

Chief Justice's Court

Case :- CRIMINAL MISC. WRIT PETITION No. - 26085 of 2019

Petitioner :- Mohd. Aman Khan

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Maha Prasad

Counsel for Respondent :- A.S.G.I.,Alok Ranjan Mishra,G.A.,Shashank Shekhar Singh

Hon'ble Govind Mathur,Chief Justice

Hon'ble Vivek Varma, J.

Heard Sri Colin Gonsalves, learned Senior Advocate assisted by Sri Fazal Abdali, Advocate, Sri A.Q. Zaidi, Advocate and Sri Mohd. Danish, Advocate appearing on behalf of the petitioner and Sri Mohd. Aman Khan, petitioner in person, Sri Manish Goyal, learned Additional Advocate General appearing on behalf of the State and Sri Ranjan Mishra, learned counsel appearing on behalf of Union of India-respondent no.4.

The petitioner, a practicing Advocate of this Court has preferred this petition for writ to have following reliefs:-

“(i) For a writ of mandamus or any other writ, order, directing the Respondents to set up a court-monitored committee headed by a retired High Court or Supreme Court Judge that shall conduct judicial inquiry into the acts of violence and arbitrary detentions by the State Police and Paramilitary Forces in a time-bound manner;

(ii) For a writ of mandamus or any other writ, order, directing the Respondents to declare on their website the full list with names of students and residents of Aligarh Muslim University that were detained by State Police and paramilitary forces;

(iii) For a writ of mandamus or any other writ, order, directing the Respondents to provide detained persons access

to their family members and to legal counsel;

(iv) For a writ of mandamus or any other writ, order, directing the Respondents to release all the students and residents so detained;

(v) For a writ of mandamus or any other writ, order, directing the Respondents to provide instant and quality medical care to students and staff detained and other injured during the violence;

(vi) For a writ of mandamus or any other writ, order, directing the Respondents to immediately cease the violence being inflicted on to the students and residents of Universities;

(vii) For a writ of mandamus or any other writ, order, directing the Respondents to quash any and all criminal proceedings initiated against students of the Universities;

(viii) For a writ of mandamus or any other writ, order, directing the Respondents to preserve the CCTV footage of all cameras in and around the Universities;

(ix) For a writ of mandamus or any other writ, order, directing the Respondents to provide adequate monetary compensation to all persons detained and/or injured by the Police and paramilitary forces;

(x) For a writ of mandamus or any other writ, order directing the Respondents to ensure the safety of all students within AMU university campus and to ensure that no student is forced to leave the campus;

(xi) For a writ of mandamus or any other writ, order directing the Respondents to ensure reopening of the University;

(xii) For a writ of mandamus or any other writ, order directing the University administration and armed forces not to take any coercive action against the students for peaceful protests;

(xiii) *For a writ of mandamus or any other writ, order directing the initiation of criminal proceedings against the armed force officials who can be recognized from the videos and audios committing violence.*

(xiv) *For a writ of mandamus or any other writ, order directing the initiation of criminal proceedings against the officials who ordered the barbaric violence against the students.*

(xv) *For a writ of mandamus or any other writ, order, directing the respondents to seek written permission from the University authorities before entering the campus;*

(xvi) *For a writ of mandamus or any other writ, order directing the respondents to provide compensation to the students who were injured in the violence by armed forces;*

(xvii) *For a writ of mandamus or any other writ, order directing the respondents to provide compensation for the vehicles destroyed by the armed forces;*

(xviii) *to issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case, and*

(xix) *to award the cost of the petition to the Petitioner.”*

The background to claim the reliefs above is the alleged display of police brutality upon students who were protesting the introduction of Citizenship Amendment Act, 2019.

As per the averments contained in the petition for writ, the Act of 2019 received assent of the President of India and came to be published in gazette on 12th December, 2019. A resentment was shown against the enactment aforesaid by the students in different corners of the country. At Aligarh Muslim University a huge number of students assembled at Bab-e-Syed (University gate) on 14th December, 2019 to share solidarity with the students of other Universities. The students were raising slogans

against the enactment.

In the evening of 15th December, 2019 a protest was lodged by the students of Aligarh Muslim University at Library canteen. According to the petitioner, a peaceful procession of the students commenced from the library and moved towards the Bab-e-Syed through University road.

A huge contingent of local police and Rapid Action Force was deployed at the University circle. The contingent moved towards Bab-e-Syed on seeing the procession of the students. The contingent aforesaid, as per the petitioners, provoked the students by different means including the intentional utterance of abusive words.

The contingent of local police and the Rapid Action Force was said to be armed with several equipments and weapon of repression and those were used too. The students were heavily injured by the brutal lathi charge, rubber bullets and pellets.

