



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : PIL 9/2022

1:Gamken Bam

VERSUS

1:THE STATE OF AP and 3 Ors.
Represented through its Chief Secretary,
Govt. of Arunachal Pradesh, Itanagar

2:The Secretary (Home)
Govt. of Arunachal Pradesh
Itanagar.

3:The Secretary
Law and Justice
Govt. of Arunachal Pradesh
Itanagar

4:The Director General of Police
Arunachal Pradesh
Police Headquarter
Itanaga

Advocate for the Petitioner : T T Tara

Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MR. JUSTICE A M BUJOR BARUA
HONBLE MR. JUSTICE DEVASHIS BARUAH

Date : 23-08-2022

JUDGMENT & ORDER (ORAL)

(A.M. Bujor Barua, J)

Heard Mr. T.T Tara, learned counsel for the petitioner and Mr. K. Ete, learned Advocate General in-charge for the State of Arunachal Pradesh.

2. The petitioner, who is a practicing Advocate in this Court, has instituted this public interest litigation seeking for a direction that the investigation wing in the Arunachal Pradesh police be separated so that the police personnel in the investigation wing are entrusted only with the duties of investigating criminal offences and are not made a part of the general duties of the police force. The petitioner refers to the pronouncement of the Hon'ble Supreme Court of India in Prakash Singh and others –vs- Union of India and others, reported in (2006) 8 SCC 1 to substantiate that there is also a requirement by the order of the Supreme Court to have the investigation wing within the police force separated from other general duties.

3. The petitioner states that in view of several instances of inadequate investigation in police cases in respect of heinous crimes in the State of Arunachal Pradesh which ultimately had resulted in acquittal, there is a requirement of separating the investigation wing. The petitioner also states that in the State of Arunachal Pradesh, there are several instances of excesses being committed by the police force in dealing with the public, some of which are also referred in the press and because of such excesses, there is also a requirement of establishing an operating a police complaint authority, which again is also one of the directions of the Hon'ble Supreme Court in Prakash Singh (supra). The petitioner also refers to several instances that had arisen in dealing with the criminal appeals that in respect of many heinous offences, because of certain infirmities in the investigation stage, the accused persons therein were given the benefit of acquittal. In many such instances, had the investigation being done in the proper manner and such glaring lacunas would not have been there, perhaps the same appeal might have resulted in a conviction of the accused concerned.

4. Although the said statement of the petitioner is made in a broad based manner, but judicial notice can also be taken that on many occasions the accused persons were acquitted only for the reason that certain basic requirements during the investigation was not done and had it been done in a proper

manner, perhaps the accused concerned could have been effectively linked to the offence that was committed which would have resulted in a more possibility of the accused person being convicted.

5. No doubt the criminal law jurisprudence provides that unless it is proved beyond all reasonable doubt that the accused concerned was involved in the offence alleged, an order of conviction cannot be passed upon such accused person. But at the same time, a proper investigation done in a more scientific method by taking note of the requirements of the law relating to the offence for which the investigation is made, would make it more conducive at the trial to prove it beyond reasonable doubt that the accused alone had committed the offence.

6. From such point, we are of the view that the issue raised in this public interest litigation petition requires a serious consideration in the public interest. The way it would be a travesty of justice if an accused is convicted without there being materials on record to prove it beyond all reasonable doubt that the accused alone had committed the offence alleged, it would equally be a travesty of justice if an accused is required to be acquitted merely because the materials which could have been obtained with a more correct investigation could not be obtained to be placed in the trial which would result in the accused being acquitted for the reason of the prosecution being unable to prove it beyond reasonable doubt that it is the accused who had committed the offence.

7. The said aspect of the matter was given a consideration by the Hon'ble Supreme Court in Prakash Singh (supra). In paragraph 22 of the pronouncement of the Hon'ble Supreme Court in Prakash Singh (supra), it had been taken note of that for a separation of investigation work from the law and order, even the Law Commission of India in its 154th report had recommended such separation to ensure speedier investigation, better expertise and improved rapport with the people.

8. Although in the 154th report of the Law Commission reference had also been made that it may not be compartmentalized in the watertight manner, but emphasis had also been given for a separation of the investigation and the reasons thereof would be for speedier investigation, better expertise and improved rapport with the people. Modern day investigation is a specialized job where the investigator is required to have a thorough knowledge of the law relating to the offence to which he is investigating so that the investigator at the stage of investigation itself is aware as to what kind of material is to be looked for or what kind of further materials are to be collected for the purpose. Different criminal offences under different Acts requires the investigation to be done in its given particular manner, so that the materials required under the law to establish the offence against the accused can be collected at the investigation stage. The requirement of an investigation would therefore also require knowledge of law relating to the offence as well as the foresight on the part of the investigation as to what material to look for in respect of the particular investigation, which again would depend on the law related to the

particular offence. It cannot be said that it would be incorrect to accept that certain personnel within the police force would be more conducive to have a deeper insight on the requirement of how to conduct an investigation in comparison with others.

