

Police and the Rule of Law: Recent Developments in India

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Abstract

For a country like India, which is committed to the rule of law, the role of police is undergoing changes very rapidly. It is primarily due to the fact that the country has transformed from a police state to welfare state since independence in 1947, and thereafter since India became a Republic in 1950, however, unprecedented changes, of late, in the governance of the country – with coalition politics being a major factor – have been witnessed raising important questions regarding the challenges faced by police in a modern welfare state within the dynamic legal framework. The relationship between the political Masters and the civil servants, including the police officers, has undergone a sea change, and lately more changes have been observed, which may not be very encouraging for a healthy and vibrant democratic country. With the Supreme Court being the final interpreter, often the police are at the receiving end. This paper examines some of the recent pronouncements of the Supreme Court and other High Courts and tries to analyse them vis-à-vis the understanding of the rule of law in India.

Keywords:

Courts, Government, Investigation, Law and order, Police, Rule of Law, Transfers and Postings

Police and the Rule of Law: Recent Developments in India

1. INTRODUCTION:

The moment one enters the main building of the training centre at the National Police Academy in Hyderabad, one can read the scroll of honour displayed prominently. It is reproduced here:

“As India attained independence, Officers of the Indian Police assumed Leadership responsibilities from the departing British officers to fill the gaps, with a total dedication to:

*Defend the Honour, Security and Integrity of India
Serve the country with Loyalty
Adhere to the Constitution and Rule of Law
Preserve Public Safety and Order
Serve the People of India”¹*

Interestingly, the scroll of honour mentions about adherence to the Constitution and rule of law among other things. Thinking a bit more about it one can easily ask as to what does it mean to adhere to the Constitution and rule of law? These are not simply hollow words; there must be some deeper meaning and noble intention. And that's precisely why in the highly celebrated case related to the police officers in the country – *Prakash Singh*² – the Supreme Court in 2006 made the following observation:

“11. The commitment, devotion and accountability of the police has to be only to the Rule of Law. The supervision and control has to be such that it ensures that the police serves the people without any regard, whatsoever, to the status and position of any person while investigating a crime or taking preventive measures. Its approach has to be service oriented, its role has to be defined so that in appropriate cases, where on account of acts of omission and commission of police, the Rule of Law becomes a casualty, the guilty Police Officers are brought to book and appropriate action taken without any delay.”³

The rule of law has two aspects – substantive and procedural. For instance, whereas the substantive law is codified in the Indian Penal Code, the procedural law is codified in the Code of Criminal Procedure, and the rule of law demands that the procedure must be followed in letter and in spirit, as interpreted and understood by the judicial officer hearing the matter. Now this is a tall order. Often, due to exigency, it is not possible to follow the procedure as laid down in the strictest manner and in such a situation discretion must be exercised, first by the police official investigating the matter, and thereafter by the judicial officer. As investigation is a highly specialised subject, it is extremely important that due emphasis is laid and time, personnel and other resources are made available. In the absence of any such move, the police will be made to cut a sorry figure and will always be at the

¹ ‘Scroll of Honour’ at the Sardar Vallabhbhai Patel National Police Academy (SVPNPA), Hyderabad

² *Prakash Singh and Others v Union of India and Others*; Supreme Court of India; 22 September 2006; Bench: Y.K. Sabharwal, C.K. Thakker and P.K. Balasubramanyan, JJ.; Reported in 2006 Indlaw SC 514; (2006) 8 SCC 1; 2006 (4) RCR(Criminal) 439; 2006(9) SCALE 444; [2006] Supp6 S.C.R. 473

³ *Prakash Singh* case, as reported in 2006 Indlaw SC 514, paragraph 11

receiving end. Political will is necessary, and as has been seen very often in the country, judicial intervention is required to make it possible.

It has now been almost eight years since the judgment in *Prakash Singh* case was pronounced, which not only made observations in a philosophical manner, but also laid down guidelines as to how the matters ought to have been handled in a practical manner keeping the fundamental and founding principles enshrined in the Constitution intact.

It will be enlightening to have a look at some of the key passages in this judgment.

2. PRAKASH SINGH V. UNION OF INDIA, SUPREME COURT, 2006

A number of commissions were appointed for police reforms, but the government over the years had not taken any concrete steps to implement any of those recommendations so as to make any worthwhile change in the functioning of the police in the country. Disappointed and disgusted by such a situation, some of the senior police officers and other public spirited persons joined hands and filed a public interest litigation in the Supreme Court of India in 1996. Prakash Singh, the first petitioner in this petition was a distinguished IPS officer and had worked as the senior most police officer – Director General of Police – in Assam and Uttar Pradesh, and also in the Border Security Force.

