

Pranlal N. Soni Vs State of Gujarat

Court: Gujarat High Court

Date of Decision: Oct. 10, 2014

Acts Referred: Commissions of Inquiry Act, 1952 " Section 3
Constitution of India, 1950 " Article 14, 21, 226, 32

Hon'ble Judges: Paresh Upadhyay, J

Bench: Single Bench

Advocate: N.D. Nanavaty, Senior Advocate and A.Y. Kogje, Advocate for the Appellant; Prakash Jani, Additional Advocate General and Rashesh Rindani, AGP, Advocate for the Respondent

Judgement

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Paresh Upadhyay, J.

The father and his married daughter, the petitioners No. 1 and 2 respectively, have approached this Court invoking

Article 226 of the Constitution of India, for protection of their fundamental right, challenging the Notification dated 26.11.2013 issued by the

respondent Government, the details of which are recorded hereunder, complaining that it has violated their fundamental right of life and personal

liberty guaranteed under Article 21 of the Constitution of India.

2.1. The Government of Gujarat, in exercise of powers under Section: 3 of the Commissions of Inquiry Act, 1952 (for short "the Act"), issued a

Notification dated 26.11.2013 appointing a two-member Commission of Inquiry, headed by a retired High Court Judge.

2.2. The very foundation of appointing the said Commission, as it transpires from the impugned Notification is that, certain news items had

appeared in the print and electronic media at the relevant time, quoting certain audio-tapes published on web portals "Cobra Post" and

"Gulail.com" regarding some alleged incident/s of security/surveillance of a woman in the State of Gujarat in the year 2009. The said Notification

further records that, it is in the interest of justice that the image and/or identity of the woman in question is not jeopardized.

2.3. It is this very lady, who is referred to as "the woman in question" in the impugned Notification, who is before this Court, along with her father,

complaining that, malicious campaign by groups and busy bodies having vested interests, wearing the mask of the protectors of the petitioners"

right to privacy, has in fact resulted into tarnishing the reputation of the petitioners and in the cross-fire between the political parties, the dignity,

reputation and privacy of the petitioners are seriously compromised, and further that, in spite of the petitioners having repeatedly conveyed before all

statutory authorities, including the National Commission for Women, State Commission for Women, as also before Hon^{ble} the Supreme Court of

India, that they have at no stage ever felt that their privacy was being interfered with by any of the actions of the State Authorities, under the pretext

of protecting the privacy of the petitioners, there has been a political warfare and in the said cross-fire, the petitioners themselves, more particularly

petitioner No. 2, has been reduced as a collateral damage.

2.4. It is at the instance of these petitioners, that this Court is examining the legality and validity of the impugned Notification dated 26.11.2013.

3. Learned advocate for the petitioners, at the outset submitted that, for the purpose of examining the legality and validity of the impugned

Notification dated 26.11.2013, the respondent No. 2 is not a necessary party and therefore he seeks permission to delete respondent No. 2.

Permission as prayed for is granted. Cause title be amended accordingly.

4. Rule. Mr. Rashesh Rindani, learned Assistant Government Pleader waives service of notice of Rule on behalf of the respondent-State.

5. Heard Mr. N.D. Nanavaty, learned senior advocate with Mr. A.Y. Kogje, learned Advocate for the petitioners, and Mr. Prakash Jani, learned

Additional Advocate General with Mr. Rashesh Rindani, learned Assistant Government Pleader for the respondent State.

6.1. Mr. Nanavaty, learned senior advocate for the petitioners has taken this Court through the averments made by the petitioners as contained in

the memo of this petition, the order passed by Hon^{ble} the Supreme Court of India in the Writ Petition (Civil) No. 405 of 2014 dated 09.05.2014

and the paper-book of the said petition, which is placed on record of this petition.

