

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 21/08/2017****Judgment Delivered on : 26/09/2017****Writ Petition (PIL) No. 30 of 2015**

Rakesh Yadav, S/o Late B.R. Yadav, aged 40 years, R/o Talapara
Main Road, P.S. Civil Line, Bilaspur (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through Chief Secretary Mantralaya Naya Raipur, Chhattisgarh
2. Secretary, Department of Home Mantralaya Naya Raipur, Chhattisgarh

---- Respondents

For Petitioner	: Smt. Rajni Soren, Advocate
For Respondents/State	: Shri Y.S. Thakur, Additional Advocate General

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. Order**Per Thottathil B. Radhakrishnan, Chief Justice**

1. During the course of this writ petition after its admission, an order was minuted by this Court on 28.11.2016, which reflects the contents of this writ petition and the views then taken regarding its scope. We therefore, deem it appropriate to quote the relevant portion of that order, which contains the decision of this Court to constitute a Committee to look into different aspects delineated in that order. Certain directions were also

issued through that order. The relevant portion of that order reads as follows :

"This petition has been filed by terminated policeman seeking various reliefs.

We are not going into the question whether this petition on behalf of a terminated policeman would lie in the form of "Public Interest Litigation". We feel that some of the issues need to be answered. Therefore, though we may not be inclined to treat this petition as a Public Interest Litigation, we would still require answers from the State Government.

We request Ms. Rajni Soren, Advocate to assist the Court and we appoint her as Amicus Curaie in the matter.

The issues raised in this petition are that :

- (i) Weekly off for the police constabulary;
- (ii) Duties may be given in three shifts;
- (iii) Request for a dry canteen;
- (iv) To provide bullet proof jacket to the constables who are in active duty specially in the naxal infested area;
- (v) A request for providing Computer, Fax machine, etc. in all police stations in the State;
- (vi) A request for adequate housing facility for the police constables; and
- (vii) A request for payment of travelling allowance to such police constables for travelling even within the jurisdiction of their police station.

As far as dry canteen is concerned, we are of a clear cut view that this does not fall within the scope of a petition of this nature.

The police constables at the lowest levels are the backbone of the law enforcement system in this country. It is essential that their working conditions are framed in such a manner that they can work efficiently. Over burdened constables can never work efficiently. These constables are also human beings and they also require rest and recreation. However, this Court is not oblivious to the financial constrains of the State. This Court is also not unaware of certain social conditions in the State which may require the police officials to work for more hours than normally expected from an ordinary government servant. Having said so, we do feel that their claim for weekly off is not unreasonable.

Shri Bharat submits that in the State of Chhattigarh, the employees of police department have 15 days special leave and who are posted in field are paid one month extra wages and therefore, the police officials are compensated adequately.

We are not concerned with the adequate compensation. Our basic concern is that if the officials are so heavily burdened, then the efficiency of the police officials would be affected, therefore, it is better to give some break to these police personnels and no amount of financial compensation can compensate a day's rest. Weekly off for a minimum of one day is one of the standard norms even as per the conditions prescribed by the various organisations of the United Nations to which India is also a signatory.

Therefore, prima facie we feel that there should be a weekly off but there can be a provision in the State not to grant weekly off in administrative exigencies and also when the law and order situation so desires.

We are aware that if this order has to be complied with in its letter and spirit, many more recruitments will have to be made in the police service. Therefore, we direct that a committee headed by (i) Shri Vishwaranjan, retired Director General of Police, (ii) Secretary Home, (iii) Secretary, Finance, and; (iv) Superintendent of Police, Raipur, be constituted. The Superintendent of Police, Raipur shall be the Convenor of the said committee.

The aforesaid committee shall not only look into the problems of weekly off, but also look into the working conditions of the Constables including housing and shift duty etc. and make its recommendation to the State Government.

A copy of the recommendation may also be filed before this Court. We hope and expect that the Committee shall actively interact with the constables and other police officials.

As far as bulletproof jackets to those of those policeman who are working in the naxal affected areas is concerned, Shri Bharat states that this matter is under active consideration and in some of the districts, bullet proof jackets have already been provided.

