

(Awdhesh Singh Bhadauria Vs. State of M.P. & Ors.)

Gwalior: 31.10.2018

Per Justice Vivek Agarwal

Shri Omendra Singh Kushwaha, learned counsel for the petitioner.

Shri Praveen Newaskar, learned Govt. Advocate for respondent/State.

This writ petition has been filed seeking direction to respondent No.1-State of M.P. to establish office of Additional Director General of Police (Anti Dacoity) on regular and full time basis at Gwalior. It is further prayed that States of M.P., U.P. and Rajasthan be directed to form a permanent task force for monitoring of serious offences like abduction, dacoity etc. in bordering areas because such accused takes advantage of bordering areas so that in such cases Govt. machinery can be put to action expeditiously. Besides this, other relief like payment of amount of ransom to the family members of a victim if he is abducted and released after collection of such ransom has also been sought. It is also prayed that police force be divided in two parts in Gwalior Chambal Division wherein one part would deal with the investigation and another part would take care of law and order. It is also prayed that respondents No.1, 2 and 3 be directed to establish maximum possible number of industries in their areas so to mitigate problem of unemployment besides conducting regular awareness campaigns about problems related to dacoity.

Respondents have filed a return under the signatures of Additional S.P. Bhand to the effect that as far as relief No.1 is concerned, concerning Superintendents of Police are competent to take action, and therefore, there is no question

of deputing one person of the rank of Additional Director General of Police. It is also mentioned that as far constitution of task force of three states is concerned, matter will be considered at the high level of the State Government and as regards relief to pay or refund the amount of ransom to the family members of the victim, as per the provisions of Cr.P.C. appropriate steps will be taken in the relevant cases. It is further mentioned that as per the police manual there is no provision for separation of investigation from law and order, and therefore, such relief cannot be granted. It is also submitted that relief in regard to establishment of industries is not the responsibility of the Home Department and petitioner has not impleaded Industries Department. Besides this, there are well developed industrial areas in the districts of Bhind and Morena i.e. Malanpur and Bamore.

Again additional return was filed on 3.4.17 vide which it was shown that what action has been taken in different cases.

A compliance report was again filed in the shape of additional reply on 29.6.17 pointing out action taken by the police in Distt. Shivpuri.

On 1.10.2018 respondent No.2 – State of Rajasthan has filed a reply that there is a special provision of law namely, Rajasthan Dacoity Affected Areas Act, 1986, enacted for curbing the actions of the dacoits and also illegal business of kidnapping in the State. It is also submitted that without collecting any information petitioner has made allegations of non-cooperation whereas there is history of cases of joint action on part of both the State police against the dacoits and some times a Special Team has been constituted to curb the crime. It is also submitted that many a times joint operations

were made and no case of non-cooperation has been singled out by the petitioner.

Respondents have again filed a reply in October, 2018 and have submitted that as far as Chambal range is concerned, Distt. Bhind has constituted a team assigning duty of patrolling on the highway and same has been constituted for the Distt. Datia, Morena and Sheopur and copies of such orders have been collectively filed as Annexure R/1. Thereafter vide additional reply dated 10.10.18 it has been brought on record that such highway patrolling teams have been constituted for the Distt. of Guna as well as Ashoknagar.

In rebuttal, petitioner has filed a rejoinder and has submitted that in Gwalior Chambal Division dacoits were eliminated between 2000-06 but same situation has emerged again and every day on an average there are cases of 40-50 murders, attempt to murder, loot, dacoity, abduction etc. and respondents have not filed any specific reply to various issues raised by the petitioner.

As far as law and order situation is concerned, perusal of reply filed by the State of M.P. and State of Rajasthan makes it abundantly clear that attempts have been made to check this menace by enacting not only Special Act in their respective states, but also in the State of M.P. appropriate steps have been taken for highway patrolling in the bordering areas to the States of U.P. and Rajasthan falling under Gwalior Chambal Division.

As far as appointment of Additional Director General is concerned, it is for the administration to take a call as to which level of officer is sufficient to meet their administrative requirements, and therefore, any public spirited citizen may have some idea, but without substantiating the necessity of

any proposed administrative overhaul, such relief cannot be granted, specially when it is the prerogative of the State Government to create or abolish a post and simultaneously post a person to man such post which is created as part of a hierarchy in a given system.

Similarly establishment of industries, their co-relation in meeting out problem of unemployment and consequential impact on crime is a subject of criminology and *prima facie* there may be evidence to substantiate this, but at the same time, petitioner has not brought any empirical study on record as to how such factors are co-related and what will be its impact on the subject matter of the writ petition. Besides this, petitioner has also not taken pains to undertake any study as to what are the factors causing closure of established industries in the region and why industrialists are shying in investing in the region. This leads to an egg and chicken phenomena, and therefore, in absence of there being any empirical study as to the cause and effect and also to address closure of industries in Madhya Bharat, particularly Gwalior Chambal Division, and also looking to the fact that industry is a private enterprise which has its own limitations and indulgence of the State is limited to provide infrastructure, relief sought by the petitioner in this regard is at best an ancillary relief and not the main relief pertaining to problem of highway patrolling and crime detection.

Relief in regard to separation of investigation and maintenance of law and order is again within the domain of legislative competence and for this petitioner is always free to lead campaigns to form public opinion so to influence the legislature to amend the relevant Acts and to issue necessary administrative orders if so advised, but certainly it is not within

the domain of this Court to direct such separation of powers, however attractive it may sound as a theoretical proposition. In fact, in the case of **Prakash Singh and others Vs. Union of India and others** as reported in **(2006) 8 SCC 1** subject of police reform and recommendations of National Police Commission have been elaborately discussed and separation of investigation work from maintenance of law and order was part of the subject matter of the said decision and has been discussed in para 20 of the said judgment, and therefore, there already exists direction of Hon'ble Supreme Court in regard to separation of investigation work from law and order as part of police reform, therefore, no separate directions are required in this regard.

Since it has already come on record that patrolling teams have been established and put into action, we express our hope and trust that State will not only monitor performance of such patrolling teams, but shall also take all necessary steps in furtherance of common object of reduction of crime and its early detection by strengthening such patrolling teams with necessary man power and equipment and shall monitor its performance on a time bound frame work to be decided by the State so that such patrolling teams remain alive to their responsibilities and duties. It is also expected of the State that apart from seeking inter-State cooperation on case to case basis, they will take all necessary steps to foster a joint team on regular basis so to exchange and monitor crime detection and its mitigation so to allay fears of common citizen of the State and secure their rights under Articles 21, 23 and 38 of the Constitution of India.

With the aforesaid observations, petition is disposed of with a further direction to the respondents to furnish action

Writ Petition No.5718/2016 (PIL)

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taken report in regard to the aforesaid on or before 20th
March, 2019 before the Registry.

(Sanjay Yadav)
Judge

(Vivek Agarwal)
Judge

ms/-