6.2. On behalf of the petitioners, it is submitted that, the very foundation of issuing the impugned Notification was that certain news items had

appeared in the print and electronic media at the relevant time, quoting certain audio-tapes published on web portals "Cobra Post" and

"Gulail.com" regarding some alleged incident/s of security/surveillance of a woman in the State of Gujarat in the year 2009. It is submitted that, it is

this very lady, who is before this Court, along with her father, with the grievance that, certain groups and busy bodies wearing the mask of the

protectors of the petitioners' right to privacy, made hue and cry and in the cross-fire between the political parties, the dignity, reputation and

privacy of the petitioners are seriously compromised, and further that, inspite the petitioners having repeatedly conveyed before all statutory

authorities, including the National Commission for Women, State Commission for Women, as also before Hon"ble the Supreme Court of India,

that they have at no stage ever felt that their privacy was being interfered with by any of the actions of the State Authorities, under the pretext of

protecting the privacy of the petitioners, there has been a political warfare and in the said cross-fire, the petitioners themselves, more particularly

petitioner No. 2, has been reduced as a collateral damage.

6.3. It is also submitted that, on account of malicious campaign being carried out by the persons with vested interests, the petitioners have had to

change their residential accommodation four times in the past few months. The print, electronic and social media, so called social workers and

other busy bodies, are constantly intruding into the private life of the petitioners and their family members. The petitioner"s email accounts are being

hacked and scores of indecent calls are being received from all over. Under the guise of protecting the petitioner"s privacy, every action

undertaken by the so called custodians for and on behalf of the petitioners has resulted into a breach of privacy of the petitioners, making life

impossible on a day to day basis. It is submitted that, not only the petitioners, but other family members are also facing immense mental and

psychological trauma, and for no fault or action attributable to the petitioners, the petitioners and their family members are compelled to undergo

immense mental psychological trauma. It is reiterated that, in this crossfire between vested interests, the petitioners, as collateral damages, are

subjected to violation of their fundamental rights on a daily basis. It is submitted that, the impugned Notification be quashed and set aside.

6.4. It is further submitted that, none of the conditions precedent to exercise of powers under Section 3 of the Act was satisfied in the present case

and therefore the impugned Notification is illegal on that count also. In support of this contention, reliance is placed by the learned advocate for the

petitioners on the decision of the Constitution Bench of Honourable the Supreme Court of India in the case of Ram Krishna Dalmia Vs. Shri

Justice S.R. Tendolkar and Others, .

6.5. It is submitted that, the impugned Notification was unwarranted in the facts and is unsustainable in law, and therefore the same be quashed and

set aside.

6.6. It is also submitted that, the petitioners had earlier approached Honourable the Supreme Court of India invoking Article 32 of the Constitution

of India by filing a Writ Petition being Writ Petition (Civil) No. 405 of 2014 with the following prayers.

a. Direct the respondent No. 2 not to proceed further with the proceedings of the Commission constituted by the Notification dated 26th

November 2013 issued by the Respondent No. 2.

b. Direct the Respondent No. 1 or any of its Department not to proceed with the constitution of the Commission of Enquiry or a Body of the like

nature to go into any question based upon the contents of "'Cobra Post'" and "Gulal.com" and

c. Restrain any publishing either by print media, electronic or the social media or in any other mode any news concerning the Petitioners directly or

indirectly in relation to the issue in "Cobra Post" and "Gulal.com".

d. Pass such other and further order or direction as this Hon"ble Court deems fit in the circumstances of the case in the interest of justice.

6.7. It is submitted that, on the said writ petition the following order was passed by Hon"ble the Supreme Court of India on 09.05.2014.

Mr. Mohan Parasaran, learned Solicitor General of India makes a statement that Mr. Kapil Sibal, Union Minister for Law and Justice has already

made a statement that there is no proposal to appoint a commission of enquiry. Learned Solicitor General of India reiterates the said statement that

there is no proposal to appoint a commission of enquiry. We record this statement.

