

185

# Citizens for Justice and Peace

May please see for  
information & orders.

April 21, 2011

To,  
Shri AK Malhotra  
Special Investigation Team (SIT)  
Gandhinagar

Chairman SIT / Shri C. H. Modi Member SIT.  
Reference: 161 Statement in SLP 1088/2008

Dear Shri Malhotra,

Pursuant to the recording of my 161 statement in the SLP 1088/2008 following the directives of the Hon'ble Supreme Court on 15.3.2011, the SIT had recorded my statement which was an unsigned statement in Mumbai at my residence on Monday, 11.4. 2011. There are certain points that I wish to place on record following this aspects to be considered as part of the 161 statement. I urge that this letter is read with my 161 statement or attached to it as have been the detailed materials placed by us before the Hon'ble Supreme Court on 10.8.2010.

- I. As has been pointed out in **point 15 in the attached NOTE annexed herein** --- that I had handed over to you on 11.4.2011 -- the highest criminal culpability of the higher echelons of the Gujarat especially Ahmedabad Police/Political Class relates to the **destruction of vital records related to the 2002 violence**. This destruction appears to have found mention in your report submitted to the Hon'ble Supreme Court on 14.5.2010 as revealed by subsequent developments and has thereafter also led to applications and legal moves to get criminally prosecuted whosoever may be responsible for this destruction. (Possibilities are that the higher level of police officials, IAS officials in the Home Department as maybe also the chief executive of the state who is also himself Home Minister, may have a role in this methodical destruction). This also applies to the near immediate destruction of details of phone calls of the landline of former Parliamentarian Shri Ahsan Jafri.

While I was on the verge of elaborating this point about destruction of these vital records in my statement under section 161, I was informed by you suddenly that now after nearly two years of the SIT believing (and saying so to the Hon'ble SC Court as also the Trial Court hearing the carnage cases) that these records have been destroyed, that **one of these high ranking officials, Shri P.C. Pande (who is also Accused No. 28 in our complaint before the Hon'ble Court) is presenting an entirely fresh version of facts before the SIT and now stating that these records were never actually destroyed by him at all but carefully scanned and saved!** He has now presented this CD of scanned PCR (Police Control

Nirant, Juhu Tara Road, Juhu, Mumbai - 400049. Ph: 26602288 / 26603927

e-mail: [cjpindia@gmail.com](mailto:cjpindia@gmail.com) website: [www.cjponline.org](http://www.cjponline.org) e-mail: [teestateesta@gmail.com](mailto:teestateesta@gmail.com)

2798

186

Room and other Vital Documentary records) before you. We presume that this change of heart is post 15.3.2011 when the Hon'ble Court directed SIT to go into the report filed by the Amicus Curiae, that Shri Pande has in a flash of memory now produced the entire documentary record that he had scanned and kept aside before they were destroyed!!) You also mentioned that there were 3,500 pages of such evidence which SIT is now, after nearly 2 years of the Inquiry commencing, examining.

**We wish to express as co petitioners and our distress and consternation at what we believe is a belated attempt by Shri Pande to save his skin or those of his political bosses. All this while – including according to all reports, in the report submitted by yourself and Shri Raghavan to the Hon'ble Supreme Court, you have maintained that these records have been destroyed.** Shri PC Pande has, we have been given to understand, twice before been examined by the SIT in the Zakia SLP 1088/2008 in the period between May 2009 and May 2010. Surely in the twelve month period he ought to have produced this voluminous record that he had so carefully scanned and preserved? His producing it now belatedly, albeit only after the Hon'ble SC has asked SIT to inquire further into its "inferences" and "evidences" is both mysterious and suspicious. In a senior official accused of criminal conduct this in no way frees him from allegations of suppression of evidence.

It may be assumed that if the Inquiry had not reached this stage, i.e. if the Hon'ble Supreme Court had not impelled or compelled the SIT to go further, for the victims and the public Shri PC Pande's sudden and generous manoeuvre may have never happened, that is the "destroyed" records would have remained buried!