9. From such point of view also if the investigation is left to be done by any of the available police personnel, the average output in the quality of an investigation would definitely be lower than what it would be if the investigation is confined to the specialized personnel within the police force who would be more conducive for conducting an investigation.

10. In paragraph 31 of the pronouncement of the Hon'ble Supreme Court in Prakash Singh (supra), certain directions were issued to the Central Government, State Governments and Union Territories for compliance till framing of appropriate Legislation in the matter of functioning of the police force, which are extracted as below:-

“31. With the assistance of learned counsel for the parties, we have perused the various reports. In discharge of our constitutional duties and obligations having regard to the aforementioned position, we issue the following directions to the Central Government, State Governments and Union Territories for compliance till framing of the appropriate legislations:

State Security Commission

(1) The State Governments are directed to constitute a State Security Commission in every State to ensure that the State Government does not exercise unwarranted influence or pressure on the State Police and for laying down the broad policy guidelines so that the State Police always acts according to the laws of the land and the Constitution of the country. This watchdog body shall be headed by the Chief Minister or Home Minister as Chairman and have the DGP of the State as its ex-officio Secretary. The other members of the Commission shall be chosen in such a manner that it is able to function independent of Government control. For this purpose, the State may choose any of the models recommended by the National Human Rights Commission, the Ribeiro Committee or the Sorabjee Committee, which are as under:

NHRC	Ribeiro Committee	Sorabjee Committee
1. Chief Minister/HM as Chairman.	1. Minister i/c Police as Chairman.	1. Minister i/c Police (ex-officio Chairperson).
2. LokAyukta or, in his absence, a retired judge of High Court to be nominated by the Chief Justice or a Member of the State Human Rights Commission.	2. Leader of Opposition.	2. Leader of Opposition.
3. A sitting or retired judge nominated by the Chief Justice of the High Court.	3. Judge, sitting or retired, nominated by the Chief Justice of the High Court.	3. Chief Secretary.
4. Chief Secretary.	4. Chief Secretary.	4. DGP (ex-officio Secretary).
5. Leader of Opposition in the Lower House.	5. Three non-political citizens	5. Five independent

	<i>of proven merit and integrity.</i>	<i>Members.</i>
<i>6. DGP as ex-officio Secretary.</i>	<i>6.DG Police as Secretary.</i>	

The recommendations of this Commission shall be binding on the State Government.

The functions of the State Security Commission would include laying down the broad policies and giving directions for the performance of the preventive tasks and service-oriented functions of the police, evaluation of the performance of the State Police and preparing a report thereon for being placed before the State Legislature.

Selection and minimum tenure of DGP

(2) The Director General of Police of the State shall be selected by the State Government from amongst the three seniormost officers of the Department who have been empanelled for promotion to that rank by the Union Public Service Commission on the basis of their length of service, very good record and range of experience for heading the police force. And, once he has been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation. The DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission consequent upon any action taken against him under the All India Services (Discipline and Appeal) Rules or following his conviction in a court of law in a criminal offence or in a case of corruption, or if he is otherwise incapacitated from discharging his duties.

Minimum tenure of IG of police and other officers

(3) Police officers on operational duties in the field like the Inspector General of Police in-charge Zone, Deputy Inspector General of Police in-charge Range, Superintendent of Police in-charge District and Station House Officer in-charge of a Police Station shall also have a prescribed minimum tenure of two years unless it is found necessary to remove them prematurely following disciplinary proceedings against them or their conviction in a criminal offence or in a case of corruption or if the incumbent is otherwise incapacitated from discharging his responsibilities. This would be subject to promotion and retirement of the officer.

Separation of investigation

(4) The investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people. It must, however, be ensured that there is full coordination between the two wings. The separation, to start with, may be effected in towns/urban areas which have a population of ten lakhs or more, and gradually extended to smaller towns/urban areas also.

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. The State Government may interfere with the decision of the Board in exceptional cases only after recording its reasons

for doing so. The Board shall also be authorised to make appropriate recommendations to the State Government regarding the postings and transfers of officers of and above the rank of Superintendent of Police, and the Government is expected to give due weight to these recommendations and shall normally accept it. It shall also function as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotions/transfers/disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State.