As there was deep anguish due to inaction by the government and an attitude to procrastinate the matter, the Supreme Court admitted the petition and asked the concerned parties, including the government of India to respond. After detailed arguments, the Supreme Court in 2006 laid down certain guidelines, in the absence of any statutory enactment and till the time it came into existence, regarding the functioning of the police officers in the country in particular, and regarding the police personnel in general. The Court observed:

“21. Having regard to (i) the gravity of the problem; (ii) the urgent need for preservation and strengthening of Rule of Law; (iii) pendency of even this petition for last over ten years; (iv) the fact that various Commissions and Committees have made recommendations on similar lines for introducing reforms in the police set-up in the country; and (v) total uncertainty as to when police reforms would be introduced, we think that there cannot be any further wait, and the stage has come for issue of appropriate directions for immediate compliance so as to be operative till such time a new model Police Act is prepared by the Central Government and/or the State Governments pass the requisite legislations. It may further be noted that the quality of Criminal Justice System in the country, to a large extent, depends upon the working of the police force. Thus, having regard to the larger public interest, it is absolutely necessary to issue the requisite directions.”⁴

Such has been the condition of policing in India and abysmal lack of interest in police reforms that the States – which are directly responsible for law and order under the federal scheme of things in India – did not pay attention to even a letter sent by the Union Home Minister in 1997. The Supreme Court commented on it:

“15. About one decade back, viz. on 3rd August, 1997 a letter was sent by a Union Home Minister to the State Governments revealing a distressing situation and

⁴ Prakash Singh case, as reported in 2006 Indlaw SC 514, paragraph 21

expressing the view that if the Rule of Law has to prevail, it must be cured. Despite strong expression of opinions by various Commissions, Committees and even a Home Minister of the country, the position has not improved as these opinions have remained only on paper, without any action. In fact, position has deteriorated further.”⁵

One of the most important directions was to insulate the police from any pressure, which most of the time are political in nature, so that the police could work in a professional manner. A notable excerpt mentioning insulating the police force and justifying the laying of guidelines is as follows:

“23. The preparation of a model Police Act by the Central Government and enactment of new Police Acts by State Governments providing therein for the composition of State Security Commission are things, we can only hope for the present. Similarly, we can only express our hope that all State Governments would rise to the occasion and enact a new Police Act wholly insulating the police from any pressure whatsoever thereby placing in position an important measure for securing the rights of the citizens under the Constitution for the Rule of Law, treating everyone equal and being partisan to none, which will also help in securing an efficient and better criminal justice delivery system. It is not possible or proper to leave this matter only with an expression of this hope and to await developments further. It is essential to lay down guidelines to be operative till the new legislation is enacted by the State Governments.”⁶

Some of the key recommendations by the Supreme Court were regarding separation of investigation from law and order, minimum tenure for senior police officers, creation of the State Security Commission headed by the Chief Minister in each state with the Director General of Police as a member, creation of Police Establishment Board and Police Complaints Authority for dealing with matters related to junior and middle level police officers and setting up a National Security Commission at the central level. The orders were to be complied with by 31st of December 2006.

In the last seven to eight years, it can easily be said that most of the orders might have been complied with in letter, but have not been complied with in spirit. The state of policing in the country very well exhibits this, and, unfortunately, it is also vindicated by a large number of cases regarding police reaching different High Courts and the Supreme Court. Some of the recent ones are discussed hereinafter.

3. SEPARATE INVESTIGATION FROM LAW AND ORDER

There has been a long-standing demand from the police personnel, which found reflected in a number of recommendations by the reforms committees as well as the Law Commissions that investigation must be separated from law and order for the simple reason that a lot of time and effort of the entire police force goes into maintenance of law and order and hardly any time is left for proper and serious investigation, which hampers the criminal justice system in the country, resulting in improper acquittals or innocent persons languishing in jails for a long time. The Supreme Court had categorically ordered separation of investigation from law

⁵ Prakash Singh case, as reported in 2006 Indlaw SC 514, paragraph 15

⁶ Prakash Singh case, as reported in 2006 Indlaw SC 514, paragraph 23

and order in the *Prakash Singh* case mentioned earlier. Despite such an order in 2006, there has been no clear-cut separation made.

In a very recent case - *State of Delhi v. Ashok Kumar Jain*⁷ - the Delhi High Court expressed serious concerns about the competence of the police personnel in carrying out investigation, either due to inadequate training or lack of competence to do one's duty.

