

(2000) 12 AP CK 0012

Andhra Pradesh High Court

Case No: Writ Petition No's. 16558 and 17149 of 2000

Andhra Pradesh Civil Liberties
Committee and Another

APPELLANT

Vs

Station House Officer and Others

RESPONDENT

Date of Decision: Dec. 5, 2000

Acts Referred:

- Hyderabad City Police Act, 1348 - Section 22(1), 22(3)
- Penal Code, 1860 (IPC) - Section 299, 302

Citation: (2001) 1 ALT 201

Hon'ble Judges: V. Eswaraiah, J; Bilal Nazki, J

Bench: Division Bench

Advocate: Pratipati Venkateswarlu, for the Appellant; A.G. and G.P. for Home, for the Respondent

Final Decision: Dismissed

Judgement

Bilal Nazki, J.

The Writ Petition, W.P.No. 17149 of 2000 is filed by Andhra Pradesh Civil Liberties Committee. They seek a direction against respondent No. 1 to register a crime u/s 302 IPC and other offences against policemen who caused the death of Mr. Vishnuvardhan Reddy and Mr. Bala Swamy and caused injuries to several others. In this Writ Petition it is further prayed that the investigation of said crime be handed over to respondent No. 6 i.e., Director General, Central Bureau of Investigation. It also seeks a relief that Government of Andhra Pradesh be asked to pay compensation to the dependants of the deceased and also to the injured persons. The second Writ Petition W.P.No. 16558 of 2000 is filed on behalf of the Peoples' Union for Civil Liberties about the same incident and it is prayed that the State of Andhra Pradesh should be directed to hold an enquiry into the incident of alleged police excesses through a Commission of Inquiry by a Sitting Judge of the Hon'ble High Court of Andhra Pradesh. The incident relates to 28th August, 2000 which

occurred at Basheerbagh in Hyderabad. Since both the Writ Petitions raise same questions of fact and law therefore they are being decided by this common order. The factual matrix of the Writ Petitions is given below:

That, there was enhancement in the Electricity tariff in the State of Andhra Pradesh and the opposition parties, in the Assembly and outside, demanded withdrawal of the enhanced rates. Demonstrations, processions and meetings were held. During these demonstrations at various places like Hyderabad, Vijayawada, Tirupathi a call was given by the Opposition parties to have a meeting at Hyderabad on 28th August, 2000 with a slogan of "Chalo Assembly". A hunger strike was also organised by M.L.As. of the Congress party and Left parties at old M.L.A Quarters, Hyderabad. According to the Writ Petitioners, the organizers of "Chalo Assembly" programme applied for permission to the police to conduct Statewide rally at Hyderabad on 28-8-2000. At about 10.00 p.m. on 27-8-2000 police gave permission to conduct public meeting near the statue of Babu Jagjivan Ram, Basheerbagh on 28-8-2000. According to the petitioners, since a State-wide call had been given several thousands of people reached Hyderabad by 10.00 a.m. on 28-8-2000 and started reaching venue in groups from various directions. By that time the police in large number positioned itself at Basheerbag. They put barricades, iron fencing at Babu Jagjivan Ram statue and Basheerbag circle. The police were sufficiently armed carrying both lathis and rifles. There were policemen also mounted on horses. The police had brought water canons, tear gas shells. They were sufficiently protected with helmets and bamboo shields. Several policemen were present in plain clothes and were carrying weapons. Demonstrators were unarmed, only a few of them carried flags and banners. A batch of demonstrators was led by Sri Gummadi Narsaiah, M.L.A. belonging to C.P.I. (ML) party and Sri Suravaram Sudhakar Reddy, former Member of Parliament and Secretary of A.P. State Council for C.P.I. They were accompanied by members of other political parties which were spear heading the agitation against the rise in electricity tariff. The police on seeing these persons stopped them from proceeding further. Demonstrators were prevented from proceeding further and police beat Sri Gummadi Narsaiah. M.L.A. and Ors., arrested them and put them in a bus. By that time large number of people had assembled. They were trying to go forward peacefully but were prevented by police. The processionists were demanding release of their leaders. The police started lathicharge without any warning. The police had not cancelled the permission given to the organizers to hold the public meeting. Thereafter, the police without any announcement or any warning started firing indiscriminately. A batch of processionists led by Sri B.V. Raghavulu, Secretary of A.P. State Communist Party (M) was also beaten without any provocation. Firing was opened against peaceful and unarmed demonstrators which resulted in instantaneous death of Mr. Vishnu Vardhan Reddy and Mr. Balaswamy and Ors.. Some of them had serious injuries and died afterwards. Several people received serious injuries in police firing and in lathicharge. Some of the demonstrators witnessed an Inspector firing at a constable

