A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14627 of 1996.

From the Judgment and Order dated 6.9.94 of the Bombay High Court in W.P. No. 2030 of 1994.

Bharat Sanghal for the Appellant.

K.T.S. Tulsi and D.M. Nargolkar for the Respondents.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY., J. Leave granted.

This appeal is preferred by the Committee for the Protection of Democratic Rights against the order of the Bombay High Court summarily dismissing the writ petition. In the writ petition filed in the High Court the appellant had asked for the following two reliefs:

“(a) that this Hon’ble Court be pleased to declare that the Commission of Inquiry appointed by the Government of Maharashtra by its Notification No. FIR/5693/Bombay-1/Appointment/SPL-2, dated 25th January, 1993, is not a Court of Law and there are no cases pending before the said Commission concerning the riots on and after 6th December, 1992, and on and after 6th January, 1993, and therefore, the question of subjudice does not arise in the way of the

A Government to launch prosecutions against the culprits responsible for the said riots;

(b) that this Hon'ble Court be pleased to issue a writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, direction or order under Article 226 of the Constitution of India directing the Respondents that they should carry out investigation as required under the law against the culprits responsible for the said riots which occurred on and after December 6, 1992 and on and after January 6, 1993, in the City of Bombay and its environs and to launch prosecution against those found prima-facie responsible for the said riots;"

The appellant had filed the writ petition with the following averments. The appellants—organisation is formed for protecting the human rights of the citizens of this country. It believes in Rule of Law and in upholding it. There were widespread and violent riots in the city on Bombay and its environs on and after December 6, 1992 and again on and after January 6, 1993 in which a large number of people were killed and injured and properties worth crores of rupees destroyed. There were allegations that the law and order machinery has either failed or was colluding with the perpetrator's of violence and destruction. Though about 3,000 criminal cases were registered in connection with the said riots, no effective investigation has been carried out into those cases, no one has been arrested and no prosecution has been launched. The reason given by the respondents for this inaction is that a Commission of Inquiry appointed under the Commissions of Inquiry Act, 1952 (Justice Sri Krishan Commission) is enquiring into various aspects of the said riots and that they are awaiting the Commission's report. This is a totally unacceptable and impermissible reason. Amnesty International has also submitted a report to the Hon'ble Chief Minister of Maharashtra stating that the appointment of the Commission is not an impediment to the Government proceeding against the guilty according to law. In spite of the said report, the respondents are not taking any action in the matter. The appellants submitted that the aforesaid Commission is neither a criminal court nor can it punish the guilty persons and that the respondents have been merely making an excuse of the said Commission for not taking any steps against the guilty. It is on the above allegations that the aforementioned two reliefs were asked for.

H The High Court dismissed writ petition under a short order which reads:

“Rejected. We are not inclined to exercise writ jurisdiction and give directions in a very sensitive matter.” A

When this SLP came up for orders before this Court, notice was issued to the respondents under the following order:

“Exemption allowed.” B

Mr. Tarkunde says that though 3000 criminal cases were registered in the different police stations in Bombay, none of them has resulted in actual prosecution being launched in a criminal court. C

In view of the said averment and other allegations made in the writ petition and special leave petition, notice shall go to the respondents.’

In response to the notice issued, a counter affidavit was filed by an Inspector of Police on behalf of the 4th respondent (Commissioner of Police). On 26th February, 1996 we expressed our unhappiness that in a matter of such gravity, the counter affidavit has been filed by an Inspector of Police and not by any responsible person on behalf of the Government of Maharashtra. The Government of Maharashtra was directed to file an affidavit of either the Home Secretary or the Additional Secretary in-charge of this matter with full particulars. Accordingly, Shri S.K. Iyengar, Secretary (Special), Home Department, Government of Maharashtra has filed an affidavit stating the following facts:; the allegation that the Government has evaded its responsibility to prosecute the persons involved in the said riots is not correct. A total of 2,267 criminal cases were registered and 8,673 persons were arrested in connection with the riots of December 1992 and January 1993. A total of 892 cases have been charge-sheeted out of which 864 cases are still pending trial before the various courts. Alongwith the affidavit, two statements have been filed setting out the particulars of the cases registered, persons arrested, cases pending investigation, cases charge-sheeted, persons charge-sheeted, cases convicted, cases acquitted and other relevant particulars. With respect to the report submitted by Amnesty International, it is stated that the Government had ordered an inquiry into the allegations of violation of human rights contained in the said report, to be held by a Special Inspector General of Police. However, when the said Officer was in the midst of recording statements of witnesses, some of them made applications before Justice Srikrishna Commission objecting to the inquiry by the Special Inspector D
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- A General of Police contending that a parallel inquiry by Inspector General of Police was not permissible in view of the pendency of the matter before the Justice Sri Krishna Commission. In the light of the said development, the inquiry by Special Inspector General of Police was deferred. It is true that the State Government has by its Notification dated 23rd January, 1996 discontinued the inquiry by Justice Sri Krishna Commission but the said Notification is under challenge in the Bombay High Court. Depending upon the decision of the High Court, the State Government "might consider revival of inquiry". This affidavit was sworn to on 3rd April, 1996.

- In the light of the averments made by the Special Secretary to the Government of Maharashtra it would not be correct to say that the Government of Maharashtra has not taken any action against the culprits. A good number of cases have been charge-sheeted after investigation. Most of them are pending trial. A few have resulted in conviction and a few have resulted in acquittal. It is also not correct to say that because of the appointment of the Justice Sri Krishna Commission, the Government and its authorities are not taking any action against the persons responsible for the said riots. May be that in some cases no charge-sheets have been filed so far but there is no material before us to say that this is on account of any negligence or deliberate inaction on the part of the authorities. There is also no material before us to say that the Government machinery is deliberately refusing to investigate into the incidents which took place during those unfortunate riots or to prosecute the culprits identified as responsible for any of the offences. We are sure that, if any, specific evidence is brought to the notice of the investigating authorities about any incident or against any person or persons, the authorities will look into the same and take necessary action. If any person feels aggrieved that inspite of bringing specific material to their notice, the authorities are not taking action according to law, it shall be open to him to approach the Bombay High Court for necessary directions. We are sure that the High Court would deal with any such grievance according to law.

- So far as the inquiry by the Special Inspector General of Police into allegations of violation of human-rights is concerned, we see no justification for deferring it on account of the proceeding before the Justice Sri Krishna Commission. The scope of inquiry before the said Commission and the scope of inquiry before the Special Inspector General of Police is not identical, though in some respects there may be an amount of over-lapping. In the circumstances we direct that the said inquiry should proceed. In fact, we think it more appropriate that the appellants should approach the

National Human Rights Commission to look into the alleged violations of human rights contained in the report of the Amnesty International. If the appellants make such a request and if the National Human Rights Commission agrees to undertake an inquiry into those allegations, it is obvious that the inquiry by the Special Inspector General of Police would be superfluous. It is also made clear that if the National Human Rights Commission has already inquired into the said allegations and has arrived at a conclusion—one way or the other—the inquiry by Special Inspector General of Police would equally be unnecessary. We, therefore, direct the Special Inspector General of Police, who was appointed to inquire into the said allegations (or his substitute, who may have been, or who may be, appointed hereafter) to ascertain whether National Human Rights Commission has already inquired into the allegations and proceed with his inquiry if he finds that it has not. It is equally obvious that if, in future, the National Human Rights Commission takes up the said inquiry before the Special Inspector General of Police submits his report to the Government, he shall defer his inquiry awaiting the report of the National Human Rights Commission.

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With the above observations the appeal is disposed of. No costs.

V.S.S.

Appeal disposed of.