The Delhi High Court made the following observations:

*“9. With utter disgust and dismay we express our utmost displeasure with regard to the manner of investigation, as was carried out by the investigating officer in this case... With the kind of investigation as has been carried out in this case, we have no hesitation in saying that this Police Officer has no basic knowledge or competence for conducting investigation in any crime... This is not a solitary case where we find the failure of the Investigating Agency to commit such serious lapses. This is primarily due to the incompetency of many such police officers who are entrusted with such a sensitive job of carrying out investigation into any crime and secondly because of lack of willingness on the part of the government to separate the investigation from the law and order, despite being directed by the Hon'ble Supreme Court many a times, right from the authoritative pronouncement in *Prakash Singh vs. Union of India* reported in (2006) 8 SCC 1; 2006 Indlaw SC 514 and various recommendations made by Law Commission of India in this regard.”⁸*

4. ACCOUNTABILITY OF ERRING POLICE OFFICIALS

There needs to be an element of accountability, if one wishes to talk about professionalism in police service. There has to be certain justification, logic, reasoning and convincing argument as to why any police officer either acted in a particular manner or made the decision not to act. Simply saying that the police officer decided not to do something without providing any justification will not serve the purpose. Also, there are certain legitimate expectations, and police officers must rise to that level, both by training and by their actions. If there is no match between the two, as unfortunately is often seen, the police officers must be held accountable and taken to task.

*“12. In many cases, the court also feels helpless where such serious lapses are committed by the investigating agencies in not carrying out its most solemn duty of conducting fair, honest, flawless and scientific investigation into any crime and the ultimate result of this is the acquittal of criminals, which increases the rate of acquittals and results in multiplication of crimes in the society. All such erring police officers who are responsible and who become cause for failure in any prosecution case on account of their sheer negligence or culpable lapses or incompetence must suffer departmental action as has been recently held by the Hon'ble Apex Court in the case of *State of Gujarat vs. Kishanbhai* reported in 2014 (1) SCALE 177; 2014 Indlaw SC 11 ... we direct the concerned Joint Commissioner of Police to initiate departmental proceedings against the Investigating Officer of this case and other erring police officials...”⁹*

⁷ *State of Delhi v Ashok Kumar Jain*; Delhi High Court; 07 February 2014; Bench: Kailash Gambhir and Sunita Gupta, JJ.; Reported in 2014 Indlaw DEL 707

⁸ *Ashok Kumar Jain* case, as reported in 2014 Indlaw DEL 707, paragraphs 9-11

⁹ *Ashok Kumar Jain* case, as reported in 2014 Indlaw DEL 707, paragraphs 12

In *State of Gujarat v Kishanbhai* case¹⁰, the Supreme Court in January 2014 – the criminal appeal was filed in 2008 – took cognizance of the high number of acquittals happening due to shoddy investigation, and passed strict orders to take action against the erring police officials. The Court made the following strongly-worded directions:

“On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability... Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers... The instant direction shall also be given effect to within 6 months... All the concerned Home Secretaries shall ensure compliance of the directions recorded above...”¹¹

There is no quarrel with whatever the Supreme Court has observed that police officials who take their work in an extremely lackadaisical manner, and therefore behave in a reckless and negligent manner must be taken to task, and penalised by the Department. However, one needs to be careful while doing this exercise because policing is not a mathematical science and often individuals in their capacity as police officials have to make decisions with whatever information is available at that point of time, and also taking into account the sensitive nature of that information and the safety of the country and its people. On many occasions, an error in judgement may be fatal for the entire country, or at least a large number of people in the country. This error in judgement may be either in terms of inaction when action is needed, or vice-versa. The yardstick by which the conduct of any police official can be evaluated is not objective in nature and hence subjectivity creeps in.

Suspicion: Subjective, Not Objective

Police officers work on the basis of suspicion which is subjective in nature and it can never be said that prior to taking any action, the concerned officer must be hundred percent sure. It is never possible, until and unless the accused has admitted, or there is presence of irrefutable evidence; but even in such a scenario suspicion can be said to be tending towards certainty, but is never certain. And, that's the role of the judicial officer to go through the fact of the matter, ascertain the facts, and make a decision. Therefore, it is a bit unfair on the part of the Supreme Court to expect that while making any decision to act or not to act, each and every police officer has to be fully sure. It strikes at the very root of policing, which is primarily based on suspicion. In case a diligent and vigilant police officer is not able to pick up the key signs, either in the conduct of a person or any other change in the related environment, there is a high possibility that there is no need to be suspicions. However, if a dull, lazy, inactive and inert officer is not able to pick up any such signs, then it's a matter of serious concern

¹⁰ *State of Gujarat v Kishanbhai etc.*; Supreme Court of India; 07 January 2014; Bench: Jagdish Singh Khehar and C. K. Prasad, JJ.; Reported in 2014 Indlaw SC 11; 2014 ALL MR (Cri) 759; JT 2014 (1) SC 508; 2014 (1) Law Herald (P&H) 1; 2014(1) SCALE 177; Cr.A. No. 1485 of 2008

¹¹ *State of Gujarat v. Kishanbhai* case, as reported in 2014 Indlaw SC 11, paragraphs 21-22

because the needle of suspicion doesn't point towards anyone on its own, but is made to point by the individual officer involved in the investigation.