Sir, we were particularly disturbed by your interpretation at these actions of Shri Pande. The belated production of the records appears to being interpreted by you and the SIT as Shri PC Pande's astute generosity.

The following questions arise that we wish to place specifically before you:

- a) The timing of the "destroyed" records "reappearing" in the action of Shri PC Pande suddenly handing over the scanned CD of all destroyed documents to you post 15.3.2011, i.e. *after* the last directions of the Hon'ble Supreme Court.
- b) Since Shri Pande's role of collusion in the conspiracy has been specifically alleged we at least cannot see this either as a stray or innocent act and would therefore urge that a hard, objective inquiry into **the previous evasion and suppression of evidence and thereafter the circumstances behind the sudden disclosure actually takes place and offences under Shri PC Pande are also registered for the earlier suppression and subsequent belated disclosure of evidence. Being a public servant who was in a commandeering**

2799

187

**position when the worst incidents took place, his role is critical and therefore even more suspicious.**

- c) When a senior officer like Shri Pande states that records are destroyed in the PE and thereafter turns up with the vanished documents what are we to make of this? Similarly we may reasonably believe that Video Recordings that we have until now been told just did not exist, may or will turn up as will certain crucial other evidence.
  - d) Shri Pande's role in the overall conspiracy and his subsequently being rewarded by the government of Gujarat for his silence and suppression (with profitable postings) make him liable to be inquired into. His personal assets and accounts as those of his family members as also the assets and accounts of other IPS and IAS officials who have been favoured by the GOG need to be part of the inquiry.
  - e) We thought it imperative that this matter be placed on record.
  - f) Finally we are by no means convinced that the records being produced by Shri PC Pande belatedly are in any way genuine or the complete records. We trust that the SIT will also inquire rigorously into the authenticity and completeness of these records.
- II. We would also like to place on record our concern, expressed in the attached note at SIT's failure to look at the Tehelka extra judicial confessions seriously especially when related to the build up of arms and ammunition into Gujarat prior to the Godhra incident of 27.2.2002. This is backed by Gujarat SIB's own reports and the SIT's failure to look into this appears surprising.
- III. We would also like to draw attention to the following specific page nos from *Rights and Wrongs*, a Report of the Editor's Guild, 2002 that was handed over to you by me before May 2010:
- a) The Zee TV programme excerpted transcript pg 38; annexure 4;
  - b) Telecast of Gujarat Chief Minister Narendra Modi from Ahmedabad Door Darshan on 28.2.2002 ; Annexure 4A
  - c) Broadcast of CM Modi's Akashwani speech of 27.2.2002
  - d) Central Government's Collaborative Role; Annexure 24 (IE 28.2.2002)
  - e) Video Footage on Gujarat Violence Throws Up Vital Evidence; Annexure 21
  - f) Memorandum from Victim Community(Memorandum Regarding Provocation and Instigation of Violence During February and March 2002 by Print Media in Gujarat) ;Annexure 14;
  - g) Samples of Narendra Modi's Fan Mail; pg 165
  - h) Brief Note on Electronic Media on Vadodara; pg 164
  - i) Samples of Media Coverage (Sandesh Newspaper); pgs 174-175
  - j) Meeting with Narendra Modi; page 10 onwards
  - k) Congratulatory letters by CM to newspapers; pg 8