It is asserted that to disburse assembly of the students the State force used repressive means recklessly and inappropriately. The contingent of police forcefully entered in different parts of the University including library, hostels, classrooms, offices, etc. and brutally behaved with students, consequent to that several students suffered serious injuries. The police officials intentionally assaulted the students and also vandalized the vehicles parked in the University campus near library. The students in a big number were detained at different places by the State agencies and no medical aid was provided to them. The detained students were also alleged to be brutally tortured. On 16th December, 2019, the Registrar of the University issued notices to all the students to vacate the hostels though no reason was there to do so.

According to the petitioner, several photographs of brutal repression made by the State force have been taken and video thereof too has been recorded. Certain photographs are also placed on record.

Sri Colin Gonsalves, learned Senior Advocate while pursuing all

the reliefs claimed in the petition for writ emphasized for constituting a Special Investigating Team consisting of independent police officials to have fair and objective investigation in the matter.

The Inspector General, Law & Order, U.P., Senior Superintendent of Police, Aligarh Range, Aligarh and Aligarh Muslim University, Aligarh through its Vice-Chancellor have filed counter to the petition today.

As per counter filed on behalf of Inspector General, Law & Order, U.P. and Senior Superintendent of Police, Aligarh Range, Aligarh, the contents of the petition for writ do not depict true facts. According to them, the students in violation of the precautions taken as per Section 144 of the Code of Criminal Procedure, 1973 gathered at University circle on 10th December, 2019. On 12th December, 2019, the University authorities noticed hindrance by some of the students in their routine functioning. Looking to overall circumstances, the Registrar, Aligarh Muslim University requested the District Magistrate, Aligarh to take appropriate steps so as to uphold sanctity of an order dated 17th May, 2019 passed by the High Court in Writ Petition No.16633 of 2019.

An another letter was sent by the Registrar of the University to the District Magistrate, Aligarh on 13th December, 2019 with a request to deploy adequate security forces outside the administrative block of the University to prevent any untoward incident. On 13th December, 2019, certain memorandums addressed to His Excellency, The President of India were tendered by the students as well as on behalf of Aligarh Muslim University Teachers Association to the Additional District Magistrate (City) and Superintendent of Police (City), who were present outside the University campus.

On 14th December, 2019 also a delegation of the students and Teachers of the Law faculty handed over a memorandum to Additional District Magistrate (City). The University administration on 15th December, 2019 also demanded adequate forces to maintain public order,

accordingly, the force was deployed close to the University campus by the district administration. On 15th December, 2019, the district administration received certain intelligence inputs and also information from the Proctor of the University about assembly of the students inside the University campus and their march towards Bab-e-Syed apprehending unwarranted incidents. The force was deployed by the district administration being necessary looking to the tense prevailing. The police force deployed at administrative block kept restrain and requested the students to refrain themselves from illegal activities. According to the respondents, the students at that time pelting stones on the force, as well as on the public property. The gathering ignored the request and continued with violent activities. A water cannon then was used to disburse the gathering and also to prevent any violent happening by the mob. Tear gas shelling was also made at the spot, looking to the need thereof. The district administration noticed that the gathering taking advantage of darkness started pelting stones vigorously from various directions and that enormously destroyed University property. The University administration in such circumstances again made a request to take appropriate action. Having no other option, the district administration decided to enter into University campus to disburse gathering and preventing the property from being damaged. In the course of action, 26 persons were arrested and some of them were found injured. According to the respondents, no lethal weapon was used by the police force.

Along with counter affidavit, the respondents have also placed on record two compact disks said to be containing video footage of the incident.

It is submitted by Sri Manish Goyal, learned Additional Advocate General that the action was taken to prevent loss to public and public property at large. It is asserted that the right available under Article 19 of the Constitution of India is only to assemble peacefully and without arms. But in the incident under consideration the assembly was absolutely

unlawful and was abating for violence at large. As such, whatever steps and actions taken by the state or its Officers's is justifiable.

Reliance is placed upon the judgment of Supreme Court in ***Bimal Gurung Vs. Union of India and others*** reported in ***2018 (15) SCC 480*** to substantiate the contention that Article 19(1)(a) to (c) does not cover violent protests affecting or threatening rights of others.

Response to the notice has also been filed on behalf of Aligarh Muslim University, Aligarh. According to it, the police entered in the University campus being called by the University authorities looking to circumstances then prevailing. The hostels were also ordered to be vacated as the winter vacations were preponed. According to the University, the demonstration on 14 & 15 December, 2019 was having presence of several persons who are not students of the University. Out of the 26 persons detained, at least 15, as per the University are not its students.

No rejoinder has been filed on behalf of the petitioner. However, it is stated that the averments contained in the petition for writ and the photographs annexed thereto speak in volumes about high handedness of police authorities and that is nothing but atrocity on innocent students. It is asserted that the photographs and the videos available reflect predetermined brutality on the part of the State agencies.