Police Complaints Authority

(6) There shall be a Police Complaints Authority at the district level to look into complaints against police officers of and up to the rank of Deputy Superintendent of Police. Similarly, there should be another Police Complaints Authority at the State level to look into complaints against officers of the rank of Superintendent of Police and above. The district-level Authority may be headed by a retired District Judge while the State-level Authority may be headed by a retired Judge of the High Court/Supreme Court. The head of the State-level Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice; the head of the district-level Complaints Authority may also be chosen out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him. These Authorities may be assisted by three to five members depending upon the volume of complaints in different States/districts, and they shall be selected by the State Government from a panel prepared by the State Human Rights Commission/LokAyukta/State Public Service Commission. The panel may include members from amongst retired civil servants, police officers or officers from any other department, or from the civil society. They would work whole time for the Authority and would have to be suitably remunerated for the services rendered by them. The Authority may also need the services of regular staff to conduct field inquiries. For this purpose, they may utilise the services of retired investigators from the CID, Intelligence, Vigilance or any other organisation. The State-level Complaints Authority would take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody. The district-level Complaints Authority would, apart from the above cases, may also inquire into allegations of extortion, land/house grabbing or any incident involving serious abuse of authority. The recommendations of the Complaints Authority, both at the district and State-levels, for any action, departmental or criminal, against a delinquent police officer shall be binding on the authority concerned.

National Security Commission

(7) The Central Government shall also set up a National Security Commission at the Union level to prepare a panel for being placed before the appropriate appointing authority, for selection and placement of Chiefs of the Central Police Organisations (CPOs), who should also be given a minimum tenure of two years. The Commission would also review from time to time measures to upgrade the effectiveness of these forces, improve the service conditions of its personnel, ensure that there is proper coordination between them and that the forces are generally utilised for the purposes they were raised and make recommendations in that behalf. The National Security Commission could be headed by the Union Home Minister and comprise heads of CPOs and a couple of security experts as members with the Union Home Secretary as its Secretary.

The aforesaid directions shall be complied with by the Central Government, State Governments or Union Territories, as the case may be, on or before 31-12-2006 so that the bodies aforesaid become operational on the onset of the new year. The Cabinet Secretary, Government of India and the Chief Secretaries of State Governments/Union Territories are directed to file affidavits of compliance by 3-1-2007.”

11. In sub paragraph(4) of paragraph 31 of the pronouncement of the Hon’ble Supreme Court in Prakash Singh (supra), it has been provided that the investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people. But at the same time, it was provided that it must be ensured that there is coordination between the two wings. It was also provided that the separation, to start with, may be effected in town/urban areas which have a population of ten lakhs or more, and gradually extend to smaller towns/urban areas also.

12. In sub paragraph (5) of paragraph 31, it was further provided that 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. The State Government may interfere with the decision of the Board in exceptional cases only after recording its reasons for doing so and the Board shall also be authorized to make appropriate recommendations to the State Government regarding the postings and transfers of officers above the rank of Superintendent of Police, and the Government is expected to give due weight to these recommendations and shall normally accept it.

13. Having taken note of paragraph 31 in Prakash Singh (supra), it is noticed that there is a requirement provided by the Hon’ble Supreme Court for separation of the investigating wing within the police force, so that the heinous offences are investigated by such officials who would be included in the investigating wing. Sub paragraph 6 of paragraph 31 of the pronouncement of the Hon’ble Supreme Court in Prakash Singh (supra) also provides for establishment of a Police Complaints Authority at the district level to look into complaints against police officers. The provision further refers to establishment of a State Level Complaint Authority to be chosen by the State Government out of a panel of names proposed by the Hon’ble Chief Justice of the High Court concerned to head the State Level Complaint Authority.

14. The judgment in Prakash Singh (supra) was rendered in the year 2006, but it is noticed that in the State of Arunachal Pradesh the requirement of the said judgment of operating a separate investigation wing and making the police complaint authority operationalized is yet to take place.

15. We have been told that in the State of Arunachal Pradesh, there is no Police Complaint Authority and, in the circumstance, considering the necessity of the same, this public interest litigation petition also includes a prayer for a direction to the respondent authorities to constitute a Police Complaint Authority.

16. We have also taken note of the affidavit in opposition filed by the respondent No. 4, who is a Deputy Superintendent of Police in the office of the Director General of Police, Arunachal Pradesh. In paragraph 5 of the said affidavit, it is stated as extracted:-

“5. That with regard to the statements made in Paragraph-9 of the PIL, the answering respondent begs to state that the Govt. of Arunachal Pradesh, Itanagar vide notification No. HMB(A)/23/06(Pt-V) dated 18/12/2006 constituted complaints authorities and also separated the investigating police from Law and Order police vide notification No. HMB(A)-23/06(Pt-III) dated 27.02.2007.”