2800

188

- IV. I attach the article handed over to you the day my 161 statement was recorded (*Indian Express*, 9.4.2002) that concurrently reported on the VHP's hand in bringing arms and ammunition from Rajasthan and other places into Gujarat before the Godhra incident on 27.2.2002.
- V. I attach also a press clipping that appeared in Divya Bhaskar dated 15.4.2011 that appears to suggest that SIT has yet again, arrived at the conclusion that the chief minister displayed no partisan or communal mindset. This has caused much consternation given the timing of the article.
- VI. I urge also that apart from contemporaneous television coverage of various private channels that should be seized by SIT (much of this is available) the testimonies and footage of film makers Gopal Menon, Pankaj Sharma and Rakesh Sharma be also recorded.
- VII. I had omitted mentioning Major Zahiruddin Shah who was in charge of the Army battalions who's statement should also be recorded.
- VIII. Among the many other seizures we believe are crucial to get to the roots of the conspiracy to commit mass murder and destroy evidence are the video recordings of the scenes and sites of the mass carnages that were made available by the IO in the Best Bakery case *only after the case was transferred to Mumbai*. We believe that unless SIT attempts to link all the 32 allegations made in the complaint that reveal a systematic attempt not simply to allow the commission of offences but thereafter to influence the prosecution and obstruct the course of justice, the matter will be long drawn out and painful.
- IX. In this specific connection we wish to draw attention to discussions related to unaccounted money going from BJP MLA Madhu Srivastava's account to a witness Ms Zahira Shaikh who turned hostile. (Income Tax Inquiry). This IT Inquiry was pursuant to the order of the Hon'ble Supreme Court. This was not a stray incident. But an attempt by the elected representatives of the Gujarat government to influence witnesses and ensure the guilty are not punished. We were also perturbed at your observations about me and our group, CJP on this matter especially since it was the CJP who had approached the Hon'ble Supreme Court for an inquiry into the matter. Since the Registrar General's report had cleared our organisation completely, we would urge that you go through this report since propaganda and misconceptions are rampant.. In case you do not have access to it, the report is available at <http://www.cjponline.org/SCreport.pdf>.
- X. I would like to conclude with, for the umpteenth time, expressing my discomfiture with Gujarat police officers still being part of the SLP 1088/2008 Smt Zakia Ahsan Jafri inquiry. I say this because both Mr Himanshu Shukla and Mr Ashutosh Parmar were present in Mumbai when my statement was recorded. I would like to place on record the dangers of such porosity in the SIT team given the vindictiveness of the mindset of the Gujarat political

2801

189

leadership and police administration against both victims and human rights groups. Worse the possibilities that any leakages from the inquiry could lead to witnesses being coerced and critical evidence being destroyed. We fear that our statements and leads are leaked to those who are named as accused allowing ample opportunity for them to cover up/destroy or construct evidence. This also impinges on the physical security of victims, complainants and us as also our families.

- XI. I would like to end by stating that the fresh revelations by Shri PC Pande amount to an effort by a highly placed officer of not merely attempting a cover up of his suppression of crucial records for nine plus years; his subverting the inquiries into various cases by not making available these records in the individual trials and thereby committing grave contempt of the judicial process. We would like to state that though partial records in the Gulberg cases (PCR and Fire Brigade etc) were made available this happened ***only after applications under 173(8) were filed by witnesses and did not logically form part of the charge sheet as they should have done from the very beginning.*** Why were Shri Pande and other senior officials suppressing these records? Allegations of high level involvement and complicity have been made by victim survivors since immediately after the incidents. Was this suppression related to protection of the mighty and powerful?

Given the peculiar circumstances of the case and the turn of events over past months, we are also making a copy of this communication to our advocates as also the Amicus Curiae.

Yours Sincerely,

  
Teesta Setalvad  
Secretary

List of Annexures:

1. Note on Points that need to be Investigated given to SIT
2. Indian Express, 9.4.2002
3. Divya Bhaskar, 15.4.2011

CC: Shri Raju Ramachandran, Amicus Curiae in SLP 1088/2008.