Sri Colin Gonsalves, learned Senior Advocate stated that in entirety the demand of the petitioner is to have a complete investigation in the matter as there is apparent violation of human rights and also commission of cognizable crime.

During the course of hearing, it is also brought to notice of the Court that against the Citizenship Amendment Act, 2019, a protest was also made by the students of Jamia Milia Islamia University, New Delhi. The students and certain faculty members of Jamia Milia Islamis University, New Delhi have approached the National Human Rights

Commission to have a complete inquiry and also investigation pertaining to the incidents taken place, where also the allegation is against the Delhi Police for causing atrocities on students.

Sri Colin Gonsalves, learned Senior Advocate while referring the observations made by the Supreme Court *Extra Judicial Execution Victim Families Association and another Vs. Union of India and others* reported in *2017 (8) SCC 417* states that the inquiry or investigation by the National Human Rights Commission is of civil nature and that too is not an effective measure to bring the culprits of doing wrong to board. According to him, looking to the facts of the case, it would be appropriate to constitute a Special Investigating Team to investigate the entire matter. He has suggested names of three former Officer of Uttar Pradesh Police to be nominated as member of the SIT.

We have considered all aspects of the matter.

Section 12 of Protection of Human Rights Act, 1993 charges National Human Rights Commission as well as the State Human Rights Commission with duty for proper implementation as well prevention of violation of the human rights and fundamental freedoms available to every human being. Under the Act of 1993 the Commission may inquire suo motu or on a petition relating to the students for violation of human rights or abatement thereof or negligence in prevention of such violation by a public servant.

Under the Act of 1993 a complete mechanism is given for having inquiry as well as investigation under Section 13 and 14 respectively. The procedure for such inquiry is given under Chapter IV of the Act and as per Section 18, the Human Rights Commission may take several actions during and after inquiry. The Commission after holding an inquiry may recommend to the concerned Government or authority to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against concerned person or persons. It may

also recommend to take such further action as it may think fit.

It would also be appropriate to mention that the Commission as per Section 18(b) of the Act of 1993 approach the Supreme Court or the High Court concerned for such directions, orders or writs as the Court may deem necessary. As per clause (b) of Section 18, it is for the Commission to approach Supreme Court or the High Court concerned to have necessary directions, orders or writs and that is by way of judicial proceedings. The power aforesaid can also be exercised by the High Court by suo motu calling upon report of inquiry or the recommendations made by the Commission.

The facts of the instant case indicate alleged violation of human rights and also alleged negligence in the prevention of such violation. We have not looked into the video footage, which are said to be available with the petitioner and compact disks, which are placed on record by the respondents along with counter. However, the photographs annexed with the petition reflect certain serious happenings which are termed by the petitioner as brutal, violation of human rights that also amounts to commission of cognizable crime. The narration of facts certainly demands a probe.

Looking to the powers of the Human Rights Commission discussed above, at this stage, we are not inclined to constitute any Special Investigating Team but to get the entire matter inquired by the National Human Rights Commission. We would have an inquiry by the State Human Rights Commission also but in light of the fact that the National Human Rights Commission is already undertaking inquiry relating to similar allegations on a complaint said to be filed by the students and some faculty members of the Jamia Milia Islamia University, New Delhi, we deem it appropriate to have an inquiry in this matter too through the National Human Rights Commission.

The National Human Rights Commission is not a party to the writ

proceedings but being a statutory body to protect human rights, we consider it appropriate to request the Commission to have an inquiry relating to the issues raised in this petition for writ.

Accordingly, the National Human Rights Commission, New Delhi is requested to have a complete inquiry or investigation as it deem fit in the matter. The Commission for the purpose of inquiry/investigation shall treat memo of this petition for writ as complaint submitted to it.

An Officer authorized by the Chief Justice of this Court shall present a photostat copy of the memo of writ petition (complaint) and photostat copies of all other record excluding the compact disks before the Registrar, National Human Rights Commission, New Delhi on or before 9th January, 2020.

The Commission is requested to complete the process of inquiry/investigation expeditiously as far as possible within a period of one month from the date of presentation of the complaint by the Officer authorized. The Commission is also requested to convey its findings and recommendations, if any, to this Court immediately after conclusion of the inquiry/investigation. The petitioner or his representative as well as representative of the State of Uttar Pradesh shall appear before the Registrar, National Human Rights Commission, New Delhi on 10th January, 2020 to have the schedule of the proceedings that is to be settled by the National Human Rights Commission.

Let this petition for writ be listed for further orders on 17th February, 2020.

Order Date :- 07.01.2020

Bhaskar

(Vivek Varma, J.)

(Govind Mathur, C.J.)