If we are to send our police personnel to counter armed naxals or any such other organization, then they must be well equipped and provided with bulletproof jackets for their safety. We do hope and feel that within six months from today, the State of Chhattisgarh will provide enough bullet proof jackets to each police stations where there are such activities so that whenever any police constables or officials are sent to face such encounters, they are provided bulletproof vests.

As far as providing computers, fax machines etc. to each police stations are concerned, Shri Bharat states that in most of the police stations, these items have already been provided.

We direct the Principal Secretary (Home), Government of Chhattisgarh to file an affidavit by 30.1.2017 in which he shall clearly mention in a tabular form the number of police stations, where such facilities are available and also the number of police stations where such facilities are not available and shall set out the time frame within which it shall be provided. Here, we may add that the Apex Court has already issued directions that any person can lodge a report by e-mail and if the report discloses commission of a cognizable offence, then the FIR can be registered. We may also like to extend this facility to SMS also because computers may not be available with large number of people but most of the people are having mobiles and they can send SMS for lodging a report. The Principal Secretary (Home) Government of Chhattisgarh shall also deal with these aspects as to how the State proposes to make use of such latest communication facilities for lodging of the FIRs."

2. Perused the pleadings in the writ petition, return filed by the respondents and the rejoinder as well as the documents produced therewith. We have also perused the different affidavits and other materials on record. Heard learned *Amicus Curiae* and the learned Additional Advocate General.

3. When this writ petition was considered on 06.02.2017, this Court had before it the affidavit filed by the Principal Secretary, Government of Chhattisgarh, Department of Home Affairs. Also on record were the documents produced by the petitioner alongwith the rejoinder, many of which were obtained in response to applications made invoking the Right to Information Act, 2005. Comparable situations regarding weekly off, extra salary, etc. as available in other States or Union Territories and the operational modality of shift duties and duty off in different sectors of the Chhattisgarh State Police are placed among those documents. Reference is also seen made at that hearing to the decision of the Apex

Court in *Youth Bar Association of India V. Union of India and Others*, {Order dated 07.09.2016 in Writ Petition (Crl.) No.68 of 2016}. The relevant portion of the order minuted on 06.02.2017 reads as follows :

The Principal Secretary, Government of Chhattisgarh, Department of Home Affairs has filed his affidavit, in which it is stated that all 428 police stations are equipped with the computers. With regard to bullet proof jackets, it is stated that 5289 bullet proof jackets are available in police stations. Fax machines are available only in the 17 police stations. Fax machines are now becoming obsolete and in this fast changing technical world, fax machines are not really required. Good smart telephones are better substitute for fax machines because any document can be scanned and downloaded on the smart phone and sent to any part of the world. Therefore, it is for the Government to decide whether to purchase fax machines or not. It would be better for the Government to provide up to date computers and smart phones to each and every police station.

Ms. Soren drawn our attention to the judgment of the Apex Court in *Youth Bar Association of India v. Union of India & Others*, wherein the Apex Court has issued the following directions:-

“(a) An accused is entitled to get a copy of the First Information Report at an earlier stage than as prescribed under Section 207 of the Cr.P.C.

(b) An accused who has reasons to suspect that he has been roped in a criminal case and his name may be finding place in a First Information Report can submit an application through his representative/agent/parokar for grant of a certified copy before the concerned police officer or to the Superintendent of Police on payment of such fee which is payable for obtaining such a copy from the Court. On such application being made, the copy shall be supplied within twenty-four hours.

(c) Once the First Information Report is forwarded by the police station to the concerned Magistrate or any Special Judge, on an application being filed for certified copy on behalf of the accused, the same shall be given by the Court concerned within two working days. The aforesaid direction has nothing to do with the statutory mandate inhered under Section 207 of the Cr.P.C.

(d) The copies of the FIRs, unless the offence is sensitive in nature, like sexual offences,

offences pertaining to insurgency, terrorism and of that category, offences under POCSO Act and such other offences, should be uploaded on the police website, and if there is no such website, on the official website of the State Government, within twenty-four hours of the registration of the First Information Report so that the accused or any person connected with the same can download the FIR and file appropriate application before the Court as per law for redressal of his grievances. It may be clarified here that in case there is connectivity problems due to geographical location or there is some other unavoidable difficulty, the time can be extended up to forty-eight hours. The said 48 hours can be extended maximum up to 72 hours and it is only relatable to connectivity problems due to geographical location.