In view of this statement, prayer (b) of the writ petition does not survive.

So far as prayer (a) is concerned, learned counsel for the petitioner seeks permission to withdraw this prayer and approach the High Court of

Gujarat for appropriate relief in respect of the said prayer. The petitioner may do so. We make it clear that we have expressed no opinion on the

merits of the case.

The writ petition is disposed of.

6.8. It is submitted that, it is under these circumstances that this petition is filed. It is prayed that, the impugned Notification be quashed and set

aside.

7. On the other hand, Mr. Prakash Jani, learned Additional Advocate General for the respondent State has submitted that, according to the State,

its action of issuing the Notification dated 26.11.2013 was in accordance with law. He however has submitted that, he has instructions to state

that, in the facts noted above, if this Court is inclined to accept this petition, the State does not have any objection. Mr. Jani is specifically asked by

this Court about the factual aspects of the matter as asserted in this petition, to which it is submitted that, there is no dispute so far the facts stated

by the petitioners are concerned. It is specifically inquired as to what the Government has to say with regard to the averments made in para: 3.5 of

the petition, and to that also it is submitted that, there is no dispute with regard to the factual aspects of the matter, including what is asserted by the

petitioners in para: 3.5 of this petition. The said para reads as under.

3.5 Under immense anguish, agony, helplessness and in an endeavor to protect their privacy and reputation against the malicious, baseless and

defamatory campaign being carried out for extraneous reasons, the petitioners decided to request the Chair Person of the Gujarat State

Commission for Women, a statutory commission constituted under the Gujarat State Commission for Women Act, 2013, to permit petitioner no.

1, petitioner no. 2, and her husband to appear before the State Commission in person. The Chair Person of the State Commission for Women

kindly consented to a personal meeting. Petitioner No. 1 and 2 and her husband all appeared before the Chair Person of the State Commission

with their respective proofs of identity and clarified the factual position before her in writing. Petitioner No. 2 categorically informed the Chair

Person that the safety measures taken by the State Agencies, upon her father's request, were not only within her knowledge but completely

justified and appropriate under the circumstances prevailing at the relevant point of time. It was also pointed out that both the families remained

thankful to the State Authorities for taking timely and adequate steps acceding to the petitioner No: 1's request. The Chair Person of the State

Commission examined and verified the identities of the petitioners and the husband of petitioner no. 2 in the presence of the Chief Secretary, State

of Gujarat and recorded their statements.

8. The point for consideration before this Court is, as to whether the impugned Notification dated 26.11.2013 is sustainable in law, and further as

to whether in the facts of this case, it was warranted. Having heard learned advocates for the respective parties and having gone through the

material on record, this Court finds as under.

8.1 The very foundation of appointing the said Commission, as noted in the impugned Notification was that, certain news items had appeared in the

print and electronic media somewhere in November, 2013, quoting certain audio-tapes published on web portals "Cobra Post" and "Gulail.com"

regarding some alleged incident/s of security/surveillance of a woman in the State of Gujarat in the year 2009. The first amongst the other terms of

Reference is to inquire into the authenticity and veracity of the said tapes. The said Notification further records that, it is in the interest of justice that

the image and/or identity of the woman in question is not jeopardized. Not only the concerned individual had not asked for any such inquiry, she

had as a matter of fact requested that, it may not be done.

8.2. Thus, the very conception of the judicial inquiry in question is some audio-tapes, the authenticity of which is not only not established, but by

the very Inquiry, the veracity thereof was yet to be gone into, and assuming the contents of the said conversation to be right, the consequential

alleged infringement of an individual's privacy (i.e. of the petitioner No. 2) and circumstances leading thereto, including as to whether release of the

said tapes after a long gap of four years reveal any conspiracy, are ordered to be inquired into. The question is, as to whether, what was sought to

be inquired into can be termed to be an inquiry into (i) any definite matter, and if yes, (ii) whether it can be termed to be a matter of public

importance, as contemplated under Section 3 of the Act.