2802

190

Following documents need to be examined:

- (1) The police wireless messages for the year 2002 that are with the GOG though in some official statements they have said they have been destroyed. Information that they are all available.
- (2) Records / documentation / minutes of the crucial law & order meetings held by Government, their follow up and monitoring by concerned authorities.
- (3) Records of police exchanges
- (4) Phone call records of fixed land lines of crucial persons (which apparently were not maintained by the telephone exchanges)
- (5) Detailed analysis of even the mobile phone records of the crucial persons which gradually became available to the SIT during the course of inquiry.
- (6) The directories of the Mobile phone Companies (AT & T and Cellforce).
- (7) The recordings of television channels of the critical events – especially Civil Sola hospital Ahmedabad on 28-2-2002 and from 27.2.2002, especially coverage of Godhra mass arson, transportation of dead bodies to Ahmedabad, funeral processions, interviews of political functionaries, heads as also senior members of the administration and police. These are available and ought to have been formally seized by the SIT to independently corroborate events of nine plus years ago.
- (8) Log books / Case diaries maintained by Police Officers Investigating Violence/Riots / Case diaries of beat constables

2803

191

- (9) Government Files relating to appointments of public prosecutors as also Statements of DMs/ Committees that are responsible for these appointments since partisan PPs were appointed\
- (10) Files relating to transfers of relevant police officers during the period
- (11) Documents and records of intelligence inputs of the State and Central Intelligence of that period (27.2.2001-31.5.2002) and Study of Reports/Comments of MHA. The Intelligence wing of government provides an independent assessment of political decisions and conduct that are particularly crucial when mass violence of the kind experienced in Gujarat 2002 takes place and serious evidence and examples of high level complicity are alleged. Specifically C/Dir/Shamshan Yatra/176/2002 dtd 2002 marked to the chief minister's office and senior police officers. Also SIB Reports of bodies dumped in the Well in Naroda Patiya and investigation allegations (Chara in Tehelka, 2007) of CP PC Pande's scattering of the bodies dumped in this well, all over Ahmedabad.
- (12) Security logs of the CM and other relevant senior officials of the relevant period showing their movements.
- (13) The records of the Army and Central Paramilitary forces showing not just their deployment but their permissions from civil authorities to use force and firearms. The Statement in this regard of the head of the Armed Forces which were reportedly deployed in Ahmedabad and the rest of the State.
- (14) The Statement of Shir KPS Gill who was sent by the Central Government on 4th May 2002 and who played a key role in ordering the reshuffle of key police officers deployed in the State, after which the riots appeared to have subsided.

2804

192

- (15) One of the stated reasons why some of these notes could not be accessed was the claim of the Gujarat Government that the records relating to meetings, police log books, wireless messages etc. were destroyed or were not kept. Official searches and seizures for this records / documents are vital as also prosecution of those senior or junior responsible for evidence destruction while the Supreme Court was monitoring this case!
- (16) Examination of Documents on Communication between the chief minister's office, Home department, DGP office, offices of the Commissioners of Police Ahmedabad, Vadodara and others.
- (17) Examination of documents on Communication between DGP's State Control Room Gandhinagar with Commissionates all over Gujarat, SPs of districts and ADGP Intelligence.
- (18) Procurement of all data and representations/memorandum sent by riot affected persons to Central and State statutory authorities including the office of the Governor and President between 27.2.2002 onwards that will reveal the depth and gravity of the violence and the brazen subversion.
- (19) Examination of all official records related to preventive detention in all cities and districts on the crucial dates of 27.2.2002 (Refer Addl CP Shivanand Jha cross examination before the Nanavati Shah Commission para 3.08 and CP Pande's affidavit and deposition (paras 5.11, 5.8, 6.5 and 6.43). Also SIB document C/Prevention/177/2002 dated 28.2.2002 that records HP/BJP men in Mobs and attacking innocent members of the minority community.