and causing injury to him. After firing, the police used water canons and tear gas. Women demonstrators were dragged and beaten by the police and several women received injuries. Some of the demonstrators were encircled by the police and were brutally beaten up without even giving them a chance to escape. Thereafter both sides started pelting stones at each other. On seeing this several demonstrators decided to go away but they were chased and beaten by the police. Mr. Nagendra of Congress (I) and his followers were also beaten by the police and Sri Nagendra received head injury. Sri Sudhakar Reddy, Youth Congress (I) President received head injury caused by police. At any time there was no necessity for any police action. There was no necessity to open fire. Even the firing was aimed at chest level. The rally was stopped at Basheerbagh chowrastha itself which is one kilometre away from Legislative Assembly. There was no damage caused by people to either any person or to any property. There was no threat to the Legislative Assembly which is one kilometre away from the place of incident and is otherwise guarded and fortified. The action of the police was unwarranted and in any case excessive.

2. On these factual positions these Writ Petitions have been filed. The case of the petitioner in W.P.No. 17149/2000 is that, admittedly some persons died as a result of police firing which is even admitted by the respondent-State. Some persons received injuries either from lathis or from bullets which is also admitted by the respondent-State. The learned Senior Counsel appearing for the petitioners in this Writ Petition submits that u/s 299 IPC causing death of a person is culpable homicide, whether it comes under the exception of private defence would have to be dealt with by the Court. Therefore police cannot themselves become complainants, prosecutors and the Judges. The case of deaths amount to causing of murder, whether policemen responsible for such deaths can get away with on the ground of private defence is a question which cannot be decided by the police and which will have to be decided by the Courts. Therefore, the respondents should be directed to register a case u/s 302 IPC for causing deaths and also for various offences of causing hurt on demonstrators and the result should be left to the Courts. In the second Writ Petition i.e., W.P. No. 16558/2000 on the same factual position it is prayed that a Commission of Inquiry be appointed headed by a Sitting Judge of High Court so that all facts are brought out and there remain no chance of guilty escaping the clutches of law.

3. Counters have been filed. Sri S.R. Sukumara, Commissioner of Police, Hyderabad in his counter-affidavit stated that, against hike in electricity charges there were Rastha rokos, Darnas and strikes by Opposition political parties. The increase in tariff was also challenged before the High Court. The campaign started by the opposition parties in protest against the hike in tariff had caused disorder and loss of public property in many places in the State. The Congress legislators went on fast as part of protest against enhancement of tariff and the disorder generated by some of these protest programmes was controlled by police effectively with minimum force. The police had been directed by the Government to display

maximum restraint in their operations and these directions were scrupulously followed. The agitation was slowly losing its tempo and on seeing that the tempo was being lost the Legislators organized a fast. The matter had been debated in the Assembly also while rumours were spread about the health of the fasting legislators. These rumours created a feeling of unrest. In this background it was announced that there would be a march to the Assembly on 28th August, 2000. The programme was described as "Chalo Assembly". Permission was sought for holding a public meeting at Hyderabad by the group of opposition parties including the Congress party. A notification had been issued by the Government u/s 22(1) and (3) of the Hyderabad City Police Act prohibiting the assembly of persons within radius of one kilometre around the premises of Legislative Assembly as the Assembly was in session having regard to the tense situation. The deponent was of the opinion that permitting a public meeting within the area where prohibitory orders were in force would not be advisable. Therefore, permission sought by the parties was refused. However, on representation of the organizing leaders to the Home Minister that the meeting would be perfectly peaceful and there would be no procession, the Government decided to permit a meeting to be held near Babu Jagjivan Ram statue. Permission for any procession or march to the Assembly was not given. He further stated that, it had been made clear to the persons organizing the meeting that there should not be any procession. It had been envisaged that the persons interested in participating in the meeting would proceed towards the statue of Babu Jagjivan Ram and conduct meeting there peacefully and no attempt would be made to march towards the Assembly premises. But, it was found by subsequent events that there had been no such intention or desire on the part of the organizers of the demonstration. In fact no arrangements for a meeting like putting up a dais, microphones, loudspeakers were made. The real intention of the organizers was to reach the Assembly and create law and order problem. The police however took precaution of erecting barricades about 100 metres away at Basheerbagh X roads, Babu Jagjivan Ram X roads and Abdul Rehman petrol bunk X roads to ensure that the crowds would not spill over. In view of the instructions of the Government, the majority of the police personnel were only armed with lathis and only a small contingent of armed police was kept as it was not initially anticipated that any other type of action would be required. But contrary to the assurance given to the Government about the nature and purpose of the meeting there was an attempt to break through the police barricades and reach the Assembly. Nearly 10,000 people including some notorious rowdy sheeters and persons prone to violence had been specially brought from adjacent districts and towns to create violence and disorder. Some leaders were also found asking people to march to Assembly. Many persons who were arriving for the meeting at Babu Jagjivan Ram statue changed their direction and entered in large numbers to the road leading from Basheerbag junction to public gardens where the police control room is also situated. They were sought to be stopped by the police. Some elements in the crowd had come equipped with bags of stones. It was also learnt that a van carrying stones had been