(e) The decision not to upload the copy of the FIR on the website shall not be taken by an officer below the rank of Deputy Superintendent of Police or any person holding equivalent post. In case, the States where District Magistrate has a role, he may also assume the said authority. A decision taken by the concerned police officer or the District Magistrate shall be duly communicated to the concerned jurisdictional Magistrate.

(f) The word 'sensitive' apart from the other aspects which may be thought of being sensitive by the competent authority as stated hereinbefore would also include concept of privacy regard being had to the nature of the FIR. The examples given with regard to the sensitive cases are absolutely illustrative and are not exhaustive.

(g) If an FIR is not uploaded, needless to say, it shall not enure per se a ground to obtain the benefit under Section 438 of the Cr.P.C.

(h) In case a copy of the FIR is not provided on the ground of sensitive nature of the case, a person grieved by the said action, after disclosing his identity, can submit a representation to the Superintendent of Police or any person holding the equivalent post in the State. The Superintendent of Police shall constitute a committee of three officers which shall deal with the said grievance. As far as the Metropolitan cities are concerned, where Commissioner is there, if a representation is submitted to the Commissioner of Police who shall constitute a committee of three officers.

The committee so constituted shall deal with the grievance within three days from the date of receipt of the representation and communicate it to the grieved person.

(i) The competent authority referred to hereinabove shall constitute the committee, as directed herein-above, within eight weeks from today.

(j) In cases wherein decisions have been taken not to give copies of the FIR regard being had to the sensitive nature of the case, it will be open to the accused/his authorized representative/parokar to file an application for grant of certified copy before the Court to which the FIR has been sent and the same shall be provided in quite promptitude by the concerned Court not beyond three days of the submission of the application.

(k) The directions for uploading of FIR in the website of all the States shall be given effect from 15th November, 2016."

These directions must be complied with in letter and spirit and therefore, in this judicial order, we are only reiterating the directions given by the Apex Court in *Youth Bar Association of India (supra)*.

Ms. Soren has informed us that though the Committee has been constituted in terms of previous order of this Court, the Committee has asked the Superintendents of Police to collect the demands of the police constables. She states that sometimes the police constables are very reluctant to place their demands before the Superintendent of Police. We can understand the reluctance on the part of the police constables to complain to the Superintendents of Police. We therefore, permit the police constables to directly send their demands to the Committee through the convener of the Committee.

We however make it clear that individual grievance of the constables shall not be entertained by the Committee and only those demands shall be entertained by the Committee which fall within the category set out by our order dated 28.11.2016, which are of general importance to all the police constables and no individual complaint shall be entertained.

4. The Committee constituted by this Court as per order dated 28.11.2016, hereinafter referred to as a "Committee", has submitted

report dated 05.06.2017. That has been placed along with I.A. No.03 of 2017. The said report is received as part of the records. Learned *Amicus Curiae* has placed 'written submissions' dated 26.07.2017 which contains the views of the Committee in a tabular form. The differential views, if any, in the Committee have also been highlighted by her in the 'written submissions'. As part of those 'written submissions', the learned *Amicus Curiae* has made certain suggestions in paragraphs 3 to 6 thereof. A duly authenticated copy of the said 'written submissions' shall be issued by the learned *Amicus Curiae* to the learned Additional Advocate General.

5. Having regard to the materials on record, including the report of the Committee and the views presented by the learned *Amicus Curiae* through the 'written submissions' dated 26.07.2017, what is required now is that the State Government shall address all issues covered by the Committee's report and recommendations dated 05.06.2017, also taking into consideration the contents of the 'written submissions' made by the learned *Amicus Curiae* on 26.07.2017. This writ petition is, therefore, ordered directing that such exercise shall be carried out at the requisite level of the Government and requisite decisions shall be issued within a period of two months from the date of receipt of a copy of this order.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Sharad Kumar Gupta)
JUDGE