2805



193

- (20) Why as Videography either not done or not made available to the investigators?
- (21) Sanghis as PPs...Dilip Trivedi's evidence...easy granting of bail is evidence
- (22) Why was the CD given by Rahul Sharma in 2004 either authenticated or discarded by the Government of Gujarat and the Gujarat Police?
- (23) That the bodies of the persons who had been burnt in the Godhra train fire were handed over to the VHP State Secretary Dr. Jaideep Patel who is an accused in Naroda Patiya and Naroda Gaam massacre in violation of normal rules and procedure.
- (24) The two ministers Shri Ashok Bhatt and Shri I.K. Jadeja were positioned by the Government in the morning of 28th February 2002 in the Ahmedabad City Police Control Room and the State Police Control Room respectively. They were thus positioned there by the Government though they had no professional connection with the law and order on precisely the day that large scale riots began in the State. (Contradictions in CM statements to the Guild and what has been reported)
- (25) Requisition or seize the records and filed relating to the transfer of these and other officers.
- (26) Distress about delay of action against Joint Commissioner of Police Shri M. K. Tandon and another police officer Shri P.B. Gondia with regard to their acts of omission in the carnage at Gulberg Society and the Naroda Patiya case.

2806

194

- (27) Rs 18 lakhs unaccounted disbursements for Madhu Srivastava account (IT Inquiry) why no question of him or higher up about it.
- (28) Discriminatory attitude of the Chief Minister as much as he went to Godhra traveling 300 km for that purpose but failed to go to local areas.
- (29) Failure of the Gujarat Government to act against the print media making-communally inciting reports, though such action was recommended by some field officers as well as the State Intelligence Bureau. (The Editor's Guild which had been provided to the SIT which mentioned that the CM had in fact issued selective congratulatory letters to those papers which had carried inflammatory coverage of the riots. Such letters were not sent those Gujarat newspapers which had acted responsibly. Why no penal consequences? (Indian Express of April 9 2002 and Editor's Guild excerpts. Pg 27). Need to study comparatively the coverage of Sandesh and Gujarat Samachar that functioned as arms of the government (inflaming passions) and other publications like Sambhav (four editions), Prabhat (Ahmedabad and Mehsana) and Gujarat Today) that were more balanced. Need to record statements of RE TOI Kingshuk Nag, RE Indian Express Virendra Kumar, Prabhat's Director Ashish Kothari who had told the Guild that swords and liquor had been distributed in areas on February 27.
- (30) Assessment of the government supporting the bandh
- (31) Partisan PPs Best Bakery Case where the courts says, "The prosecutor who does not act fairly and acts more like the counsel for defence is a liability to the fair judicial system and courts should not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total

2807

195

aloofness." Similarly the Gujarat High Court has ordered the replacement of Public Prosecutors in the Sardarpura case.

- (32) No penal action against of officers who subverted investigation did not name accused in 2002 and until 2008 when SIT was appointed
- (33) **Serious: Destruction of Records while SC watching:** The explanation of the State officials that these were routinely destroyed after 5 years is too facile to accepted in the light of the fact that several investigations / inquiries relating to these records were in progress, including the pendency of these very cases before this court. In these investigations coercive measures like searches and seizures may be required.
- (34) Investigation of the mobilization of arms and ammunition allegedly by individuals of the Hindu right wing groups before the Godhra incident. These have been mentioned by persons belonging to these organizations to Tehelka in the sting operations. The Tehelka tapes are said to have been authenticated by the CBI when they were asked to do so by the NHRC. The SIT does not appear to have given due weight to the extra judicial confessions of the Hindu extremist groups in these tapes. (Haresh Bhatt etc) Even the Fax allegedly send from the ADGP SIB's office to the Ahmedabad police commissioner saying that their intelligence shows that Sabarkantha unit of the VHP had supplied weapons to their Ahmedabad unit which led to an inquiry and arrest (Indian Express April ( **Editor's Guild Report...pg 27**))
- (35) Non arraignment of those complicit (SRP in Naroda Patiya), KK Mysorewala etc.

2808

196

- (36) Adding of names of accused that get revealed during investigations.
- (37) All those public servants who were given reward postings and extensions after retirement, and have been accused of failing in their statutory and Constitutional duty, and are therefore logically, obliged to the State government and the present Chief Minister should be carefully probed including their financial assets/bank accounts as also those of their close relatives;

2804

197

<http://www.indianexpress.com/oldStory/627/>

Indian Express, 09April 2002

### VHP 'hand' in Gujarat's murder weapons

JOYDEEP RAY

AHMEDABAD, APRIL 9:

One of the representative images of the carnage in Gujarat was that of a young man in a sleeveless T-shirt, saffron band across his forehead, brandishing a sword.