Innocents: Ignominy of Criminal Prosecution

The Supreme Court also made observations regarding innocent persons being made accused in some of the cases resulting in long legal proceedings and thereby irreparable loss of not being able to live a normal life. The Court held that for this loss the entire system of administration of justice was responsible and the erring police officials must be made accountable. The relevant portions from the judgment are reproduced:

“...And if the accused was wrongfully prosecuted, his suffering is unfathomable. Here also, the investigating and prosecuting agencies are blameworthy. It is therefore necessary, not to overlook even the hardship suffered by the accused, first during the trial of the case, and then at the appellate stages. An innocent person does not deserve to suffer the turmoil of a long drawn litigation, spanning over a decade, or more... The system responsible for the administration of justice, is responsible for having deprived them of their lives, equivalent to the period of their detention. It is not untrue, that for all the wrong reasons, innocent persons are subjected to suffer the ignominy of criminal prosecution and to suffer shame and humiliation. Just like it is the bounden duty of a court to serve the cause of justice to the victim, so also, it is the bounden duty of a court to ensure that an innocent person is not subjected to the rigours of criminal prosecution.”¹²

The guilty must be punished and the innocent should not be made to suffer in an ideal scenario, however, due to a number of reasons – many genuine and some fabricated – innocent individuals are made to suffer police atrocities, and if not atrocities, the entire rigmarole is sufficient to drain any individual – emotionally, socially, financially, professionally, and in every other sense. This is a welcome step taken by the Supreme Court of India and we can really hope that the government of the day will use the Supreme Court order to enforce a number of recommendations of several committees.

Harassment and Extortion

A highly successful and very well-known doctor – plastic surgeon – in Mumbai was targeted by certain persons for extorting money and maligning his reputation. These persons had filed false complaints with the police and even when the complaints were withdrawn, the doctor was troubled by the police in the name of investigation. Let with no other option, he filed a written complaint with senior police officers against irresponsible and unprofessional conduct of the investigating officials, but no action was taken against them. Thereafter, the doctor moved the Bombay High Court against the police. In its judgement in August 2013, the Bombay High Court ordered:

“30. In the above circumstances, we are of the view that the petitioner has made out a sufficient case for interference by this court in its inherent jurisdiction and to ensure that principles of natural justice and rule of law is abided equally by the police force. We, therefore, issue a writ of mandamus directing the respondent Nos. 3 and 4 to enquire into the allegations made by the petitioner against the respondent Nos. 5, 6

¹² State of Gujarat v. Kishanbhai case, as reported in 2014 Indlaw SC 11, paragraphs 17-18

and 7 to this petition afresh. That such an enquiry should not be entrusted to the Joint Commissioner of Police Mr. Himanshu Roy but to other superior official is a direction which must follow the above discussion. Therefore, we direct that the enquiry be entrusted to a competent authority in terms of the provisions regarding regulation, control and discipline of the police force, contained in Chapter III of the Bombay Police Act, 1951. The enquiry, preferably be entrusted to an official in the level of Special Inspector General or any other officer but superior in rank to that of Joint Commissioner.”¹³

The order speaks volumes about the conduct of police officials. It is the need of the hour to penalize the erring police officials to send a strong signal to the police force that such a conduct is not acceptable and also to the public that the judiciary shall bring the erring persons to book.

5. TRAINING PROGRAMMES

The Supreme Court laid emphasis on proper training of police officials in the changing legal and social scenario. In a welfare state committed to the rule of law, there has to be proper recognition and enforcement of fundamental human rights. Gone are those days when the police can act in almost an unaccountable manner. The way technology is developing, people are becoming aware and social norms are changing, it is unacceptable that the police continues to remain in a typical age-old mindset and colonial mould. It has to change and for that proper training of officials is essential. In *State of Gujarat v. Kishanbhai*, the Court said:

“...The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course-content drawn from the above consideration. The same should also constitute course-content of refresher training programmes, for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials, should be vested in the same committee of senior officers referred to above... Judgments like the one in hand (depicting more than 10 glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course content will be reviewed by the above committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of Courts, and on the basis of experiences gained by the standing committee while examining failures, in unsuccessful prosecution of cases... We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence, when they are made liable to suffer departmental action, for their lapses.”¹⁴

It is very well understood and accepted that training at all levels of police officials is extremely important and for this purpose training modules need to be customized according to the requirements of different target groups. For senior police officials the requirements are very different from those of the junior most officers. And by the same token, the training

¹³ Dr. Vijay Chandraprakash Sharma v Joint Commissioner (Crime) and others; Bombay High Court; 06 August 2013; Bench: S. C. Dharmadhikari, and S. B. Shukre, JJ.; Reported in 2013 Indlaw MUM 972; 2013 ALL MR (Cri) 3962; paragraph 30

¹⁴ State of Gujarat v. Kishanbhai case, as reported in 2014 Indlaw SC 11, paragraph 20

needs of police personnel at a slightly lower level in the hierarchy than the officers are also very different. One size doesn't fit all. Hence, there is an urgent need to provide proper training to all the personnel at different levels, and for this purpose, in today's world, technology can be used to get the maximum out of it. But, a lot depends on the political masters who control almost everything – training budgets, training calendar, granting approval for identified personnel to register for a training program, and above all, boosting the morale or demoralising the police force. At times it is a matter of shame that concerned ministers have been either dismissive about such training requirements, or have simply paid lip service. This needs to change.