brought there and had unloaded the stones at the road side to be utilised to attack the police force. This clearly shows that the intention of the organizers was not of a peaceful demonstration. Provocative and indecent slogans were being shouted. Without any provocation the crowd started hurling stones at the unarmed police and police had to flee for their lives to a distance. Some of them took shelter behind motor vehicles. In the process 98 policemen were injured. As the situation was rapidly deteriorating horse mounted policemen and water canons were used to control the crowds. The crowds initially retreated but on exhortation of their leaders they once again advanced with great determination and started hurling stones with increased intensity. Some of these stones hit agitators also. In these circumstances the Officer in-charge had no option but to direct opening of fire. Initially policemen fired warning shots in the air but as the crowds did not stop pelting stones which was causing injuries to policemen firing at the mob was resorted to resulting in the death of two members of the mob one of whom, according to the deponent, was a rowdy sheeter. After the firing the situation at Basheerbagh junction was brought under control. The attempt of processionists coming from Indira park to go towards Assembly having failed, about 6,000 people entered into the Old MLA quarters. They demanded that all the policemen in Old MLA quarters should leave. As the police did not want to provoke the strong crowd which had already damaged the Police Outpost, broken glass panes and wireless sets, the police came out of the MLA quarters and watched the situation from outside. Number of persons were singing songs, shouting slogans and climbing over the compound walls and roof of smaller buildings inside the old MLA quarters. At 5.30 p.m. the Congress leaders announced that hunger strike had been called off. The crowd then attacked an RTC bus passing in front of old MLA quarters. This was followed by heavy stone pelting from inside MLA quarters. The leaders were requested to control their followers, but miscreants set fire to the bus, broke open the TRANSCO office gate, entered inside, brought out a TRANSCO jeep and a moped and set fire to both the vehicles. Two tear gas shells were fired but it had no effect. The miscreants attacked State Bank of India branch situated opposite MLA quarters, damaged the shutters and attempted to break open the locks presumably with a view to loot the Bank. The police then resorted to lathi charge. In this process and in the stone pelting, 6 cars parked inside the old MLA quarters got damaged including the car of Sri Y.S. Rajasekhar Reddy. Six cases have been registered. Details of the cases have been given in the affidavit. Particulars of the vehicles damaged due to stone pelting of the mob is also given. The Commissioner has also stated that 98 police personnel including 7 Officers were injured and some of them had been injured seriously, 4 horses had also been injured. It is stated that certain private agencies and police have videographed the whole incident and these videographs show that restraint was exhibited by the police and only as a last resort firing was opened. The deponent further stated that he was in constant touch with the developing situation and he was sitting in the Control room near Public Gardens and he was watching the live telecast of the whole incident. Then, he has given in his affidavit some background of the

organizers which according to him is relevant.

4. From this affidavit one does not see anywhere that any definite stand is being taken on the issues (a) whether police firing was necessary, (b) if so, whether excessive force was used and (c) whether people were fired at chest level to ensure their death. However, in paras 9 and 10 the deponent stated:

"9. The complaint against the police firing voiced in a variety of versions is totally unjustified. The alternative courses of action narrated in para-7 of the affidavit under reply are theoretical and ignore the compulsion of a developing situation. The police did fire into the air in the first instance and that was sufficient warning. It is not correct to say that the police aimed at people who were watching from the fly-over. The other allegations are also not correct. The statement that one person "succumbed" to bullet injury and was later hospitalized, is patently untrue. There is no question of a dead person being hospitalized. The averments in para-9 that the police firing was unwarranted and unnecessary and was resorted to only to terrorise the people of Andhra Pradesh who were agitating the hike of electricity charges, is totally incorrect. In regard to the complaint that no specific case was registered against the police, the following aspects deserve consideration.

10. The police has acted in discharge of their duties. Further, the incidents have been videographed by private agencies as well as the police and these films furnish clear proof that the firing was justified and was required in self-defence."