After several hauls of such weapons and more than a month of violence, police officers say they believe there was an organised distribution of swords, in some cases possibly within a few days of the Godhra carnage.

Almost all the swords seized were brand new, and bore the same marking, indicating manufacture in the Sirohi district of Rajasthan.

And, while their leaders remain vague on details, Bajrang Dal activists told The Indian Express distribution was on till at least 10 days ago.

Police officers who made the seizures in the Vejalpur, Shahpur, Maninagar, Vatva, Kalupur and Gomtipur police station areas of Ahmedabad said rioters could have obtained the swords through two sources: at diksha samaroh functions organised from August-December 2001 by the VHP and the Bajrang Dal; and from workers of the two organisations in the first few days of the post-Godhra violence.

IAS officers call off meet Gandhinagar: The Gujarat IAS Officers' Association which had scheduled a meeting here today called it off amid reports that was pressure from the state government. The meeting was called to "discuss the present scenario in the state and do introspection into the role of bureaucracy in the trying times." Association chief and senior IAS officer Vijay Ranchan said it was postponed and would be convened some other day. Some officers said they believed that swords were still being distributed in Hindu areas "for protection of life and property against Muslim attacks." Carrying of swords "capable of being used for carrying out physical violence" is prohibited under Section 37 of the Bombay Police Act. Convictions could lead to jail terms ranging from four months to a year.

VHP joint secretary Jaideep Patel denies any distribution of swords "in the last few days", but admits that swords and trishuls are routinely distributed to volunteers.

"We've been distributing these weapons since 1985; trishul diksha samarohs and Bharatiya abhyans are a constant process," he said. "Nobody has objected, not even the police."

Patel said the weapons "were not for creating terror or causing injury".

2810

198

Hareesh Bhatt, VHP vice-president for Gujarat, said, they are meant to be used "purely in self-defence against Muslim attacks. Do you think when they attack, we want our men to stand empty-handed and get killed?"

Bhatt refused to say if sword distribution was still on for fear of "alerting Muslims".

"But," he said, "there is nothing wrong. Swords and trishuls are not weapons, these are divine instruments used by our gods."

Police officers have a different view of the tempered, well-sharpened steel. Holding up one confiscated sword, a police officer said, "Look, most of them are more than four feet long. They slice through flesh on touch. Just touch the edge to a man's throat and he will die."

Requesting anonymity, an officer said there was no doubt the distribution was well-organised. "Some of the men arrested during seizures said that during the trishul diksha samaroh last November, swords were given to any volunteer who paid Rs 200," he said.

Senior officers are unwilling to come on record about the extent of the seizures and the arrests made. All Deputy Commissioners V.M. Parghi and B.S. Jebaliya, whose areas saw much violence, would say was that seizures and arrests were made but they did not have details.

In contrast, lower-level VHP and Bajrang Dal leaders are ready to speak about weapons distribution. Prakash Shivnani, a Bajrang Dal leader of the Naroda area — where the Naroda Patia carnage took place — boasted, "In the last 10 days I have distributed more than a thousand swords to Hindus. I don't find anything wrong. Now, Muslims may retaliate, and we have to be ready."

Asked where he got the swords from, Shivnani said, "Earlier we used to get it from the Dudheswar area in Ahmedabad, but now we get it from Rajasthan."

He also said that now the organisation did not charge volunteers for the swords.

In the Karanj area in the heart of the city, too, swords were distributed just a few days ago.

Said a resident of Marwadi Ni Dhel, "Just three days back our VHP leader distributed 200 swords."

He said he took three: "One for me, one for my father, and one is in reserve."

2811

DIVYA BHASKAR, APRIL 15, 2011