6. POLITICAL OBDURACY AND HIGH-HANDEDNESS

No doubt in a democratic country it is the elected representatives of the people who form the government, and thus make decisions for and on behalf of the people of the State, in different states, or the entire country, at the Centre. But these powers to any of these elected representatives are not absolute; these powers are to be exercised within the constitutional framework, as interpreted by the judiciary. On numerous occasions, the political masters, acting as the elected representatives of the people, make decisions in a myopic manner, which proves beyond doubt their obduracy in doing whatever they think is right, irrespective of the constitutional limitations. Strong headed politicians create numerous problems for police officers by blurring the distinction between an official order and personal order. Somehow, the feeling sets in the political bosses that the police personnel would align themselves to their personal whims and fancies, for which they would be rewarded. The other side is also true – in case they refuse to align, they would be penalised by the political bosses. Of late, one of the chief ministers in the country – Mamata Banerjee in West Bengal – refused in the first instance to obey the orders of the constitutional authority, the election commission. Five of the superintendents of police, among other civil servants, known to be close to Mamata, were transferred by the election commission. Mamata refused to comply. It was reported in the Indian express:

“Hours after the Election Commission (EC) ordered the transfer of five superintendents of police and three district magistrates and additional district magistrates on Monday, West Bengal Chief Minister Mamata Banerjee took a defiant stand, saying she would “not remove a single officer” and was ready to face the consequences. “I will not remove a single officer. Let the EC come and arrest me. I throw this challenge to the EC. I will put in my resignation... I want to see how the EC takes charge of the state’s law and order...”¹⁵

Now this is not the way the Chief Minister of any state is expected to behave. Standing for the police personnel is one thing, however, protectionism to this extent is undesirable, avoidable and unconstitutional. Supporting the police force in a state is expected from the government. Making it blatantly a case of nexus between the political master and the police officer is a sorry state of affairs.

¹⁵ Mamata Banerjee defies Election Commission, refuses to transfer eight SPs and DMs; The Indian Express; April 8, 2014; <http://indianexpress.com/article/india/politics/mamata-defies-ec-refuses-to-transfer-eight-sps-and-dms-2/>; last accessed April 11, 2014

Verbal Orders

Political Masters are used to giving verbal orders to civil servants, including police officers, and many a time, unsurprisingly, these orders are clear deviations from the well-established norms of the rule of law. It is left to the civil servant to justify his actions in case a question is raised later. In the absence of any written order, the entire responsibility and accountability is of the civil servant. In a close-working relationship between the political master and the civil servant, it is often very important to execute orders at lightning speed, especially for the maintenance of law and order. Thus, it is extremely difficult to say that for each and every action, a civil servant has to wait for the written order from the political master. If such a practice is enforced in a routine manner, it would not be possible to administer a number of things which require immediate attention and action. However, a line has to be drawn between orders for immediate action and others. Even for the orders in the former category, the written permission needs to be noted down in the file to complete the paperwork and have something in writing on record. The Supreme Court in *TSR Subramanian* case¹⁶ observed:

“...We notice that much of the deterioration of the standards of probity and accountability with the civil servants is due to the political influence or persons purporting to represent those who are in authority... Rule 3(3)(iii) of the All India Service Rules specifically requires that all orders from superior officers shall ordinarily be in writing. Where in exceptional circumstances, action has to be taken on the basis of oral directions, it is mandatory for the officer superior to confirm the same in writing... Recording of instructions, directions is, therefore, necessary for fixing responsibility and ensuring accountability in the functioning of civil servants and to uphold institutional integrity.”¹⁷

The menace of verbal orders can come to an end only when the civil servants insist on written orders from the political bosses. Till the time the civil servants are willing, or rather overzealous, to obey the orders, and at times work with the understanding – your wish is my command – things will not change. Court orders can make the position clear of the ultimate interpretation by the judiciary, however, implementation at the ground level has to be done by individual officials, and that will make a difference.