8.3. Sub-section (1) of Section: 3 of the Act, omitting the proviso which is not material for this petition, reads as under.

3. Appointment of Commission.

(1) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by [each House

of Parliament or, as the case may be, the Legislature of the State], by notification in the Official Gazette, appoint a Commission of Inquiry for the

purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified

in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly:

Provided that.....

8.4. The scope and ambit of the said Section is discussed and explained by the Constitution Bench of Honourable the Supreme Court of India in

the case of Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, thereof, which reads as under.

13. It will be apparent from its long title that the purpose of the Act is to provide for the appointment of Commissions of Inquiry and for vesting

such Commissions with certain powers. Section 3 empowers the appropriate Government, in certain circumstances therein mentioned, to appoint a

Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions within such

time as may be specified in the notification. It seems clear-and it has not been controverted-that on a proper construction of this section, the

functions the performance of which is contemplated must be such as are ancillary to and in aid of the inquiry itself and cannot be read as a function

independent of or unconnected with such inquiry. That being the position, as we conceive it to be, the question arises as to the scope and ambit of

the power which is conferred by it on the appropriate Government. The answer is furnished by the statute itself, for S. 3 indicates that the

appropriate Government can appoint a Commission of Inquiry only for the purpose of making an inquiry into any definite matter of public

importance and into no other matter. In other words the subject matter of the inquiry can only be a definite matter of public importance. The

appropriate Government, it follows, is not authorised by this section to appoint a Commission for the purpose of holding an inquiry into any other

matter. Learned Solicitor-General, in the premises, submits that the section itself on the face of it, makes a classification so that this statute falls

within the first category mentioned above and contends that this classification of things is based on an intelligible differentia which has a reasonable

relation to the object sought to be achieved by it, for a definite matter of public importance may well call for an inquiry by a Commission. In the

alternative the learned Solicitor-General urges that in any case the section itself quite clearly indicates that the policy of Parliament is to provide for

the appointment of Commissions of Inquiry to inquire into any definite matter of public importance and that as there is no knowing when, where or

how any such matter may crop up Parliament considers it necessary or expedient to leave it to the appropriate Government to take action as and

when the appropriate moment will arrive. In the tempo of the prevailing conditions in modern society events occur which were never foreseen and

it is impossible for Parliament or any legislature to anticipate all events or to provide for all eventualities and, therefore, it must leave the duty of

taking the necessary action to the appropriate Government. This delegation of authority, however, is not unguided or uncontrolled, for the

discretion given to the appropriate Government to set up a Commission of Inquiry must be guided by the policy laid down, namely, that the

executive action of setting up a Commission of Inquiry must conform to the condition of the section, that is to say, that there must exist a definite

matter of public importance into which an inquiry is, in the opinion of the appropriate Government, necessary or is required by a resolution in that

behalf passed by the House of the People or the Legislative Assembly of the State. If the preambles or the provisions of the statutes classed under

the first category mentioned above could be read as making a reasonable classification satisfying the requirements of Art. 14 and if the preamble to

the statute considered in the case of *Kathi Raning Rawat (E)* (supra) could be construed as laying down sufficiently clearly a policy or principle for

the guidance of the executive, what objection can there be to construing S. 3 of the Act now under our consideration as also making a reasonable

classification or at any rate as declaring with sufficient clarity the policy of Parliament and laying down a principle for the guidance of the exercise of

the powers conferred on the appropriate Government so as to bring this statute at least in the fourth category, if not also in the first category ? On

the authorities, as they stand, it cannot be said that an arbitrary and uncontrolled power has been delegated to the appropriate Government and

that, therefore, the law itself is bad.