17. A perusal of the averments made in paragraph 5 of the affidavit in opposition makes it discernible that by a notification No. HMB(A)/23/06(pt-V) dated 18/12/2006, a Complaint Authority was constituted and there was also a provision for separating the investigating police from the law and order police as per notification No. HMB(A)-23/06(Pt-III) dated 27.02.2007. The notification dated 27.02.2007 apparently appears to be in pursuance to the directions of the Hon'ble Supreme Court in Prakash Singh (supra) and it provides that the Governor of Arunachal Pradesh was pleased to decide for separation of investigating police from law and order police in Arunachal Pradesh police department.

18. No further material is made available that the said decision of the Governor of Arunachal Pradesh had been put into its implementation or that the separation of the investigating wing within the police force is effectively being pursued with. The other notification dated 18.12.2006 which again provides that in compliance of the direction of the Hon'ble Supreme Court in Prakash Singh (supra), the Governor of Arunachal Pradesh is pleased to constitute Police Complaint Authority at district level in Arunachal Pradesh to look into the complaints against the police officers. But again we have been told that apart from providing for the same in the two notifications, nothing further had been done and no such Police Complaint Authority is effectively functioning in the State of Arunachal Pradesh at present.

19. Mr. T.T Tara, learned counsel for the petitioner at this stage makes a statement that although the Police Complaint Authority had been constituted at the district level, but the same is being operated through the police department itself whereas the requirement of the law as per the pronouncement of the Hon'ble Supreme Court in Prakash Singh (supra) is that such authority should be made functional through a retired District Judge.

20. It is taken note that the notification dated 18.12.2006 itself provides that the Police Complaint Authority would be made functional through a retired District Judge. Although the two notifications dated 18.12.2006 for constitution of Police Complaint Authority and 27.02.2007 for separating the investigating wing of the police force were issued by the Government of Arunachal Pradesh, but no further effective steps have been taken to implement the requirements of the two notifications and the notifications appear merely to be repeating the wordings in the pronouncement of the Hon'ble Supreme Court in Prakash Singh (supra) rather than making it an effective platform for implementing the requirements of the said judgment.

21. Considering the matter in its entirety, we are of the view that the public interest in respect of the State of Arunachal Pradesh overwhelmingly requires that immediate effective steps be taken to separate the investigating wing within the police force in the State of Arunachal Pradesh. We can take note that within the personnel of the police force in the State of Arunachal Pradesh, there would be several police personnel who may have the required qualifications as well as more perception towards the requirement of conducting an investigation.

22. Accordingly, we direct the Director General of Police, Arunachal Pradesh to conduct a thorough exercise and identify such police personnel within the police force who according to their experience, perception and qualification would be suitable for the purpose of carrying out the duties of an investigating officer. The number of such personnel to be carved out from the regular police force may be suitably determined by the Director General of Police depending upon the volume of criminal cases to be investigated in the State as a whole and also in respect of the individual police stations. If the individual police stations have higher load of criminal investigation to be made, more than one investigating officer can be considered to be posted in such police stations and in respect of other police stations where the volume of criminal investigation to be made would be correspondingly much lower, it can also be considered as to whether one investigating officer can cover more than one police station, which again would depend on the geographical location and other logistics involved between two such police stations.

23. Accordingly, the Director General of Police, Arunachal Pradesh is directed to provide the Court with a list of such persons from the police force who would be suitable for being deployed in the investigating wing for the above purpose on the next returnable date.

24. After the list of the police personnel suitable for investigation is provided to the Court, further steps should be taken to impart appropriate training to such personnel on the intricacies and requirements of conducting an investigation and for the purpose take up necessary administrative measures for doing the needful.

25. As regards the establishment of Police Complaint Authority, the notification dated 18.12.2006 be carried forward and be brought to its logical end and for the purpose a direction is issued to the Chief Secretary to the Government of Arunachal Pradesh to carry forward and bring the requirement of the notification dated 18.12.2006 to its logical end and ensure that the Police Complaint Authority both at the State Level and at the District Level are being made operational and functional through the appropriate authorities qualified for the purpose.
26. The requirement of making the Police Complaint Authority operational and functional be done by the Chief Secretary within a period of 06 (six) months from today.
27. List the matter after 06(six) weeks for further consideration.
28. On the next date, the Director General of Police, Arunachal Pradesh to make available the list of proposed investigating officers and the Chief Secretary to submit a status report as regards the implementation and making operational and functional of the Police Complaint Authority.

JUDGE

JUDGE

Comparing Assistant