A guarded stand has been taken in Para-11 of the affidavit. However, the deponent had stated that a Magisterial enquiry had been ordered and CID had also been requested to look into all aspects of the case. Para-11 is also reproduced.

"11. The Courts have laid down the criteria, which govern such cases. In the light of the established precedent there is no warrant for taking any action against any policemen. However, in the crime which has been registered and which is being enquired into if the investigation reveals that any policeman was guilty of any crime, proper action will be taken. A complaint has also been made to the Human Rights Commission by All India Democratic Women's Association and in accordance with the guidelines action is being taken. Further a Magisterial Enquiry has also been ordered. Apart from this, the CID has been instructed to look into all aspects of the case vide Memo No. 3395/C4/2000, dated 13-9-2000 issued by DG & IGP, Andhra Pradesh."

Since the affidavit was found somewhat evasive this Court directed an affidavit to be filed by 4th respondent. 4th respondent has filed a brief affidavit. Para-4 of the affidavit is material which is reproduced:

"4. I state that both the Magisterial Enquiry and the enquiry by the State CID will comprehend all aspects of all incidents which occurred on 28-8-2000 at Basheerbagh junction as also Old MLA quarters including the police firing."

5. Various judgments were pressed into service to show that this Court could order the Government to appoint a Commission of Inquiry which was however disputed by the learned Advocate General appearing for the State. The learned Counsels for the petitioners relied on a Full Bench judgment of this Court in Dhronamraju Satyanarayana Vs. N.T. Rama Rao and Others . They also relied on Janamohan Das and Others Vs. State of Orissa and Others . and Siddha Raj Dhadda Vs. State of Rajasthan, whereas the learned Advocate General relied on Division Bench judgment of this Court in Peela Pothi Naidu Vs. State of Pradesh and others . According to the learned Counsel for the petitioners this Court has the power to direct appointment of a Commission. The learned Advocate General however submits that, in view of the law laid down in Pothi Naidu's case this Court would not be right in ordering Commission to be appointed under the Commissions of Inquiry Act, 1952 as this is the sole domain of the State Government or of the State Legislature. He further contended that the issue was discussed in the Assembly, and, had the Assembly found it necessary to appoint a Commission they would have ordered so. We are not going into the question as to whether this Court has the power to direct the State Government to appoint a Commission under Commissions of Inquiry Act or not in view of the fact that investigations have already been ordered and they are being conducted under the supervision of an Additional Director General of Police. We have nothing on record to feel that the investigation shall not be carried independently in accordance with law. Therefore, at this stage, we are not inclined to pass any direction with regard to appointment of Commission under the Commissions of Inquiry Act.

6. It was also argued and vehemently argued by the learned Counsel appearing for the petitioner in W.P.No. 17149/2000 that, since deaths had been caused by police firing therefore registration of case was imperative and he pressed into service certain authorities, but in view of the clear stand taken by the Home Secretary we are of the view that no further directions in this regard are necessary. The Home Secretary has clearly stated that the CID would comprehend all aspects of all incidents which occurred on 28-8-2000. Cases have already been registered, therefore, in our view it will not be necessary to register a specific case of crime against police officials when even the petitioners have not been able to give names of any of the police officers. Obviously the petitioners might have not been in a position to know the officers or the police constables who opened fire or those persons who ordered opening of fire. But, since the CID has already been ordered to comprehend all aspects in the investigation, therefore, we have no reason to disbelieve that the officers concerned will not look into the aspects as to whether the police firing was justified or not and if they come to the conclusion that it was not justified they will proceed accordingly. Similarly if during the investigation the investigation agency comes to a conclusion that certain policemen or police officers are guilty of offence they will be bound to proceed against them in accordance with law. Therefore, registering of a fresh case would not serve any specific purpose.

7. For the reasons given above, we dispose of these Writ Petitions with the following directions:

(1) As it was stated by the learned Advocate General that the investigations are being carried under direct supervision of Additional Director General of Police, therefore, it is directed that the said Officer shall supervise the investigation and try to complete the investigation within a period of three months.

(2) That the investigators shall specifically investigate-

(a) Whether the firing by the police was justified.

(b) If it was justified, whether excessive force was used.

(c) During firing whether firing was aimed at the chest and head of the demonstrators with an intention to kill the demonstrators.

(d) In case it is found that firing was not justified or excessive force was used, the erring officials of the police department shall be identified and action shall be taken against them in accordance with law.

(3) If it is found that the firing was justified and excessive force was not used or firing was not aimed at vital parts of the demonstrators with an intention to kill them the investigation shall not be closed without seeking permission of this Court.