(emphasis supplied by this Court)

8.5. On conjoint reading of what is noted in para: 8.1 to 8.3 and the proposition of law noted in para: 8.4 above, this Court arrives at the

conclusion that, what was sought to be inquired into was something, which was certainly not "any definite matter" as contemplated under Section 3

of the Act. Further, intrusion if any, in an individual's privacy, as may be perceived by some persons or groups of persons, which is inconsistent

with the perception of the concerned individual, can not be termed to be "a matter of public importance" as contemplated under Section 3 of the

Act. For these reasons, this Court holds that, while issuing the impugned Notification, none of the conditions precedent of exercise of powers

under Section 3 of the Act was fulfilled, and therefore the impugned Notification is unsustainable in law.

9.1. Having held that the impugned Notification is unsustainable in law, it may not be necessary to decide as to whether in the facts of this case

issuance thereof was warranted, however there is ample material on record to hold that, even on facts, the appointment of such a Commission was

not warranted. In this regard, the following aspects need to be recorded.

9.2. The alleged surveillance is claimed to have been made somewhere in the year 2009. The surreptitious popping up of tapes somewhere in

November 2013 is not seen to be a mere coincidence by the petitioners. Many things are alleged in the petition, including the vested interests of

certain political sections, however those questions are neither pressed, nor are required to be gone into by this Court, but there can not be any

dispute that the alleged infringement of privacy of petitioner no. 2 was firstly the matter of concern, for and of her own self. It is her own case that,

in the interregnum she has got married, she is living at her matrimonial house happily and further that, not only she did not have any grievance at the

relevant time even if what is perceived by the so-called protectors of her fundamental right to be violation thereof, much water has flown thereafter,

and she has already settled in her life by this time. She, along with her father and her husband had approached different authorities including the

National and the State Commission for Women requesting not to do, what was asked for on her behalf by many. Even their statements were

recorded in the presence of not less than the Chief Secretary of the State, that too after satisfying about their identities and the request was made

by them that they do not want this issue be blown up. On the face of these undisputed facts, this Court finds that there was no occasion for the

Government to order any judicial inquiry in that regard. For these reasons, this Court finds that, even on facts, the action of the Government of

issuing the impugned Notification dated 26.11.2013 appointing the Commission of Inquiry, was unwarranted.

10.1 In view of above, this Court arrives at the judgment that, the impugned Notification dated 26.11.2013 was unwarranted on facts, and is

unsustainable in law.

10.2 From the record it transpires that, number of groups at the top of their voice screamed against the alleged encroachment of the privacy of

petitioner no. 2 and demanded investigation in the affairs of the State in that regard. At that very point of time, the concerned lady herself was also

screaming with whatever feeble voice she had, that she does not want these things to be gone into. It is not that her dissent has escaped notice. It is

on record that her say, conveying her NO, was already there before various authorities, but for the reasons which are not required to be gone into

by this Court, the same was completely overlooked by the concerned authorities at the relevant time. The irony is that, under the pretext that the

alleged encroachment of privacy of petitioner no. 2 needs to be inquired into, that too irrespective of her say, her privacy has stood intruded.

10.3 This Court also finds that, in the commotion created by the shouts from various quarters, including the so-called custodians of the dignity of

petitioner no. 2, the feeble voice of the petitioner no. 2 herself went into the background and it is the duty of this Court to listen to that very voice

of the concerned citizen, how so feeble it may be, and on doing so, what is heard by this Court, in no uncertain terms is that, at least the concerned

citizen states that, she does not want any inquiry in that regard and further that, what is alleged against the State Authorities had not resulted in

intrusion in her privacy, but now what is sought to be done, certainly has resulted into intrusion in her privacy and has thereby resulted in violation

of her fundamental right. It is this situation, against which the petitioners need to be protected by this Court.

11. For the reasons recorded above, this petition is allowed. The impugned Notification dated 26.11.2013 issued by the respondent Government

is quashed and set aside. The summons issued by the Commission to the petitioners or to any other person would now not survive. Rule made

absolute. No order as to costs.