Right to Information

In a democratic country, public interest is paramount and voice of the people is what should really matter. Formation of an opinion – which is at the foundation of any democratic system – requires information, and that is why it is essential that the dialogue between different players and the government must be recorded properly so that at any point of time, the people at large can dig out the deliberations and find out on their own as to what happened at any particular time. For this to happen, it is extremely important that the people in the country have the right to information, which has already been guaranteed, but it can very easily be negated by not recording the discussions and acting on verbal orders. Such a practice is against the canons of the rule of law. It was also observed by the Supreme Court in *TSR Subramanian* case that verbal orders should be converted to written orders so as to make it

¹⁶ T. S. R. Subramanian and others v Union of India and others; Supreme Court of India; 31 October 2013; Bench: K. S. Radhakrishnan and Pinaki Chandra Ghose, JJ.; Reported in 2013 Indlaw SC 722; AIR 2014 SC 263; 2014(1) ALL MR 480; 2013 (6) AWC 6018; 2013 (6) KarLJ 513; 2013 (8) MLJ 201; 2013(13) SCALE 340; W.P. (Civil) No. 82 of 2011 with W.P. (Civil) No. 234 of 2011

¹⁷ T. S. R. Subramanian case, as reported in 2013 Indlaw SC 722, paragraphs 32-33

possible for the citizens of this country to know as to what, why and how anything is being done:

“By acting on oral directions, not recording the same, the rights guaranteed to the citizens under the Right to Information Act, could be defeated. The practice of giving oral directions/instructions by the administrative superiors, political executive etc. would defeat the object and purpose of RTI Act and would give room for favoritism and corruption.”¹⁸

Using Political linkages

Ironically, it's not always that the police officials are troubled by the control the political masters have on them, at times, there are individuals who would like to exploit the closeness with any of his political leaders and thereby misuse it in their professional career, either for a better posting or not to be transferred from a particular posting. In a very interesting case, which was decided by the Supreme Court recently, the concerned police official blatantly produced a letter written by a Cabinet minister to get an administrative matter proceed in a particular manner. It could have very well not been reported at the individual, not conducted himself arrogantly and haughtily. Often, being discreet helps while using such letters, but this gentleman had decided – understandably, due to his proximity to the minister – to be flashy about it, and became audacious enough to shout in the High Court and later make false statements in the Supreme Court. He had to ultimately pay for his indiscreet behaviour when these two courts acted against him under the law of contempt of court.

*“...The appellant wants to create an impression that he is fighting for the cause of police officers of Bihar, but a careful reading of his application makes it clear that he is espousing his own cause... We have extensively referred to the contents of the impugned order of the High Court with a purpose. It reflects the appellant's rude behaviour. The intemperate language used by the appellant while addressing learned Judges of the High Court is most objectionable and contumacious.... Another very disturbing feature of this case is the manner in which the appellant flourished in the High Court a Cabinet Minister's letter addressed to the Chief Minister recommending his case. We do not want to comment on the propriety of the Cabinet Minister in addressing such a letter to the Chief Minister in this case, though this Court has in *Prakash Singh and ors. v. Union of India and ors.* (2006) 8 SCC 1 2006 Indlaw SC 514 sought to insulate the police from political interference. In any case, the appellant should not have tried to overawe the High Court by producing the said letter. We deprecate this conduct... We were also taken aback when we were informed that the appellant is the President of the Bihar Police Seva Sangh. We are, however, informed that membership of such association is permitted in the State of Bihar even to the police officers. However, the fact remains that the said association is not registered.”¹⁹*

¹⁸ T. S. R. Subramanian case, as reported in 2013 Indlaw SC 722, paragraphs 34

¹⁹ Ram Niranjan Roy v State of Bihar and others; Supreme Court of India; 31 March 2014; Bench: Ranjana Prakash Desai and Madan B. Lokur, JJ.; Reported in 2014 Indlaw SC 208; paragraphs 5, 9 and 18

Transfers and Postings: Judicial Intervention

In *Prakash Singh* case, the Supreme Court had given directions to the Central Government, State Governments and Union Territories for compliance till framing of the appropriate legislations. One of the directions was for the creation of a Police Establishment Board.

“(5) There shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. The Establishment Board shall be a departmental body comprising the Director General of Police and four other senior officers of the Department.”²⁰

In the state of Uttar Pradesh, and the situation in all probability will not be very different in other states, despite the creation of such a Board, matters often reach the High Court for adjudication even on issues which are clearly settled.

Often officials posted at the capital cities and headquarters get a chance of interacting with political masters and very senior officers and this opportunity may be favourable for them personally. But, it cuts both ways. As familiarity breeds contempt, these officials may, at times, find themselves at the receiving end for something which may be either work-related or unrelated to work. This is not at all new or going to end with creation of any Boards. Often, in the legal environment provided by the Constitution, a person decides to move the court, whether for a genuine grievance to get redressal, or even for a frivolous matter, simply to try his luck at the legal gamble, which he treats the judicial proceeding as. It is for the Bench hearing the matter to exercise judicial discretion and decide.

