

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.4225 OF 2014

Shri Ishwar Prasad G. Khandelwal. .. Petitioner
Vs
The State of Maharashtra. .. Respondent

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Shri Ishwar Prasad G. Khandelwal, the Petitioner in person.
Shri A.A. Kumbhakoni, Senior Advocate/Special Government Pleader
along with Mrs. M.P. Thakur, AGP, Shri A.C. Gavnekar and Shri Shardul
Singh for the State.

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CORAM : A.S. OKA & C.V. BHADANG, JJ
DATED : 23RD APRIL 2015

P.C.

. Heard the Petitioner appearing in person and the learned
senior counsel appearing for the State Government.

2. The issue relates to the recommendations made by the
Commission of Enquiry headed by the Hon'ble Shri Justice M.G.
Gaikwad, a retired Judge of this Court. The Commission was
constituted to look into the incident of the police firing at Baur, Taluka
Maval, District- Pune on 9th August 2011. The report submitted by the
Commission headed by Shri Justice M.G.Gaikwad was laid before the
Legislature. The affidavits filed on record and in particular the affidavit
filed by Shri Sudhakar Chavan, the Joint Secretary, Government of
Maharashtra, Home Department dated 1st August 2014 records that the

recommendations of the Commission were accepted by the State Government. The Action Taken Report (ATR) on the basis of the recommendations of Shri Justice Gaikwad Commission has been annexed to the said affidavit. What is material, out of the said ATR for the purposes of this Petition, is the decision of the State Government that an administrative action will be initiated after following due process of law against Shri Sandip Karnik, I.P.S. [the then Superintendent of Police, Pune (Rural)], PI Shri Ashok Patil, PI Shri Yahswant Gawari and PSI Shri Ganesh Mane. The prayer in this Petition under Article 226 of the Constitution of India is essentially for enjoining the State Government to take a prompt action against the said officers on the basis of the recommendations of the Gaikwad Commission.

3. There are various orders passed by this Court from time to time in the present Petition. The order dated 12th December 2014 notes that the show cause notices were issued to the said four police officers who had submitted their reply to the show cause notices. The order dated 2nd February 2015 notes the delay on the part of the State Government in taking action on the basis of the show cause notices. As far as Shri Sandip Karnik is concerned, by a communication dated 16th February 2015, the Additional Chief Secretary (Home) of the State Government informed Shri Karnik that after perusing the reply

submitted by him, the State Government has come to the conclusion that the action of Shri Karnik cannot be justified. However, the State Government came to the conclusion that as no one has been injured as a result of firing of bullets by use of SLR by Shri Karnik, the State Government decided to let off Shri Sandip Karnik on a warning without initiating a disciplinary inquiry. As regards the other three police officers, the State Government decided to hold a disciplinary inquiry against them and has directed the Director General of Police to take necessary action.

4. The report of Shri Justice Gaikwad Commission is placed on record. The Petitioner appearing in person has filed a compilation containing various statements recorded and the material which was placed before the Commission.

5. The grievance made by the Petitioner appearing in person initially was that the plastic bullets fired by Shri Sandip Karnik caused injury to a woman by the name Kantabai Thakar. After necessary documents in terms of the order dated 16th February 2015 were produced before this Court, the Petitioner appearing in person pointed out that apart from the firing of two plastic bullets, Shri Karnik fired two live bullets from SLR and the post-mortem report and forensic report show that the said Kantabai died due to injuries sustained due to

live bullets. He raised a contention that Shri Karnik is responsible for causing the death of the said Kantabai.

6. The learned senior counsel appearing for the State justified the decision of the State as regards Shri Karnik. He pointed out that after the mob dispersed, the three other police officers fired live bullets but Shri Karnik fired two plastic bullets. He pointed out that the two live bullets were fired by Shri Karnik from SLR earlier when the mob was very much in action. He pointed out that there was nothing on record to show that any one was injured due to the two live bullets fired by Shri Karnik. He, therefore, stated that the State Government decided to initiate disciplinary proceedings against the three police officers and Shri Karnik was let off with a warning.

7. Considering the aforesaid contentions raised by the Petitioner appearing in person, we have minutely perused the compilation tendered by him as well as the report of Shri Justice Gaikwad Commission placed before us. From the material available on record, we find that there is nothing to indicate that the said Kantabai lost her life due to the two live bullets fired by Shri Karnik. The Petitioner appearing in person contends that there may not be any material on record of the Petition or the Gaikwad Commission to prove that Kantabai lost her life due to live bullets fired by Shri Karnik, but

independently, he may be in a position to prove the same and therefore, his remedy may be kept open.

8. Essentially, the present Petition is filed to ensure that the recommendations of Justice M.G. Gaikwad Commission placed before the House of Legislature and, thereafter, the ATR should be implemented. In this Petition under Article 226 of the Constitution of India, this Court cannot make an independent adjudication on facts. Suffice it to say that the material on record is not sufficient to link the two live bullets fired by Shri Karnik with the death of the said Kantabai. Suffice it to say that in writ jurisdiction, we cannot record any finding on this aspect. If the Petitioner appearing in person has a remedy, he can always adopt such remedy.

9. Other issue which arises for our consideration is whether the State Government has acted arbitrarily by treating the three police officers differently from Shri Karnik. In the Action Taken Report, it is recommended that the administrative action will be taken against all the four police officers. The Government seems to have made a distinction between the role played by the three police officers and the role played by Shri Karnik. The distinction is that after the mob dispersed, the three other police officers fired the live bullets while Shri Karnik fired the plastic bullets which did not hit any member of the

mob. Another distinction seems to have made by the Government is that the two live bullets were fired by Shri Karnik in the air much earlier when the mob was very much in action. The distinction which is made by the State Government is borne out from the report of the Commission headed by Justice Shri M.G. Gaikwad. Considering the material available on record, in this Petition under Article 226 of the Constitution of India, we cannot accept the contention that a different treatment is given to Shri Karnik by letting him off on a warning. Therefore, the action of the State Government on the basis of the available material on record cannot be said to be arbitrary.

10. All actions have been taken by the State Government after filing of this Petition under Article 226 of the Constitution of India. Considering the aforesaid discussion, it is not necessary to issue any other directions and to interfere with the action taken by the State Government as regards Shri Karnik. However, we make it clear that the disciplinary proceedings against the three other officers shall be taken to its logical conclusion as expeditiously as possible.

11. While we are disposing of the Petition, we make it clear that the remedies of the Petitioner appearing in person, if any, are expressly kept open.

12. At this stage, the Petitioner appearing in person seeks clarification. We must make it clear that we have examined the entire matter only in one context. The question before this Court was whether on the basis of the material available before the Commission headed by Shri Justice M.G. Gaikwad, the State Government has failed to take appropriate action against Shri Karnik. It is, therefore, obvious that what is observed while disposing of this Petition will not affect the merits of the other proceedings, if any, which are pending. Order accordingly.

(C.V. BHADANG, J)

(A.S. OKA, J)