In *Ajit Pratap Singh* case,²¹ one of the police officials was transferred from Lucknow to Kheri. Apparently, he was not happy to be shifted from the capital city and sought judicial intervention on the pretext of certain personal and family compulsions. The Allahabad High Court stated the settled law on this issue:

“4. The general principles in respect to the transfer an employees that can be deducted from various judicial pronouncements and the statutory provisions are as follows: (i) that an employee cannot be transferred out of his cadre or establishment against his wish; (ii) that no transfer can be justified merely because the pay is not affected, when the appointment is made to a specified post or a specified group of posts; (iii) that the Government employee cannot be asked to perform duties which were never expected of him at the time of recruitment; and (iv) that the expectation of future promotion cannot be wiped off by moving a Government employee around.”²²

On the powers of the police officials vis-à-vis the government, in the instant case the Court observed:

“3... the impugned order of transfer has been passed after due approval of the Regional Police Establishment Board, Lucknow and also that no Government employee has any right to be posted at any particular place forever, because transfer

²⁰ *Prakash Singh* case, as reported in 2006 Indlaw SC 514, paragraph 26; direction #5 by the Supreme Court

²¹ *Ajit Pratap Singh v State of Uttar Pradesh Through Principal Secretary Department of Home Lucknow and others*; Allahabad High Court; 09 July 2013; Bench: Anil Kumar, J.; Reported in 2013 Indlaw ALL 1414

²² *Ajit Pratap Singh* case, as reported in 2013 Indlaw ALL 1414, paragraph 4

*is not only an incidence of service, but also a condition of service, and as such it is necessary in public interest and in the interest of efficiency in public administration. There is no hostile discrimination in transfer from one post to another when the posts are of equal status and responsibility. The transfer in posts, which are in the same grade or cadre or considered equivalent can be affected on administrative exigencies... 6. The law is well settled that transfer being exigency of service can be effected by the employer concerned in accordance with administrative exigency, in the interest of administration and public interest at any point of time and that cannot be monitored and guided by this Court unless it may be shown that transfer order is vitiated on account of the contravention of the statute, or lacks jurisdiction or mala fide.*²³

Moving the court on matters clearly settled and have gone through the procedure established by law, particularly after the creation of Regional Establishment Boards, must be discouraged and even penalized. It is taking the judicial process for granted and abusing the rights guaranteed by the Constitution of India. This attitude of a sizeable number of police officials and other government officials creates problems. No one is denying that in cases of bias, misuse of authority and arbitrariness, judicial intervention is needed as per the power of judicial review of administrative decisions, however, caution and discretion need to be exercised.

7. ROLE OF COURTS: EXPANSION AND RESTRAINT

A Public Interest Litigation, PIL, *Voices for Freedom*²⁴ was filed in the Punjab and Haryana High Court challenging the appointment of the Director General of Police, DGP, the highest police officer in any state. The High Court followed a cautious approach and observed:

*“26. Likewise, in Ashok Kumar Pandey's case 2003 Indlaw SC 1010 (supra), the Supreme Court emphasized that the Courts have to be watchful that no one's character is besmirched and that justifiable executive actions are not assailed for oblique motives. The Court has to be extremely careful that it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature... 27. However, an exception to a limited extent is also carved out, namely, quo-warranto in service matters in the form of Public Interest Litigation, can be entertained by the Courts. Therefore, no doubt, the present petition involves the service matter; the limited scrutiny in the nature of quo-warranto is still permissible...”*²⁵

On merits the High Court upheld the appointment in the following words:

“...Once we find that there is no fault in the decision making process; the respondent No.3 is legally competent to hold the post; he was found eligible for the same; and that he was ranked most meritorious in competitive merit, the present petition of quo-warranto and that too in the nature of Public Interest Litigation, where the scope of enquiry is limited, it appears difficult for this Court to interfere with the decision of

²³ Ajit Pratap Singh case, as reported in 2013 Indlaw ALL 1414, paragraphs 3 and 6

²⁴ *Voices for Freedom*, through its Director v Union of India and others; Punjab And Haryana High Court; 11 April 2013; Bench: A.K. Sikri and Rakesh Kumar Jain; Reported in 2013 Indlaw PNH 787; 2013 (2) Law Herald (P&H) 1106

²⁵ *Voices for Freedom* case, as reported in 2013 Indlaw PNH 787, paragraphs 26 and 27

the Government in appointing the respondent No.3 as the Director General of Police... We thus dismiss the present petition."²⁶

The High Court exercised restraint regarding the issues of moral turpitude and character assassination of the candidate for the highest position in the State, however, at the same time, the court did not eschew from going into the merits of the case regarding the candidature and the criteria for selection. It has been a very balanced approach taken by the High Court, and in the present scenario with awareness increasing day by day, it is necessary that the courts make decisions in public interest in a detached manner, without being influenced – directly or indirectly – by the sensational value of any particular matter. Hardly any appointment at the topmost position in the State is without political blessings, and this makes the role of courts critical in evaluating such appointments in a clinical manner on the basis of merits only. It is a welcome judgment by the Punjab and Haryana High Court.

Police Complaints Authority: Role of Courts

In *Gurminder Singh* case ²⁷, a petition was filed in the Punjab and Haryana High Court with the allegation that one of the police inspectors had misused the powers in getting a house vacated. Interestingly, prior to this petition a complaint was filed with the Police Complaints Authority, constituted as per the directions of the Supreme Court of India in *Prakash Singh* case. The court observed the constitution of the Authority in the following words:

*"...The petition calls in question the impugned orders passed by the Police Complaints Authority, U.T. Chandigarh, (for short the "Authority") constituted by notification dated 23.6.2010 in compliance of the directives issued by the Supreme Court in Prakash Singh v. Union of India, (2006) 8 SCC 1 2006 Indlaw SC 514 which decision kick started the much needed police reforms in the country with a mandate to constitute in each State a Police Complaints Authority headed by a retired Judge of the High Court to entertain and opine on complaints presented against police personnel to hold them accountable to human rights violations and serious misconduct committed by them in the discharge of their official duties."*²⁸

The High Court dismissed the petition for the reason that it was not within its purview.

*"No ground is made out warranting intervention in extra ordinary writ jurisdiction or to call upon this Court to answer the prayers by issuing a writ in the nature of a mandamus or a writ of certiorari going to record... The petition is, for these reasons, dismissed with the liberty to the petitioner to avail alternative remedies in accordance with law."*²⁹

Insulating Civil Servants from Political Control: Civil Service Board

Well-intentioned retired civil servants, led by TSR Subramaniam, former Cabinet Secretary, had filed a petition in the Supreme Court of India praying for directions to minimise political interference in the working of civil servants. There was a demand to constitute an

²⁶ *Voices for Freedom* case, as reported in 2013 Indlaw PNH 787, paragraphs 42 and 43

²⁷ *Gurminder Singh v Union Territory Chandigarh and others*; Punjab And Haryana High Court; 01 May 2013; Bench: Rajiv Narain Raina, J.; Reported in 2013 Indlaw PNH 4110

²⁸ *Gurminder Singh* case, as reported in 2013 PNH 4110, paragraph 1

²⁹ *Gurminder Singh* case, as reported in 2013 PNH 4110, paragraphs 6 and 7

independent board – Civil Service Board – for transfers and postings of civil servants, on the lines as directed in *Prakash Singh case* for police officers. The prayer was to allow such a board to be constituted and consisting of retired civil servants, an idea the Supreme Court was not at all comfortable with. The Court favoured an enacted law for this purpose. It observed:

“We find it, however, difficult to give a positive direction to constitute an independent Civil Service Board (CSB) ... Petitioners placed considerable reliance on the judgment of this Court in Prakash Singh and Others v. Union of India (2006) 8 SCC 1 2006 Indlaw SC 514 and urged that similar directions be given to insulate, to at least some extent, the civil servants from political/executive interference. Retired persons, howsoever eminent they may be, shall not guide the transfers and postings, disciplinary action, suspension, reinstatement, etc. of civil servants, unless supported by law enacted by the Parliament or the State Legislature... CSB, consisting of high ranking in service officers, who are experts in their respective fields, with the Cabinet Secretary at the Centre and Chief Secretary at the State level, could be a better alternative... We, therefore, direct the Centre, State Governments and the Union Territories to constitute such Boards with high ranking serving officers, who are specialists in their respective fields, within a period of three months, if not already constituted, till the Parliament brings in a proper legislation in setting up CSB.”³⁰

The Supreme Court refrained from constituting such a board on its own, however, gave directions to the government for constituting such boards.

8. CONCLUSION

Commitment of the police to the Constitution and the rule of law must be understood as per the changing times and aspirations of the people of India. The challenges posed by the fast changing technology have to be faced by the police with the help of better training in the subject matter, along with a good understanding of the evolving social norms. Political environment in the country has been in a state of turmoil in the last few years, however, professionalism demands that the police officials need to function in a detached manner, without bothering as to who the political executive is. Intervention of the judiciary in the day-to-day working, particularly administrative matters, is undesirable and very often the courts have restrained themselves from such intervention. On the policy matters, the courts have to review the decisions made and executed on the anvil of well-settled constitutional norms for the rule of law. Public interest in a democratic country like India can be served best by the police personnel by keeping the welfare of the people in mind as the foremost duty.

³⁰ T. S. R. Subramanian case, as reported in 2013 Indlaw SC 722, paragraphs 27-29